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Attorney for Plaintiffs, Randolph M and Cynthia K. Christy-Langenfeld as trustees of the Cynthia K. Christy-Langenfeld 2012 Qualified Personal Trust and Plaintiff's Joseph and Danielle Davi

RANDOLPH M. LANGENFELD and
CYNTHIA K. CHRISTY-LANGENFELD,
individually and RANDOLPH M,
LANGENFELD as Trustees of the Cynthia K
Christy-Langenfeld 2012 Qualified Personal
Residence Trust. JOSEPH H.DAVI and
DANIELLE R. DAVI

Plaintiffs,

vs.

NORMANDY BEACH ASSOCIATION;
NORMANDY BEACH IMPROVEMENT
ASSOCIATION; TOWNSHIP OF TOMS
RIVER, NEW JERSEY. XYZ Corporations 1-
50 and JOHN DOES 1-50.

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:
OCEAN COUNTY

DOCKET NO. C-85-20

CIVIL MATTER

SECOND AMENDED COMPLAINT

ACTION IN LIEU OF PREROGATIVE
WRITS AND VERIFIED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

Plaintiffs, Randolph M. Langenfeld and Cynthia K. Christy-Langenfeld, individually and as Trustees of the Cynthia K. Christy-Langenfeld 2012 Qualified Personal Residence Trust, residing at 12036 Corozo Court, Palm Beach Gardens, Florida 33418, by way of complaint against Defendants, state:

PARTIES

1. Plaintiffs, Randolph M. Langenfeld and Cynthia K. Christy-Langenfeld (hereinafter "Langenfeld" or "Plaintiffs"), husband and wife, are owners of an oceanfront lot

located at 3666 Ocean Terrace, Normandy Beach, Toms River Township, New Jersey, having acquired the Premises (the “North Premises”) on June 29th, 2018

2. Plaintiff, Randolph M. Langenfeld, as Trustee of the Cynthia K. Christy-Langenfeld 2012 Qualified Personal Residence Trust (hereinafter “Langenfeld”) was at all relevant times the owner of an oceanfront home at 3628 Ocean Terrace, Normandy Beach, New Jersey (referred to as “the South Premises”) having acquired same individually on August 17th, 2005 and conveyed to trust on September 21st, 2012. and sold on September 31st, 2021 with assignment of rights to this litigation to Plaintiffs, Joseph H. Davi and Danielle R. Davi (hereinafter “Davi”).

3. After acquiring both the North and South Premises, Plaintiffs, Langenfelds, became members of the Normandy Beach Associates, Inc. (“NBA”). Plaintiffs, Langenfeld are presently members in good standing, as they have been since 2018.

4. Defendant, Normandy Beach Associates, Inc. (“NBA”) is a for-profit Corporation organized under the laws of the State of New Jersey.

5. Defendant, NBA, operates as a community association organized for the benefit of Normandy Beach residents, who are members of the same, and with an address of P.O. Box 698, Normandy Beach, Brick Township, New Jersey.

6. Defendant, NBA, and at least two other entities that preceded it in interest, acquired oceanfront property above the mean high-water line of the Atlantic Ocean in Brick and Dover (now Toms River) Townships through a number of conveyances occurring in and before 1960. This oceanfront property represents Normandy Beach’s ocean beach.

7. Defendant, NBA, holds itself out as “the ownership entity for certain properties and building improvements in the Normandy Beach Community (‘Community’)”.

8. Defendant, Normandy Beach Improvement Association (“NBIA”) was established in 1937, predating the NBA, and has since evolved into the non-profit entity that maintains the NBA’s beach property.

9. Defendant, Toms River Township (“Toms River”), is a municipal corporation of the State of New Jersey charged with exercising public and essential government functions. Its municipal offices are located at 33 Washington Street, Toms River Township, in Ocean County, New Jersey.

10. The Defendant, Toms River, is a party having asserted jurisdiction and authority for the issuance of permit in connection with Dune Walkovers within the Township.

11. The Defendant, Toms River, is a party, having obtained easements over the Defendant, NBA’s beach lands and has an alleged interest in lands to be effected.

