

ORDINANCE NO. 2022-21

ORDINANCE OF THE TOWNSHIP OF LITTLE EGG HARBOR, COUNTY OF OCEAN, STATE OF NEW JERSEY, AUTHORIZING THE ACQUISITION OF A TEMPORARY CONSTRUCTION EASEMENT AND PERMANENT EASEMENT ON A PORTION OF BLOCK 325.84, LOT 2, 1 SILVER LAKE COURT FROM KEN AND DIANA LABARCA, IN ACCORDANCE WITH N.J.S.A. 40A:12-5(a)(1)

WHEREAS, Ken and Diana Labarca are the owners of Block 325.84, Lot 2 and Grantor; and

WHEREAS, the Township (Grantee) desires to construct bulkheading on Township property to extend along lagoon ends; and

WHEREAS, Grantor's property and bulkhead are adjacent to the Township's property upon which Township intends to construct a bulkhead; and

WHEREAS, the Township requires a temporary construction easement to make said improvements and to construct the bulkhead upon Township property; and

WHEREAS, Grantor's bulkhead is not built to the Grantor's property line, which would create a gap between the Township bulkhead and the Grantor's bulkhead; and

WHEREAS, Township requires a permanent easement on Grantor's property to construct bulkhead returns on its bulkhead structures to assure that there are no gaps; and

WHEREAS, the within easements are necessary for Township to secure the proper regulatory permits from the State, Department of Environmental Protection.

WHEREAS, N.J.S.A. 40A:12-5(a)(1) authorizes the Township to acquire an interest in real property by ordinance; and

WHEREAS, the Township of Little Egg Harbors desires to acquire a temporary construction easement and permanent easement along a portion of Block 325.84, Lot 2, also

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known as 1 Silver Lake Court from Ken and Diana Labarca for the purpose of construction of bulkhead returns and structures on and across Township-owned property and Grantor's property.

NOW, THEREFORE, BE IT ORDAINED by the governing body of the Township of Little Egg Harbor, County of Ocean, State of New Jersey as follows:

SECTION 1. That in accordance with the provisions of N.J.S.A. 40A:12-5(a)(1), the governing body does hereby Said Temporary Construction Easement and Permanent Easement is attached hereto and made a part hereof as Schedule A, and is subject to approval of form by the Township Attorney, the Township Engineer, and the State, Department of Environmental Protection.

SECTION 2. That the Mayor and Township Clerk are hereby authorized to execute any and all documents necessary for the acquisition of a temporary construction easement and permanent easement along a portion of Block 325.84, Lot 2, also known as 1 Silver Lake Court from Ken and Diana Labarca.

SECTION 3. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 5. This ordinance shall take effect after second reading and publication as required by law.

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NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Township Committee on first reading at a meeting of the Township Committee of the Township of Little Egg Harbor held on the **10th** day of **November, 2022**, and will be considered for second and final passage at a meeting of the Township Committee to be held on the **8th** day of **December, 2022**, at 7:00 p.m. at the Municipal Building located at 665 Radio Road, Little Egg Harbor, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

KELLY LETTERA, RMC
Township Clerk
Township of Little Egg Harbor

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Prepared by: _____
MELANIE SZUBA APPLEBY, ESQ.

**GRANT OF TEMPORARY CONSTRUCTION EASEMENT
AND PERMANENT EASEMENT**

THIS GRANT OF EASEMENT made this _____ day of _____, 2022,

BETWEEN: **KEN AND DIANA LABARCA**, 54 Plank Road, Staten Island, NY 10314

Hereinafter called "Grantor,"

AND: **TOWNSHIP OF LITTLE EGG HARBOR**, a municipal corporation of the State of New Jersey, having its principal offices located at 665 Radio Road, Little Egg Harbor, New Jersey 08087,

Hereinafter called "Grantee,"

WHEREAS, the Township (Grantee) desires to construct bulkheading on Township property to extend along lagoon ends; and

