

WITHDRAWN 6/27/2019

**BOROUGH OF LONGPORT
ORDINANCE NO. 2019-11**

**AN ORDINANCE AUTHORIZING EXECUTION OF A DEED OF DEDICATION AND PERPETUAL PUBLIC
ACCESS EASEMENT OVER STREET ENDS
FOR PUBLIC ACCESS TO TIDAL WATERS
IN THE BOROUGH OF LONGPORT,
ATLANTIC COUNTY, NEW JERSEY**

Purpose: The purpose of this Ordinance is to authorize the execution of a deed of dedication and perpetual public access easement over street ends for public access to tidal waterways.

Whereas, the Borough of Longport ("Borough") encourages the maintenance of public access points to tidal waters; and

Whereas, the Borough has developed, in conjunction with the New Jersey Department of Environmental Protection, a Municipal Public Access Plan which requires the granting of a Deed of Dedication and Perpetual Access Easement over the street ends in Longport which provide access to tidal waters.

Now Therefore:

1. The Governing Body does hereby authorize the execution and recording of the following Deed of Dedication and Perpetual Access Easement:

DEED OF DEDICATION AND PERPETUAL PUBLIC ACCESS EASEMENT

THIS DEED OF DEDICATION AND PERPETUAL PUBLIC ACCESS EASEMENT is made this ____ day of May 2019 BY AND BETWEEN THE BOROUGH OF LONGPORT, a Municipal Corporation whose address is 2305 Atlantic Avenue, Longport, New Jersey 08403 Referred to herein as Grantor, AND THE STATE OF NEW JERSEY referred to herein as "Grantee",

WITNESSETH

WHEREAS, Grantor is the owner of certain tracts of land, located in the Borough of Longport, County of Atlantic, State of New Jersey, consisting of fifty-three (53) public street end access locations as more specifically identified in Addendum A (Street End Descriptions) attached hereto and Addendum B (the official tax map of the Borough of Longport), attached hereto and hereinafter referred to as the "Property(s)," and Grantor holds the requisite interest to grant this Deed of Easement; and

WHEREAS, Grantees recognize that tidal waterways and their coastlines which are a part of, and adjacent to, the Borough of Longport, New Jersey are valuable economic resources to the municipality and the State of New Jersey; and

WHEREAS, access to tidal waterways which are a part of, and adjacent to, the Borough of Longport, New Jersey is a right provided to the public under the Public Trust Doctrine; and

WHEREAS, in order for the public to access tidal waterways, perpendicular access to these areas must be secured for public use; and

WHEREAS, in order to ensure public access, Grantees need a Perpetual Public Access Easement on portions of said Property(s) herein described; and

WHEREAS, the Borough of Longport shall consider this Deed of Easement in establishing the assessed value of any lands subject to such restrictions; and

WHEREAS, the Deed of Dedication and Perpetual Public Access Easement shall be subject to and consistent with any existing public access agreement or easement entered into by the Municipality with the United States Army Corps of Engineers; and

WHEREAS, this Deed of Easement will also serve to implement the Public Trust Doctrine and ensure permanent public access, use and enjoyment of tidal waterways and their shores.

NOW, THEREFORE, the Grantor grants and conveys to Grantee an irrevocable, perpetual and permanent easement set for herein:

GRANT OF EASEMENT: An irrevocable, perpetual and permanent easement and right-of-way across that land of the Property(s) described as public street ends located at the beach and 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, Pelham, Manor, 30th, Evergreen, 31st, Woodcrest, 32nd, 33rd, 34th, 35th and 36th Avenues and located at the bay at 11th, 12th, 13th, 14th, 15th, 17th, 18th, 19th, 20th, 21st, 22nd, 24th, 25th, 26th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, and 36th Avenues located at the southern end of Atlantic Avenue as identified in Addendum A (Approximate Street End Descriptions) and Addendum B (the official tax map of the Borough of Longport, hereinafter the "Property(s),” and Grantor holds the requisite interest to grant this Deed of Easement listed above for use by the State of New Jersey, their representatives, agents and contractors to:

- a. Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public access area to allow the public access to tidal waterways;
- b. Post signs;

The easement reserves to the Grantor, the Grantor’s, successors and assigns the right and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby conveyed to the Grantees, subject however to existing easements for utilities and pipelines, existing public highways, existing paved public roads and existing public streets.

Duration of Easement: The easement granted hereby shall be in perpetuity, and in the event that the Borough of Longport or the State of New Jersey shall become merged with any other geopolitical entity or entities, the easement granted hereby shall run in favor of surviving entities. The covenants, terms, conditions and restrictions of this Deed of Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective representatives, successors and assigns and shall continue as a servitude running in perpetuity with the land.

Municipality to Maintain Public Access: The Municipality agrees, consistent with all Federal, State and local statutes and regulations, that at all times it shall use its best, good-faith efforts to preserve, cause and ensure the public access areas to be maintained, consistent with all applicable Federal, State or local laws or regulations, notwithstanding any action or inaction of the State of New Jersey.