12. The New Jersey Department of Environmental Protection (“DEP”) is an agency created by statutory enactment of the State of New Jersey, which has jurisdiction over, supervision of, and regulatory authority over, inter alia, New Jersey’s coastal zone, including tidal and non-tidal waters, waterfronts, and inland areas and is named herein as an indispensable party and party in interest with no direct claims being asserted.

13. The U.S. Army Corps of Engineers (the “Army Corps”) is a federal agency under the United States Department of Defense that provides, among other things, military engineering services designed to reduce risks from natural disasters. Since 2007, the Army Corps has been charged with the responsibility for construction and maintenance of a dune and berm system designed to reduce impacts from coastal erosion and storms in northern Ocean County as part of the congressionally authorized Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project.

14. Defendants, XYZ Corporations, are fictitious names of associations, partnerships, corporations, or affiliations or other entities whose present identities are unknown, who assisted, conspired, acted in concert with or otherwise cooperated with the other defendants in the illegal conduct complained of herewith.

15. Defendants, JOHN DOES 1-10, are fictitious names of persons whose present identities are unknown, who assisted, conspired, acted in concert with or otherwise cooperated with the other defendants in the illegal conduct complained of herewith.

***The North Premises Chain of Title Back to Davis from Coast and
Inland Development Co.
- Express Easement Appurtenant -***

16. On or about June 29th, 2018, Plaintiffs, Langenfelts, acquired title to the premises known as Block 908, Lots 6, 7 & 8, located at 3666 Ocean Terrace, Normandy Beach, Toms River Township, State of New Jersey (the “North Premises”), having acquired the same by Deed from Bart Wenrich and Bonnie Simmons, husband and wife (“Wenrich”), dated June 29th, 2018, and recorded in the Ocean County Clerk’s Office on July 25th, 2018 in Deed Book 17186, Page 1482.

17. On or about September 23rd, 2005, the Wenrichs acquired the Premises by Deed from Timothy J. Maxwell, Sr., William H. Black, Jr. and Phyllis R. Black (“Black”) and recorded the deed in the Ocean County Clerk’s Office on November 14th, 2005, in Deed Book 12908, Page 1.

18. On or about June 30th, 1976, the Blacks acquired the Premises by Deed from C. Shelley Acuff and Mary Elizabeth Acuff, his wife (“Acuff”) and recorded the deed in the Ocean County Clerk’s Office on July 7th, 1976 in Deed Book 3535, Page 748.

19. On or about March 1st, 1956, the Acuffs acquired the Premises by Deed from Carroll C. Bailey and Kathleen A. Bailey, his wife (“Bailey”) and recorded the deed in the Ocean County Clerk’s Office on March 2nd, 1956 in Deed Book 1707, Page 45.

20. On or about June 12th, 1946, the Baileys acquired the Premises by Deed from Harriett F. Davis and Harry L. Davis, her husband (“Davis”) and recorded the deed in the Ocean County Clerk’s Office on July 19th, 1946 in Deed Book 1222, Page 213.

21. On or about March 8th, 1935, the Davis’ acquired the Premises by Deed from Coast and Inland Development Co. and recorded the deed in the Ocean County Clerk’s Office on March 8th, 1935 in Deed Book 970, Page 338 (hereinafter “Appurtenant North Deed”), See, Davis deed from Coast and Inland, Exhibit P-2.

***North Premises Easement Appurtenant into Davis from Coast
and Inland***

22. Prior to March 8th, 1935, Coast and Inland Development Co. was the owner of both the Davis (residential buildable lot) as well as a strip of adjacent unimproved beach land east of the Davis lot which separated the upland owners from the Ocean by virtue of a subdivision plan known as the “Plan of Normandy Beach, Ocean County, N.J.” created by Sherman and Sleeper, C.E., in October of 1923, approved for filing by the then Dover Township Committee on May 5th, 1924 and thereafter filed in the Office of the Ocean County Clerk on November 30th, 1925 (hereinafter “1925 Plan of Normandy Beach”). See, 1925 Plan of Normandy Beach, Exhibit P-1.

