

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

ORDINANCE #2020-02

**Title:** AN ORDINANCE AUTHORIZING THE TOWNSHIP OF LOWER TO CONVEY A DEED OF EASEMENT TO THE PROPERTY OWNERS OF BLOCK 796, LOTS 45 & 46 IN ORDER TO AFFORD SAID OWNER ACCESS TO USE AND MAINTAIN AN EXISTING WOODEN PIER/WALKWAY CONSTRUCTED ON TOWNSHIP OWNED PROPERTY

WHEREAS, Clair Hooper ("Hooper") is the owner of certain real property located at 880 W. Rio Grande Avenue, a/k/a Block 796, Lots 45 and 46 ("Subject Property"), on the official Tax Map of the Township of Lower;

WHEREAS, there is currently an existing wooden pier/walkway constructed at the Subject Property which is owned by Hooper and which has been constructed directly over and across Richardson's Avenue, a paper street owned and maintained by the Township, Channel Road, a paper street owned and maintained by the Township, and Township owned property identified as Block 797, and Block 795, Lots 90 and 91, which provides the Subject Property with access to Richardson Channel;

WHEREAS, on July 11, 2018, the New Jersey Department of Environmental Protection ("NJDEP") issued Hooper a Notice of Violation associated with the performance of unauthorized regulated activities within a coastal wetland without obtaining authorization from the Department's Division of Land Use Regulation to reconstruct/repair the existing wooden pier/walkway;

WHEREAS, in order to resolve the pending NJDEP Notice of Violation and to apply for required permits, the NJDEP has indicated that Hooper requires written consent from the Township of Lower in order to perform restoration work to the existing wooden pier/walkway on and within property owned by the Township of Lower;

WHEREAS, in connection with the approval and authorization required from the NJDEP to permit Hooper to complete required and necessary repairs to said wooden pier/walkway located on and within Township owned property, the Township of Lower has determined that it is necessary to convey a right-of-way access easement to Hooper over its land so as to afford Hooper with permission and access to undertake the contemplated restoration work;

WHEREAS, N.J.S.A. 40A:12-1 et seq. permits the conveyance of an interest in land not needed for public purposes; and

WHEREAS, the public's interest in the Easement is not affected by granting this easement as Richardson's Avenue and Channel Road are unimproved paper streets, and the property owned by the Township, Block 797, and Block 795, Lots 90 and 91, consists of marshland and land that is currently underwater.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Lower, County of Cape May, State of New Jersey, as follows:

Section 1. The Township of Lower is hereby authorized to convey a deed of easement to Clair Hooper to afford her access to use and maintain an existing wooden pier/walkway constructed within Richardson's Avenue, a paper street owned and maintained by the Township, Channel Road, a paper street owned and maintained by the Township, and Township owned property identified as Block 797, and Block 795, Lots 90 and 91, as further identified in **Exhibit A** which is attached hereto;

Section 2. The Mayor and Township Clerk are hereby authorized to execute all documents necessary for the conveyance of the Easement, including but not limited to executing a Deed of Easement, attached hereto as **Exhibit B**, and other required conveyance documents;

Section 3. The Mayor and Township Clerk are hereby authorized to execute the Application Form for Permit Authorization required by the New Jersey Department of Environmental Protection granting Hooper its permission to proceed with the required permit application, which is attached hereto as **Exhibit C**;

Section 4. The land subject to the Easement is not needed for a public purpose and it is determined to be in the best interests of the Township of Lower to permit access by Hooper to the land in question by way of an Easement;

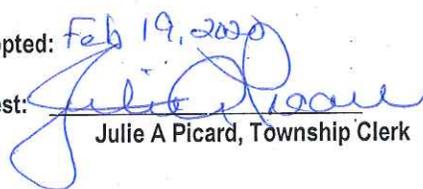
Section 5. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof;

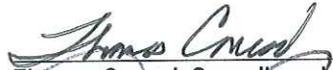
Section 6. All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

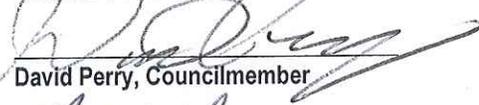
Section 7. This ordinance shall take effect immediately after final passage and publication in the manner provided by law.