WHEREAS, Grantor's property and bulkhead are adjacent to the Township's property upon which Township intends to construct a bulkhead; and

WHEREAS, the Township requires a temporary construction easement to make said improvements and to construct the bulkhead upon Township property; and

WHEREAS, Grantor's bulkhead is not built to the Grantor's property line, which would create a gap between the Township bulkhead and the Grantor's bulkhead; and

WHEREAS, Township requires a permanent easement on Grantor's property to construct bulkhead returns on its bulkhead structures to assure that there are no gaps; and

WHEREAS, the within easements are necessary for Township to secure the proper regulatory permits from the State, Department of Environmental Protection.

W I T N E S S E T H:

That the said Grantor, for and in consideration of **ONE AND NO/100 (\$1.00) DOLLARS**, do grant and convey unto the said Grantee, its successors and assigns:

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ALL that right of temporary construction easement and permanent easement, upon the property known as 1 Silver Lake Court, Block 325.84, Lot 2 on the Tax Map of the Township of Little Egg Harbor being subject to the temporary construction easement and permanent easement hereinafter described. It is the intention of the temporary construction easement to grant to the Grantee the right to use the Grantor's property to stage and conduct bulkhead improvements on Township property adjacent to Grantor's property. It is the intention of the permanent easement to construct a permanent bulkhead return as part of Township's bulkhead, which will extend onto Grantor's property. Said easements are delineated upon the attached Schedule A.

TO HAVE AND TO HOLD for use of said Grantee, its successors and assigns, during the construction of the bulkhead structures by the Township Engineer and a contractor for the Township of Little Egg Harbor at Block 325.84, Lot 2, Little Egg Harbor, New Jersey.

Said property to be subject to the temporary construction easement and permanent easement lies in and along premises of the Grantor in the Township of Little Egg Harbor, County of Ocean and State of New Jersey.

The Grantee shall have the right to patrol, inspect, design, store equipment and materials upon said property as the Grantee, its authorized agents, representative, or employees may at any time determine necessary.

Together also with the right from time to time to remove or clear and keep clear any and all structures and other obstructions upon said easement area, together also with the right of entry upon the Grantors' said lands for all the purposes as aforesaid. Aside from the Township's bulkhead return which shall extend onto Grantor's property and connect with Grantor's bulkhead, Grantee shall restore Grantor's property to the condition it was prior to the beginning of work under this temporary construction easement and permanent easement, subject to Grantor's reasonable satisfaction and the Township Engineer's discretion.

The Grantor hereby covenants with the Township of Little Egg Harbor that the Grantor is lawfully seized and possessed of the real estate above described; and that Grantor has a good and lawful right to convey it or any part thereof.

Said temporary construction easement shall commence on the day and year executed by the Grantors, as set forth above, and shall continue for a period no later than twelve (12) months thereafter provided.

Grantee agrees to indemnify, hold harmless and defend Grantor and any and all of its agents, representatives and employees from, and in conjunction with, any and all claims,

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actions, judgments, liability, laws, costs, expense, court costs, attorney fees, and demands of whatever nature incurred by or presented against Grantor arising specifically out of the actions of the Grantee pursuant to this Temporary Construction Easement and Permanent Easement, its agents, representatives and employees or contractors in the exercise of its rights hereunder.

IN WITNESS WHEREOF, the said Grantor have hereunto set their hands and seal the day and year first above written.

Signed, Sealed and Delivered
in the presence of:

By: _____, Grantor
KEN LABARCA

By: _____, Grantor
DIANA LABARCA

STATE OF NEW JERSEY, COUNTY OF
I CERTIFY that on _____, 2022,

SS:

_____ personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) was the maker of the attached instrument; and
- (b) executed this instrument as his or her own act.

(print name and title below signature)

RECORD AND RETURN TO:

Melanie Szuba Appleby, Esq.
Rothstein, Mandell, Strohm, Halm & Cipriani, PA
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