23. Prior to March 8th, 1935, Coast and Inland Development Co., having ownership of both the unimproved beach lot and the upland residential lot, was in fact a “shore-owner” and/or “riparian owner” having all common law and statutory rights to access and use the beach for ingress and egress to the ocean for recreation, fishing, and navigation.

24. By Deed, dated March 8th, 1935, Coast and Inland Development Co. did, in fact, retain ownership of the easterly beach lands between the Davis lot, as conveyed, and the Atlantic Ocean to the east.

25. As part of the conveyance from Coast and Inland Development Co. to Davis, the following express easement language was included: “*Together* with all singular, the buildings, improvements, woods, *ways, rights, liberties, privileges, hereditaments, and appurtenances*, to the same belonging, or in any wise appertaining...”. See, Davis Deed from Coast and Inland, Exhibit P-2.

26. At the time of the 1935 conveyance from Coast and Inland Development Co. to Davis, the grantor was an upland shore-owner and/or riparian-owner having littoral rights.

27. Littoral rights include the right of access for ingress and egress to the beach and are considered “ways, rights, liberties, privileges, hereditaments, and appurtenances, to the same belonging” to the lands.

28. At the time of the 1935 conveyance to Davis, the grantee, Davis, and his successors in title, had no convenient access other than across the beach lot as retained by the conveyor, Coast and Inland Development Co. See, 1925 Plan of Normandy Beach, Exhibit P-1.

29. Said easement rights of access and riparian right of way, as conveyed by Coast and Inland Development Co., run with the land on all future conveyances and successors in interest of Davis and said right remains in existence to present date.

30. Upon information and belief, all of Plaintiffs, Langenfolds,’ predecessors in title from 1935 through 2018, when Plaintiff took title from Weinrich, have, as a matter of claim or right, traversed in an easterly fashion on a regular and continuous basis over the beach lands owned by Normandy Beach Association as well as their predecessors in title for access to and enjoyment of their riparian and/or littoral rights for use of the beach and the Atlantic Ocean.

***South Premises Chain of Title back to Wiss and Funk from Coast
and Inland Development Co.
- Express Easement Appurtenant -***

31. On or about August 27th, 2015, Plaintiffs, Langenfelds, acquired title to oceanfront Lots 5, 6, and 7 in Block 914 as shown on the Toms River Tax Map and more commonly known as 3628 Ocean Terrace, Normandy Beach, New Jersey.

32. Plaintiffs' title was conveyed by deed of said date from Co-Executors and Trustees of the Estates and Trusts of Blair C. Ohaus and Robert E. Ohaus (hereinafter "Ohaus").

33. On or about June 4th, 1971, Ohaus acquired title by deed from Blanch D. Latham, as survivor in interest from Earl B. Latham (hereinafter "Latham").

34. On or about October 11th, 1958, Latham acquired title of Lot 7 from John M. and Evelyn C. Sheffey (hereinafter "Sheffey") and Lots 5 and 6 by deed, dated October 16th, 1958, from Dante P. and Concetta Monico (hereinafter "Monico").

35. On or about June 29th, 1953, Monico acquired Lots 5 and 6 from Albert J. and Doris E. Capalbo (hereinafter "Capalbo").

36. On or about August 28th, 1952, Capalbo acquired Lots 5 and 6 from R. Stanley and Edith M. Wadsworth (hereinafter "S. Wadsworth").

37. On or about November 1st, 1951, Sheffey acquired Lots 7 and 8 from Wiss, widower (hereinafter "Wiss").

38. On or about December 28th, 1943, S. Wadsworth acquired Lots 5 and 6 from Charles J. Wadsworth, widower (hereinafter "C. Wadsworth").

39. On or about March 26th, 1936, C. Wadsworth acquired Lots 5 and 6 from Leroy M. and Mabel B. Funk (hereinafter "Funk").

40. On or about September 23rd, 1931, Funk acquired Lots 5 and 6 from Coast and Inland Development Co. (hereinafter “Appurtenant Deed South-Funk”). See, Appurtenant Deed South-Funk, Exhibit P-3.