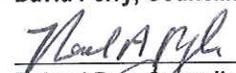
Introduced: January 22, 2020

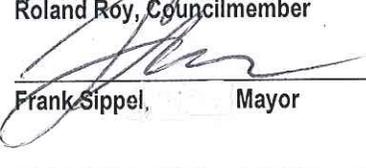
Adopted: Feb 19, 2020

Attest:   
Julie A Picard, Township Clerk

  
Thomas Conrad, Councilmember

  
David Perry, Councilmember

  
Roland Roy, Councilmember

  
Frank Sippel, Mayor

# Easement

KNOW ALL PEOPLE BY THESE PRESENTS, THAT the Township of Lower, ("Authority" or "Grantor"), a municipal corporation with a business address of 2600 Bayshore Road, Villas, NJ 08251, for One Dollar (\$1) and other good and valuable consideration paid by Clair Hooper, whose address is 31 Shade Court, Maple Shade, New Jersey, 08052, ("Grantee"), the receipt of which is hereby acknowledged, does hereby provide and grant to Grantee, its successors and assigns, a nonexclusive easement and right-of-way (the "Easement") over and across the following described real property (the "Easement Area"), for so long as the Easement is used solely for the purposes mentioned in this Easement, for the purpose of providing a means of ingress to and egress over and above the land and water by means of a raised pier to access the Grantee's waterfront dock, deck and mooring structures a set forth in the attached schematic being more particularly described as attached hereto.

The Easement is granted, subject to the conditions, restrictions, and limitations contained in this Easement. The recording of this NonExclusive Access Easement or use of the Easement by the Grantee, for itself and its successors and assigns, will be deemed acknowledgment and acceptance by Grantee of all terms and conditions, restrictions, and limitations contained in this document, which will be effective and binding on the Grantee, its successors and assigns. The Easement will constitute an appurtenance to the real property.

1. Grantee assumes the risk and will indemnify and hold harmless Grantor and/or Grantors' directors, officers, employees, public officials, agents, customers, invitees, and licensees against, any and all demands, claims, causes of action, fines, penalties, damages, losses, liabilities, judgments, and expenses for bodily injury, death, any other personal injury, damage to real or personal property, and business interruption (including, without limitation, attorneys' fees and court costs) incurred in connection with or arising from: (1) the use or occupancy of the Easement Area by Grantee, or its employees, agents, contractors, invitees, visitors, any other person entering upon the Easement Area under the express or implied invitation of Grantee, or any person claiming under Grantee; (2) any activity, work, or thing done, or permitted or suffered on or about the Easement Area by Grantee, or its employees, agents, contractors, invitees, visitors, any other person entering upon the Easement Area under the express or implied invitation of Grantee, or any person claiming under Grantee; (3) any acts, omissions, or negligence of Grantee, or its employees, agents, contractors, invitees, visitors, any other person entering on the Easement Area under the express or implied invitation of Grantee, or any person claiming under Grantee; (4) any breach, violation, or nonperformance by Grantee, or its employees, agents, contractors, invitees, visitors, any other person entering on the Easement Area under the express or implied invitation of Grantee, or any person claiming under Grantee, of any term, covenant, or provision of this NonExclusive Access Easement or any law, ordinance, or governmental requirement of any kind; or, (5) (except for loss of use of all or any portion of the Easement Area or Grantee's property located within the Easement Area which is proximately caused by or results proximately from the negligence or willful misconduct of

# Easement

Grantor), any injury or damage to the person, property, or business of Grantee, or its employees, agents, contractors, invitees, visitors, any other person entering on the Easement Area under the express or implied invitation of Grantee, or any person claiming under Grantee. If any action or proceeding is brought against Grantor and/or Grantors' directors, officers, employees, public officials, agents, customers, invitees, or licensees by reason of any such claim, Grantee, on notice from Grantor, will defend the claim at Grantee's expense with counsel satisfactory to Grantor.

2. Grantor expressly reserves a reversionary interest in the Easement Area. Grantee will not share, lease, assign, sell, convey, or transfer all or any part of the Easement or rights granted in this Easement. In the event the Grantee abandons, disuses, shares, leases, sells, assigns, conveys, or transfers all or any part of the Easement, or rights granted in this Easement, the Easement and all rights connected with the Easement will terminate and revert to Grantor in accordance with the Grantor's interest in the real property, and a Grantor may file an Affidavit of Facts Relating to Title for the purpose of giving public notice of any such reversion. On termination and reversion as stated, the Grantee will execute and deliver a recordable instrument of conveyance returning the described easement rights to Grantor and releasing any and all rights which may have been conveyed by this Easement. Grantor will be released from any obligation or liability to Grantee arising or resulting from the granting or termination.

3. Grantee agrees to be responsible for all costs related to damage to Grantors' real property or interest in the real property, which damage was occasioned by or resulted from the Grantee's use of the Easement.