Character of Property(s): Notwithstanding the foregoing, nothing herein is intended or shall be deemed to grant the Grantees or otherwise permit the Grantee to any other person to cross over or use any part of the Property(s) which is not within the Easement Area; nothing herein is intended or shall be deemed to alter the boundary lines or setback lines of the Property(s).

By acceptance of this Deed of Easement, the Municipality agrees, to the extent allowed by applicable law, that the Property(s) burdened by the easement herein described shall not be excluded from the calculations of minimum square footage requirements when construing applications under the Zoning Ordinance of the Municipality.

Miscellaneous:

1. The enforcement of the terms of this Easement shall be at the discretion of the Grantees and any forbearance by Grantees to exercise their rights under this Easement in the event of any violation by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or any subsequent violation of any of Grantees rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any violation by Grantor shall impair such rights or remedies or be construed as a waiver of such rights or remedies.
2. The interpretation and performance of this Deed of Easement shall be governed by the laws of the State of New Jersey.
3. If any provisions of this Deed of Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Easement or the application of such provisions to person or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
4. Any notice, demand, request, consent, approval or communication under this Deed of Easement shall be sent by regular first-class mail, postage prepaid and by Certified Mail, Return Receipt Requested, addressed to the mailing addresses set forth above or any other address of which the relocation party shall notify the other, in writing
5. The captions in this Deed of Easement have been inserted solely for the convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

IN WITNESS WHEREOF, with the parties understanding and agreeing to the above, they do hereby place their signature on the date at the top of the first page.

Accepted by the Property(s) Owner, Grantor
Borough of Longport

Nicholas Russo, Ed.D, Mayor

Date: _____

Witnessed by:

NOTARY PUBLIC OF THE STATE OF NEW JERSEY

Accepted by the State of New Jersey, GRANTEE

By: _____

Date: _____

Witnessed by:

NOTARY PUBLIC OF THE STATE OF NEW JERSEY

STATE OF NEW JERSEY, COUNTY OF ATLANTIC SS.:

I CERTIFY that on _____, Nicholas Russo personally came before me and this person acknowledged under oath, to my satisfaction that this person (or if more than one, each person);

1. Is named in a personally signed this Deed of Easement;
2. Signed, sealed and delivered this Deed of Easement as his or her act and deed;
3. Holds the requisite ownership interest and authority to execute this Deed of Easement; and
4. Made this Deed of Easement for the full and actual consideration as set forth herein.

NOTARY PUBLIC OF NEW JERSEY

All other Ordinances or parts of Ordinances which are inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies, are hereby repealed. Should any section, subsection, clause, or portion of this Ordinance be adjudged by a Court of competent jurisdiction as invalid, such judgment shall not affect, impair, or invalidate the remainder of this Ordinance.

This Ordinance shall take effect immediately upon passage and publication as required by Law.

Vote on First Reading 5/15/2019 Publication Date: 5/21/2019

DO NOT USE SPACE BELOW						
OFFICIAL RECORD OF GOVERNING BODY VOTING ON 1 st Reading/Introduction						
COMMISSIONERS	MOTION	SECOND	AYE	NAY	NV	AB
Russo	X		X			
Leeds		X	X			
Lawler			X			
XX-indicates vote NV-not voting AB. - Absent						

**BOROUGH OF LONGPORT
ORDINANCE NO. 2019-11**

Page 2 of 2

Vote on a **MOTION TO POSTPONE:** June 5, 2019 Publication Date: June 11, 2019

DO NOT USE SPACE BELOW						
OFFICIAL RECORD OF GOVERNING BODY VOTING ON FINAL PASSAGE						
COMMISSIONERS	MOTION	SECOND	AYE	NAY	NV	AB
Russo	X		X			
Leeds			X			
Lawler		X	X			
X-indicates vote NV-not voting AB. - Absent						

Vote on a **MOTION TO ADJOURN to June 27, 2019:** June 18, 2019 Publication Date: June 20, 2019

DO NOT USE SPACE BELOW						
OFFICIAL RECORD OF GOVERNING BODY VOTING ON FINAL PASSAGE						
COMMISSIONERS	MOTION	SECOND	AYE	NAY	NV	AB
Russo						X
Leeds		X	X			
Lawler	X		X			
X-indicates vote NV-not voting AB. - Absent						

Vote on a **MOTION TO WITHDRAW:** June 27, 2019 Publication Date:

DO NOT USE SPACE BELOW						
OFFICIAL RECORD OF GOVERNING BODY VOTING ON FINAL PASSAGE						
COMMISSIONERS	MOTION	SECOND	AYE	NAY	NV	AB
Russo	X		X			
Leeds						X
Lawler		X	X			
X-indicates vote NV-not voting AB. - Absent						

This is a Certified True Copy of the Original Ordinance on file in the Municipal Clerk's Office.

/s/ **MONICA KYLE**
 MUNICIPAL CLERK

Nicholas M. Russo, Ed.D, Mayor

James P. Leeds, Sr, Commissioner

Daniel Lawler, Commissioner