41. On or about June 2, 1926, Wiss acquired Lots 7 and 8 from Coast and Inland Development Co. (hereinafter “Appurtenant Deed South-Wiss”). See, Appurtenant Deed South-Wiss, Exhibit P-4.

***South Premises Easement Appurtenance into Wiss and Funk
from Coast and Inland Development Co.***

42. Prior to conveyances to Plaintiffs’ predecessors in title, Wiss and Funk, Coast and Inland Development Co., Grantor, was the owner of both the residential buildable Lots 5, 6, and 7 as well as a strip of adjacent unimproved beach land east of the buildable lots which separated the upland owners from the Ocean by virtue of a subdivision plan known as the “Plan of Normandy Beach, Ocean County, N.J.” created by Sherman and Sleeper, C.E., in October of 1923, approved for filing by the then Dover Township Committee on May 5th, 1924 and thereafter filed in the Office of the Ocean County Clerk on November 30th, 1925. See, 1925 Plan of Normandy Beach, Exhibit P-1.

43. Prior to the conveyance to Wiss and Funk, Coast and Inland Development Co., having ownership of both the unimproved beach lot and the upland residential lot, was in fact a “shore-owner” and/or “riparian owner” having all common law and statutory rights to access and use the beach for ingress and egress to the ocean for recreation, fishing, and navigation.

44. Coast and Inland Development Co. retained ownership of the easterly beach lands between the buildable residential Wiss and Funk lots, as conveyed, and the Atlantic Ocean to the east.

45. As part of the conveyance of Lots 5, 6, and 7 from Coast and Inland Development Co. to Wiss and Funk, each deed contained the following express easement language: “*Together* with all singular, the buildings, improvements, woods, *ways, rights, liberties, privileges, hereditaments, and appurtenances*, to the same belonging, or in any wise appertaining...”. See, Appurtenant Deed South-Funk, Exhibit P-3 and Appurtenant Deed South-Wiss, Exhibit P-4.

46. At the time of the aforementioned conveyances from Coast and Inland Development Co. to Plaintiffs’ predecessors, the grantor was an upland shore-owner and/or riparian-owner having littoral rights.

47. Littoral rights include the right of access for ingress and egress to the beach and are considered “ways, rights, liberties, privileges, hereditaments, and appurtenances, to the same belonging” to the lands.

48. At the time of these conveyances to Plaintiffs’ predecessors, the grantees, Wiss and Funk, and his successors in title had no convenient access for ingress and egress to the beach and ocean other than to cross the beach lot as retained by the conveyor, Coast and Inland Development Co. See, 1925 Plan of Normandy Beach, P-1.

49. Said easement rights of access and riparian rights of way, as conveyed by Coast and Inland Co., run with the land on all future conveyances and successors in interest of Davis and said rights remain in existence to present date.

50. Upon information and belief, all of Plaintiffs’ predecessors in title from 1926 through 2018, when Plaintiff took title from Weinrich, have, as a matter of claim or right, traversed in an easterly fashion on a regular and continuous basis over the beach lands owned by Normandy Beach Association as well as their predecessors in title for access to and enjoyment of their riparian and/or littoral rights for use of the beach and the Atlantic Ocean.

Plan of Normandy Beach is Created by Subdivision Map 1925

51. In or about 1921, Coast and Inland Development Co. began to acquire ocean-front land in the area that would later become known as Normandy Beach.

52. That land, located in what was then Dover and Brick Townships, was later the subject of a subdivision plan known as the “Plan of Normandy Beach, Ocean County, N.J.” created by Sherman and Sleeper, C.E., in October of 1923, approved for filing by the then Dover Township Committee on May 5th, 1924 and thereafter filed in the Office of the Ocean County Clerk on November 30th, 1925. See, 1925 Plan of Normandy Beach, Exhibit P-1.

53. The November 30th, 1925 Filed Subdivision Map (Plan of Normandy Beach) shows the creation of eight oceanfront blocks with several oceanfront lots abounding the beach and Atlantic Ocean. See, 1925 Plan of Normandy Beach, Exhibit P-1.