4. The rights granted in this Easement do not include any rights of Grantee to construct or install any improvements in the Easement Area without the written authorization of the Authority. However, the Grantor hereby authorizes the Grantee the right to maintain, repair, and replace in kind and in place the existing pier for ingress and egress to the Grantee's waterfront dock, deck and mooring structures as set forth in the attached schematic.

5. The rights granted in this Easement are nonexclusive and will not be construed to interfere with or restrict the Grantor's paramount right to use the Easement Area for any and all public purposes, to fully use and enjoy the property, or construct and maintain property improvements in, over, under, across and through Easement Area, so long as such use and enjoyment does not unduly interfere with the use of the Easement for the purposes granted to Grantee.

6. Grantee will not permit or suffer to exist any mechanics or materialman's lien of any kind or nature against the Easement Area or other lands owned by Grantor for any work done or materials furnished at the instance, request, or on behalf of Grantee. Grantee will indemnify and hold harmless Grantor against any and all liens, claims, demands, costs, and expenses of any nature connected with or arising out of such work done or materials furnished.

7. All activities conducted on the Easement Area by Grantee will be conducted in compliance with all laws, ordinances, rules, and regulations including, without limitation, environmental,

# Easement

land use, and public utility laws, rules and regulations. This includes, but is not limited to, any rules, regulations, and/or permitting process established by Grantor to regulate access to the Easement Area in addition to the terms contained in this Easement.

IN WITNESS WHEREOF, the Grantor, Township of Lower, by its duly authorized officer Mayor Frank Sippel, has caused this instrument to be executed and subscribed

Township of Lower

By: \_\_\_\_\_

[Name of authorized officer]

*Frank Sippel*

[Title of authorized representative]

*MAYOR*

Subscribed and sworn to before me on [date of attestation].

[Notary clause]

*Julie A Sylvester-Picard*

Notes

JULIE A SYLVESTER-PICARD  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
MY COMMISSION EXPIRES AUG. 26, 2021

# James R. Boney & Associates, LLC

LAND SURVEYORS

N. J. LICENSE No. 31264 ♦ PA. LICENSE No. SU-048532-R

13 Stone Mill Court, Egg Harbor Township, NJ 08234

Office: (609) 788- 8013    Mobile: 457-2826

## LEGAL DESCRIPTION

### (EASEMENT)

ALL THAT CERTAIN LOT, tract or parcel of land and premises situate, lying and being in the TOWNSHIP of LOWER, County of CAPE MAY and State of New Jersey, being a five feet wide easement for the use and maintenance of an existing wooden pier or walkway running from the northeasterly line of Richardson's Avenue, over and through meadowlands to the division line between Lot 90 and Lot 91, Block 795, Lower Township Tax Map, being more particularly described as follows:

BEGINNING a point in the Northeasterly sideline of Richardson's Avenue (50' wide, not open), said point being 34.71 feet southeast of the southeast corner of Lower Township Tax Map Lot 47, Block 796 and from said beginning point running thence:

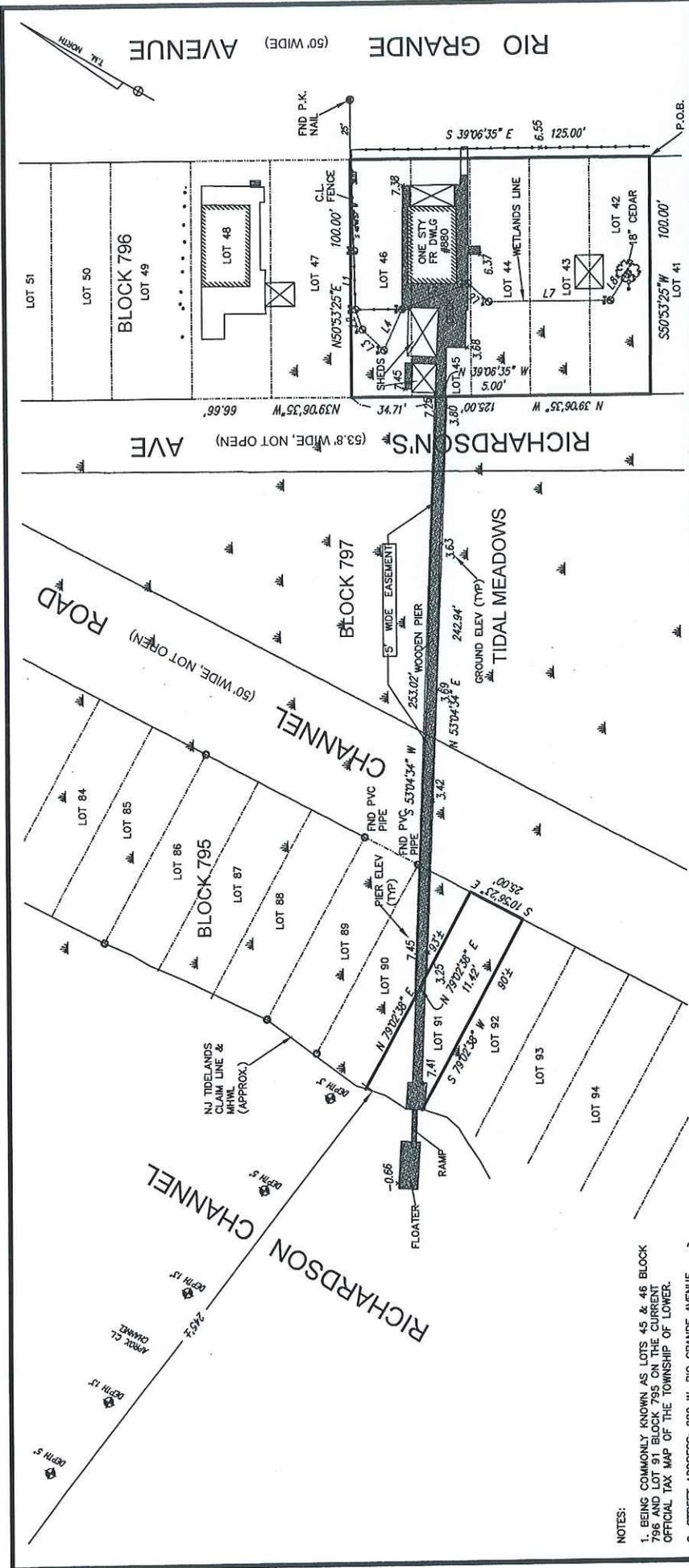
- 1) South 53 degrees 04 minutes 34 seconds West, 253.02 feet to a point in the division line between Lot 90 and Lot 91, Block 795; thence
- 2) North 79 degrees 02 minutes 38 seconds East, along said division line, 11.42 feet to a point; thence
- 3) North 53 degrees 04 minutes 34 seconds East, 242.94 feet to a point in the said line of Richardson's Avenue; thence
- 4) North 39 degrees 06 minutes 35 seconds West, along same, 5.00 feet to the Point and Place of BEGINNING.

Described in accordance with a survey of the premises by James R. Boney, PLS dated May 31, 2018 and revised to December 10, 2019.

December 10, 2019

Date

  
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James R. Boney, PLS  
NJ License No. 31264



DATE: 05-31-18  
 SCALE: 1"= 40'  
 DRN.BY: JRB  
 PROJ: 18-2016  
 REV:  
 12-20-18 LOT NUMBERS  
 02-17-19 WETLANDS  
 12-10-19 EASEMENT

SURVEY OF:  
 BLOCK 796 LOTS 42, 43, 44, 45, & 46; BLOCK 795 LOT 91  
 TOWNSHIP OF LOWER CAPE MAY COUNTY NEW JERSEY  
**JAMES R. BONEY**  
 PROFESSIONAL LAND SURVEYOR  
 NJ LICENSE No. 31284  
 13 STONE MILL CT. E.H.T., NJ 08234 PH: 609-786-8013

WETLANDS LINE TABLE

LINE	LENGTH	BEARING
L1	23.98	S50°15'48" W
L2	9.02	S31°33'42" W
L3	12.44	S05°58'29" W
L4	19.21	N75°16'31" E
L5	29.33	S59°42'04" E
L6	11.75	S02°35'57" W
L7	50.92	S39°07'05" E
L8	13.38	N82°47'17" E

- NOTES:
1. BEING COMMONLY KNOWN AS LOTS 45 & 46 BLOCK 796 AND LOT 91 BLOCK 795 ON THE CURRENT OFFICIAL TAX MAP OF THE TOWNSHIP OF LOWER.
  2. STREET ADDRESS: 880 W. RIO GRANDE AVENUE
  3. ELEVATIONS ARE NAVD 1988

TO:  
 CLAIRE HOOPER  
 I HEREBY CERTIFY THAT THIS SURVEY WAS PERFORMED AND PREPARED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW JERSEY. I FURTHER CERTIFY TO ITS ACCURACY EXCEPT FOR ANY EASEMENTS OR STRUCTURES NOT VISIBLE ON THE SURFACE.