

Prepared by:

Alan I Gould

ALAN I. GOULD, ESQUIRE

Special Counsel, Borough of Avalon

Municipality: BOROUGH OF AVALON, Cape May County, New Jersey

Property address: _____

Tax Map Reference: Block _____ Lot(s) _____

DEED RESTRICTION and NON-CONVERSION AGREEMENT

This Agreement is dated _____, 20____ between
Month Day Year

GRANTOR(S) *[Insert name and permanent residence of each owner]*

And

GRANTEE: BOROUGH OF AVALON, a municipal corporation of the State
of New Jersey located at 3100 Dune Drive, Avalon, NJ 08202.

**THE REAL PROPERTY DESCRIBED ABOVE, TOGETHER WITH ALL STRUCTURES
AND IMPROVEMENTS THEREON WHICH NOW EXIST OR WHICH MAY
HEREAFTER BE CONSTRUCTED IS MADE SUBJECT TO THIS DEED
RESTRICTION AND NON-CONVERSION AGREEMENT AS HEREIN PROVIDED.**

**THIS DEED RESTRICTION AND NON-CONVERSION AGREEMENT MAY, AT TIMES,
HEREAFTER BE REFERRED TO AS "THIS AGREEMENT".**

BACKGROUND

A. All enclosures, including attached garages, new enclosures attached to the primary dwelling, storage areas, outdoor entertainment areas attached to the primary dwelling, and/or any new development of the area below the design flood elevation, such construction shall be subject to the following provisions:

1. Finish materials shall not be permitted below the design flood elevation with the exception of **400 square feet of flood-resistant finish material in the building entry only. (per Ed's email of 1/4/23)**
2. In accordance with the New Jersey Uniform Construction Code, enclosures below the design flood elevation, including garages, shall be unfinished and flood-resistant, and shall be used solely for vehicle parking, building entry, or limited storage. Electrical systems, equipment, and components; heating, ventilating, air conditioning; plumbing appliances and fixtures; duct systems; and other service equipment shall be located above the design flood elevation, except as permitted by the New Jersey Uniform Construction Code.
3. Such construction shall comply with all of the provisions of Chapter 19 of the Borough Code (Flood Damage Prevention).

B. All enclosed areas below the approved design flood elevation, including garages, shall have flood openings installed in accordance with ASCE24 and the New Jersey Uniform Construction Code.

IT IS AGREED AS FOLLOWS:

1. Prohibition Against Use for Human Habitation.

Owner(s) named above, for themselves their heirs, executors, administrators, and assigns do hereby waive and relinquish, in perpetuity, any right of the owner(s) or their agents to convert or use any part or portion of the enclosed areas below the design flood elevation as habitable space. Such area shall be used solely and exclusively for the parking of vehicles, limited storage, or access to the building and will never be used for human habitation.

In addition:

- All interior walls, ceilings, and floors below the design flood elevation at the time of construction shall be unfinished and all proper and required venting shall be installed and maintained; and
 - Exception 1: Only the building entry may be constructed of flood-resistant materials up to a maximum of **400 square** feet. Finish materials installed below the design flood elevation shall be water resistant Class 4 or 5 in accordance

with FEMA Technical Bulletin 2, Table 2.

- Exception 2. **Outdoor entertainment areas attached to the primary dwelling** shall be permitted to be finished with flood resistant materials in accordance with FEMA TB-2, however if the outdoor entertainment area is to be enclosed when not in use, then the total amount of finished space below the design flood elevation may not exceed 400 square feet including building entry and entertainment area enclosure. Outdoor entertainment spaces are not habitable indoor spaces, and shall not be used as habitable indoor spaces.
- ◆ All mechanical, electrical, or plumbing devices and equipment, and their attendant utilities shall not be installed or relocated below the design flood elevation.

2. **Jurisdiction of Superior Court of New Jersey; Remedies on Default or Violation.**

The owner(s) agree to submit to the jurisdiction of the Superior Court of New Jersey, with the venue situated in Cape May County, and that in the event of any violations of the terms of the agreement, the Borough may, in its discretion, and in addition to any other remedy it may have under this agreement or otherwise, apply to the Superior Court to compel compliance with the non-conversion agreement, by specific performance or otherwise, including seeking the award of damages, costs of litigation and reasonable attorney's fees.