54. The Premises, then known as “Lots 7 and 8 of Normandy Beach, in Block 7 in [the] Plan of Normandy Beach” was conveyed by Deed from Coast and Inland Development Co. to Plaintiff’s predecessor, Wiss on or about June 2nd, 1926. See, Appurtenant Deed South-Wiss, Exhibit P-2.

55. The Premises, then known as “Lots 5 and 6 of Normandy Beach, in Block 7 in [the] Plan of Normandy Beach” was conveyed by Deed from Coast and Inland Development Co. to Plaintiff’s predecessor, Funk on or about September 23rd, 1921. See, Appurtenant Deed South-Funk, Exhibit P-3.

56. Both Deeds of conveyance to Wiss and Funk (Plaintiffs’ Predecessors in Title) from Coast and Inland Development Co. contained the following language:

***Together with allwood, way, rights, liberties, privileges,
herediments, and appurtenances to the same belonging, or in***

anywise pertaining.... . See, Appurtenant Deed South-Funk, Exhibit P-3 and Appurtenant Deed South-Wiss, Exhibit P-4.

57. At the time of these conveyances to Plaintiffs' Predecessors in Title, Coast and Inland Development Co. retained ownership of the easterly beach lands adjacent and parallel to the Atlantic Ocean. See, 1925 Plan of Normandy Beach, Exhibit P-1.

58. At the time of these conveyances to Plaintiffs' Predecessors in Title, access to the beach by the upland owner would have been by walking and traversing the beach lands in an easterly perpendicular fashion from the upland lot to the Ocean. See, Id.

59. From 1925 and continuing until 1940, Coast and Inland Development Co. advertised the sale of residential lots with "Attractions" including "Bathing" and "Surf Fishing". See Coast and Inland Advertisement, Bicher, History of Normandy Beach, pp 5-11, Exhibit P-7.

60. At all relevant times Coast and Inland Development company retained ownership of the Oceanfront Beach Lot and made same accessible for all land purchasers as a matter of right and privilege for recreational uses.

61. In 1939 Coast and Inlet sold of a large tract of Normandy Beach Bay Harbor tract to Henry O. Uhden, Frank. Z. Sindlinger, by deed March 28th, 1939, and recorded April 20th, 1939, that deed contains the following easement language:

TOGETHER with *the use and right of way and easement to all that strip of beach land shown on "Plan of Normandy Beach, Ocean County, New Jersey, made October 1923 by Sherman and Sleeper, C.E."* and filed in the Ocean County Clerk's Office November 30, 1925, bounded Westerly by the Westerly line of a strip of land which lies to the West of and adjoining the boardwalk as show on said filed plan of Normandy Beach; and Easterly by the mean high water line of the Atlantic Ocean; and Northerly and Southerly by the North and South lines of Normandy Beach as show on the filed plan above recited, ***for bathing, fishing and recreational purposes; and together with the right and privilege of ingress, egress and regress in and over all streets shown on said filed plan of "Normandy Beach" and such streets as are now or may hereafter be constructed in said "Normandy Harbor Tract."***

See, Uhden Deed, P-15.

62. In 1940, it appears that Coast and Inland had sold of all residential lots and no longer needed the Oceanfront beach lot and so they conveyed same to Richard and Marion Hudson By deed dated, February 19, 1940. See, Hudson Beach Deed, P-5.

63. At some point, these beach parcels were separated and separately designated as tax Lot 1, Block 1 on the tax map of Brick Township (the “Bricktown Beach Section”) and Lot 1, Block 905, Lot 30 Block 921.15 (the “Toms River Section”).

64. In or around December 13th, 1940, Hudson conveyed the beach parcel, now known as Lot 1, Block 1 on the tax map of Toms River Township, by Deed to the Normandy Beach Owners, Inc., and recorded same in the Ocean County Clerk’s Office on July 11th, 1941 in Deed Book 1100, page 18 (hereinafter, the “Hudson Beach Deed”). See, NBO Beach deed from Hudson, P-6.

65. Between 1929 and 1940, there is no historical evidence of any interference or limitations on oceanfront owners’ easterly access across the beach to the Atlantic Ocean by Hudson or Coast and Inland Development Co.

Normandy Beach Associates Inc. Acquires the Beach Property

66. Originally, Normandy Beach was to be governed by a not-for-profit organization, Defendant, Normandy Beach Improvement Association (“NBIA”). Founded in 1937, the NBIA was designed to “promote social and civil interest of the property owners and residents of Normandy Beach, New Jersey....” At the time of its founding and in the years that followed, upon information and belief, the NBIA neither owned nor held any property.

67. On or about 1939, Richard and Marion Hudson purchased the oceanfront beach lot and formed the Normandy Beach Owners Inc. See, Hudson Beach Deed, Exhibit P-5.

68. By deed, dated December 13th, 1940, the Hudsons conveyed the Beach property to the Normandy Beach Owners Inc. (hereinafter “NBO Beach Deed”). See, NBO Beach Deed, Exhibit P-6.

69. Historically, it reported that the Normandy Beach Owners Inc., hereinafter “NBO”, was *formed* “for the sole purpose of assuring that the beaches would be accessible to all resident members who bought stock to pay back the Hudson family for their investment.” E. Stephen Kirby. See, Bicher History at p.33, Exhibit P-7.

70. Notwithstanding any purchase of stock in the NBO, none of the property owners relinquished any pre-existing property rights to access the beach.

71. Although the failure to purchase stock in the NBO had no legal impact on the pre-existing property owners’ rights to access and use the beach, the NBO, as new owner of the beach, now made beach access contingent upon stock purchase.

72. Defendant, Normandy Beach Associates, Inc. (“NBA”) was thereafter created as a for-profit entity in August 6th, 1955 to “purchase, take, acquire, lease, hold, maintain work, develop mortgage, improve, sell or otherwise deal in and with real estate or any interest and rights therein...”

73. Defendant, NBA, merged with the Normandy Beach Owners Inc. by way of an Agreement of Merger and Consolidation, dated December 12th, 1959 and recorded on June 16th, 1960.

74. As a consequence of the merger and consolidation, Defendant, NBA, acquired “all property, real, personal and mixed” of Normandy Beach Owners Inc. by Indenture, dated June 8th, 1960, recorded in the Ocean County Clerk’s office on September 25th, 1961 in Deed Book 2172, page 363.

75. Thus, Defendant, NBA, became the title owner of the beach lot, now known as Block 1, Lot 1, located at Normandy Beach, Brick Township in the State of New Jersey, that parcel having been conveyed to the Normandy Beach Owners in 1941 and the Defendant, NBA, having acquired its beach properties by way of the aforesaid 1960 Indenture from the Normandy Beach Owners Inc., to Defendant, NBA, recorded on September 25th, 1961 in Deed Book 2172, page 363.

76. Defendant, NBA, also claims to be the title owner of Block 905, Lot 1 and Block 921.15, Lot 30 in what was then known as Dover Township in the State of New Jersey. These three parcels adjoin Block 1 and Lot 1 in Brick Township, in the State of New Jersey.

77. Collectively, these parcels form Normandy Beach (the “Beach Lands“) as it is presently known, an area bounded by the mean high-water line of the Atlantic Ocean on the east, and on the west by the “strip of land which lies to the west of and adjoining the boardwalk as shown on the 1925 plan., at the north by what was identified in 1925 as “the Allen Estate” (now known as Deauville Beach, Brick Township), and on the south by what was identified in 1925 “the Holland property”. See, 1925 Plan of Normandy Beach, Exhibit P-1.

78. Defendant, NBA, is the successor in interest to the Normandy Beach Corporation and the Normandy Beach Owners Inc.

Hurricane Sandy

79. On October 28th and 29th, 2012, Hurricane Sandy made landfall in New Jersey causing billions of dollars in property damage and forcing tens of thousands of people from their homes.

80. Hurricane Sandy substantially damaged the Premises and Plaintiffs were required to do substantial repairs and renovations to the Premises in order to return the property to habitability and use.