3. **Property Subject to Inspections by the Borough; Survival of Agreement.**

The Property described herein which is subject to this non-conversion Agreement shall be subject to periodic inspections by duly authorized agents, of the Borough of Avalon, without notice, at reasonable times and intervals as determined by the Borough, BUT IN NO EVENT LESS THAN ONCE PER YEAR. This may be in addition to, or concurrent with, other routine inspections performed by the Borough including, but not limited to, zoning inspections during and post construction, licensing inspections, fire inspections, and inspections on transfer of the property.

This non-conversion agreement shall survive the issuance of any construction permit or any other subsequent permit or approval granted by the Borough pertaining to the property and shall not merge into same.

4. **Violations; Administrative Penalties; Enforcement; Other Permits.**

Should a violation of this non-conversion agreement be discovered, the owner(s) shall have thirty (30) calendar days, OR SUCH FURTHER TIME AS SPECIFIED BY THE ENFORCING AGENCY from the date of Notice of Violation (sometimes "NOV") to correct the violation. Should the owner(s) fail or neglect to do so, the owner(s) shall be subject to an administrative penalty as follows:

Commencing on the date of the Notice of Violation (NOV)	Penalty to be levied
If violation is abated within 30 days from NOV	No monetary penalty
Commencing on the 31 st day from the NOV for 30 additional days	Up to \$500.00 per week, i.e., for every period of 7 days or fraction thereof
Commencing on the 62 nd day from the NOV for an additional 30 days	\$500.00 per day.
Commencing on the 92 nd day from the NOV and daily thereafter until the violation is abated	\$1,000.00 per day

The administrative penalty shall operate as a lien on the property and shall be collected in the same manner and fashion as real estate taxes and other municipal charges.

During the period that the violation continues, no permits shall be issued by the Borough to the property owner(s) for any purpose, except for the correction of the named violation and owner(s) shall not be entitled to file applications with the Avalon Planning & Zoning Board; receive any certificates of approval or conformity; any certificate of occupancy or continued certificate of occupancy nor any approvals that may be required to sell, assign, or transfer the property.

In addition to the foregoing Administrative Penalties, any violation may also subject the OWNER(S) to the criminal penalties for an Ordinance violation specified in Ordinance 849-2022 and codified as part of Chapter 19.

5. Requirement for Deed Restriction; Non-conversion Agreement; Modification; Consent by Authorized Personnel of the Borough of Avalon; Discharge.

This Agreement, which is known as a Deed Restriction and Non-Conversion Agreement (NCA), shall be recorded **in the Office of the County Clerk** and shall run with the land and shall not be discharged, modified, or altered without the express written consent of the Borough of Avalon which consent, if granted, shall only be expressed by Resolution of the Borough Council. **Any such modification shall be recorded with the Cape May County Clerk.**

This Agreement is applicable to the principal structure and may be applicable to other improvements located on the property. In the event of demolition or destruction of the subject improvements by fire, flood, or otherwise, this Agreement shall become null and void and may be discharged from the public records by the OWNER(S) making written application to the Borough through the Flood Plain Administrator and the Zoning Official who shall notify Borough Council which may authorize the discharge of the recorded Agreement by Quit Claim Deed or otherwise.

Prior to the recording of this Agreement, it shall be countersigned by the Flood Plain Administrator and the Zoning Official attesting that the same is in accord with Chapter 19 (Flood Damage Prevention) of the Avalon Borough Code.

6. Appeal.

The owner(s) or other party in interest may appeal any administrative penalty imposed herein to an Appeal Tribunal composed of the Business Administrator or his designee, the Director of Revenue & Finance or his designee, the Director of Public Works & Utilities, or his designee. Any decision of the Appeal Tribunal may be further appealed to the Borough Council or a subcommittee of same appointed by the President of Borough Council. The decision of Borough Council shall be final and conclusive.

7. Enforcement.

This Agreement shall be enforced on behalf of the Borough by:

- The Construction Official / Flood Plain Administrator
- Code Enforcement Official and Officers
- Zoning Official / Flood Plain Coordinator
- Zoning Code Enforcement Officer

8. Governing Law; Severability; Miscellaneous Provisions.

This Agreement shall be construed in accordance with the law of the State of New Jersey. This Agreement is expressly authorized and required by Ordinance 849-2022, as amended and supplemented, and as codified in Chapter 19 of the Avalon Borough Code.

10. Severability. The invalidity of any one or more of the words, phrases, sentences, clauses, or sections contained in this Agreement shall not affect the enforceability of the remaining portions of this Agreement or any part of it, all of which are inserted conditionally on their being valid in law. Except as is otherwise provided above, in the event that any one or more of the words, phrases, sentences, clauses or sections contained in this Agreement shall be declared invalid by a court of competent jurisdiction, then, in any such event, this Agreement shall be construed as if such invalid word or words, phrase or phrases, sentence or sentences, clause or clauses, or section or sections had not been inserted.