81. Hurricane Sandy also caused significant beach and coastal damage to the property at or near Plaintiffs' Premises. This beach and coastal damage required significant efforts on the part of the Federal Government, namely by the Army Corps of Engineers (the "Army Corps"), State, namely by the DEP, and local government authorities to repair.

82. Accordingly, as a condition of its involvement in New Jersey's beach and coastal repair and restoration, and on pain of condemnation, the Army Corps required all oceanfront homeowners to enter into Deeds of Dedication and Perpetual Storm Damage Reduction Easements ("PSDRE") which granted local municipalities perpetual and assignable easements and rights of way over the homeowners' properties so that the municipalities could "construct, preserve, patrol, operate, maintain, repair, rehabilitate and replace a public beach, dune system, and other erosion control and storm damage reduction measures... [and] to construct berms and dunes...." Although consideration of \$1.00 was promised, it was never paid.

83. However, the PSDRE specifically enabled the oceanfront property owners, as well as their heirs, successors, and assigns to construct private at-grade dune walkover structures in compliance with applicable federal, state or local laws or regulations provided that the structures did not violate the integrity of the repaired dunes or their dimensions or functions.

84. DEP had full knowledge of, agreed to, and participated in the Army Corps' efforts to repair and remediate New Jersey's coastal areas. Ultimately, DEP would accept all the PSDREs entered into by New Jersey's municipalities and oceanfront property owners.

Plaintiffs, Langenfelds', Express and Recorded Walkover

Easement

85. Pursuant to the Army Corps' terms and upon pain of condemnation, Plaintiffs' Predecessor, Wenrich, were solicited by Defendants, DEP, and Defendants, Toms River, to enter into

a Declaration of Taking in consideration of \$750.00. Plaintiffs, Langenfelds, were promised but did not receive a \$750.00 consideration for doing so.

86. As part of said Declaration of Taking, Wenrich negotiated with the DEP and Toms River, for a reserved access to the beach and ocean as part of Plaintiffs, Langenfelds,' PSDRE to Toms River and the State of New Jersey.

87. Specifically, the Declaration of Taking is dated April 21st, 2016 and recorded on May 31st, 2016, in the Ocean County Clerk's office in Deed Book 164, Page 1938. Exhibit C attached thereto as page 1944 of the PSDRE which contains the following easement language:

This easement reserves to Bart Wenrich and Bonnie Simmons, their heirs, successors and assigns the right to construct a private dune overwalk structure ...Bart Wenrich and Bonnie Simons, their heirs, successors and assigns shall not grade or excavate the easement area or to place therein any structure or material, other than a dune walkover, without prior approval ..from the Township....

See, DEP Easement for Dune Over Walk, Exhibit P-8.

88. Plaintiffs, Langenfelds' predecessor, Wenrich, executed the Declaration of Taking based on representations made to them by Defendants, Toms River and DEP, that doing so would not inhibit, limit or preclude them from enjoying the access to the Atlantic Ocean over and through the Defendant, NBA's, property to the area below the mean high-water line, as they had enjoyed since acquiring the Premises.

Defendant's Refusal to Honor Plaintiffs, Langenfelds', Express Easement as Conveyed originally by Coast and Inland Development Co.

89. Notwithstanding the express easement permitting Plaintiffs, Langenfelds, to construct an overwalk, without any prior approval, Defendant, Toms River, passed an ordinance Ord. Sect 189-1 *et. seq.*, requiring a "permit" for a walkover.

90. On or about October 1st, 2019, Plaintiffs, Langenfelds, filed application and paid Toms River a fee for a walkover permit and on even date Defendant, Toms River, denied the application advising through counsel “It is my opinion that the Langenfeld's application for a zoning permit cannot be granted without interfering with the rights of the Normandy Beach Association (NBA)...If you are able to convince the NBA to join in your request for a zoning permit, the township will reconsider its position.” See, Toms River Zoning Request, Exhibit P-9 and Toms River Denial, Exhibit P-10.

91. On or about October 2nd, 2019, Plaintiffs, Langenfelds, without prejudice to established rights, made a request to the Defendant, NBA, requesting consent for a joint application. See, Plaintiff request to NBA, Exhibit P-11.