11. Entire Agreement/Modification. This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein and supersedes all prior negotiations, agreements, understandings, and arrangements, both oral and written. This Agreement may not be modified in any way, except by a written instrument executed by each.

12. Benefits; Binding Effect. This Agreement shall be for the benefit of, and shall be binding upon, both the Municipality and Planning Consultant, their respective heirs, personal representatives, legal representatives, successors, and assigns.

Waivers. The waiver by either party of a breach or violation of any term or provision of this Agreement by the other party shall not operate, nor be construed as a waiver of any subsequent breach or violation of any provision of this Agreement, nor of any other right or remedy.

13. **Section Headings.** The section headings contained in this agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of any, or all of the provisions of this Agreement.

NOTICE

***THIS DOCUMENT IS INTENDED TO BE RECORDED BY THE
BOROUGH OF AVALON IN THE OFFICE OF THE CAPE MAY
COUNTY CLERK.***

SIGNATURES APPEAR ON FOLLOWING PAGE

EACH OWNER MUST INDIVIDUALLY SIGN BELOW. IF OWNED BY A PARTNERSHIP, EACH PARTNER MUST SIGN INDIVIDUALLY. IF OWNED BY A CORPORATION OR LLC, THE PRESIDENT, VICE-PRESIDENT OR MANAGING DIRECTOR AND SECRETARY MUST SIGN AND A COPY OF A CORPORATE RESOLUTION AUTHORIZING THE EXECUTION OF THE AGREEMENT MUST BE PROVIDED. IF OWNED BY ANY OTHER ENTITY, THE AGREEMENT SHALL BE SIGNED AND AUTHORIZED AS DIRECTED BY THE BOROUGH SOLICITOR OR OTHER COUNSEL FOR THE BOROUGH.

IN WITNESS WHEREOF, the parties have signed this Agreement to become effective on the day first written above.

____ (Owner) Print Name and address:
(Signature) Name

Street _____
City, State, Zip Code

____ (Owner) Print Name and address:
(Signature) Name

Street _____
City, State, Zip Code

____ (Owner) Print Name and address:
(Signature) Name

Street _____
City, State, Zip Code

____ (Owner) Print Name and address:

(Signature) _____ Name _____

Street _____
City, State, Zip Code _____

Notary acknowledgements appear below for OWNER(S).

NOTARY ACKNOWLEDGMENT OF OWNER(S)

THE STATE OF _____

COUNTY OF _____

On _____, 20____ before me, _____, Notary Public in
and for said
Month Day Year

county, personally appeared _____,
_____, (signer(s)) who has/have
satisfactorily identified him/her/themselves as the signer(s) to the above-referenced
document, a DEED RESTRICTION AND NON-CONVERSION AGREEMENT, and
acknowledged that they signed the same as their voluntary act and deed for the
purpose stated.

Notary Public Signature

Print _____

My commission expires: _____

(Seal)

RECORD AND RETRUN TO:

**BOROUGH CLERK
BOROUGH OF AVALON
3100 DUNE DRIVE
AVALON, NEW JERSEY 08202**

The undersigned, duly authorized agents of the Grantee, Borough of Avalon, hereby attest that the foregoing Deed Restriction and Non-Conversion Agreement was executed in accordance with Ordinance 849-2022 as codified in Chapter 19 (Flood Damage Prevention) of the Code of the Borough of Avalon.

BOROUGH OF AVALON

Richard E. Dean, Sr.
Construction Official – Floodplain Administrator

ATTEST:

Amanda Seltzer
Floodplain Coordinator
Construction Technical Assistant
Zoning Official

STATE OF NEW JERSEY :
: ss
COUNTY OF CAPE MAY :

BE IT REMEMBERED that on this _____ day of _____ 20____
Before me, a notary public of New Jersey, personally appeared **RICHARD E. DEAN, Sr, and AMANDA SELTZER**, the Construction Official / Floodplain Administrator and Floodplain Coordinator / Construction Technical Assistant / Zoning Official, respectively, and both of whom are known personally to me, and each acknowledged under oath and to my satisfaction, that they each signed the foregoing document as their voluntary act and deed and for the purpose indicated.

[Notary Seal]

Notary Public of New Jersey

My Commission Expires: _____