92. On or about October 17th, 2019, Defendant, NBA, advised that they will not consent to any dune walkovers. See, NBA denial, Exhibit P-12.

Defendant NBA's PSDRE

93. After Sandy, Defendant, NBA, entered into a PSDRE with Defendant, Toms River, which was recorded at the Ocean County Clerk's office on June 23rd, 2014 in Deed Book 15832, Page 95.

94. Thereafter, Defendant, NBA, entered into a Supplemental Agreement with the U.S. Federal Emergency Management Agency (“FEMA”). As this Supplementary Agreement was thought to create ambiguities between Defendants, NBA, Toms River, and the DEP, the parties agreed to rescind and release the Supplementary Agreement (PSDRE) by and between Defendants NBA and Toms River, replacing the original agreements. This was entered into on July 11, 2014 and recorded at the Ocean County Clerk's office on July 11th, 2014 in Deed Book 15847, Page 441.

95. Defendant, NBA's, PSDRE with Defendant, Toms River, provided, in perpetuity, a

GRANT OF EASEMENT: A perpetual and assignable easement and right- of-way from the Manasquan Inlet to Barnegat Inlet, New Jersey Hurricane and Storm Reduction Project, in, on, over and across that land of the property described as Blocks 905 and 921.5 Lots 1 and 30 as shown on the Township of Toms River’s official tax maps for the Blocks and Lots listed above for use by the State of New Jersey and the Municipality, and the United States Army Corps of Engineers its contractors, and each of their representatives, agents, contractors and assigns to:

g. Facilitate preservation of dune and vegetation through the limitation of public access to dune areas;...

96. Character of Property also provided:

Character of Property: Notwithstanding the foregoing, nothing herein is intended or shall be deemed to change the overall character of the Property as private property; nothing herein shall be deemed to grant to the Grantee or otherwise permit the Grantee or any other person to cross over or use any part of the Property 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.

See, NBA PSDRE to Toms River, Exhibit P-13.

97. Supplementary Agreement Regarding Grant of Easement to Toms River Township and the New Jersey Department of Environmental Protection was entered into on April 19, 2013 and reads:

Dune Restoration Work. The Township shall use its best efforts to restore the dunes on the Owner’s property to substantially the same condition as such dunes were in prior to Superstorm Sandy (“Dune Restoration Work”), subject to the receipt by the Township of reimbursement by U.S. Federal Emergency Management agency (“FEMA”), whether such funds are received directly or indirectly (e.g. through the State of New Jersey).

98. Defendant, NBA’s, PSDRE similarly enabled the NBA and its heirs, successors, and assigns to construct private at-grade dune walkover structures in compliance with applicable federal, state or local laws or regulations provided that the structures did not violate the integrity of the dunes in either dimension or function as a barrier.

Defendant, NBA's, 2017 CAFRA Permit

99. Pursuant to *N.J.A.C. 7:7 et seq.*, Defendant, NBA, is subject to review and regulation by DEP's Coastal Area Facilities Review Act ("CAFRA"). On or about August 7th, 2017, the NBA made application for a CAFRA permit from the DEP ("NBA's DEP Permit") for beach and dune maintenance, including debris removal and clean-up, mechanical sifting and raking, maintenance of access ways, removal of sand from street ends and residential properties, and the placement of seasonal sand fencing for collection and movement of sand.

100. The Defendant, NBA, as part of their DEP CAFRA Permit application, made affirmative and material representations setting forth conditions for the project, specifically, in part, as follows:

(e) The construction of at-grade dune walkovers at single family homes and duplexes shall comply with the following:

1. Only one walkover per site is allowed;
2. The width of the walkover does not exceed four feet;
3. The walkover is fenced on both sides through the use of sand fencing, split rail fencing, or open handrails, unless prohibited by the municipality; and
4. Any grading or excavation associated with the installation of the walkover does not result in the lowering of the beach or dune below design specifications.

This condition was a mirror image of applicable DEP regulations then in effect at the time. See, NBA CAFRA Permit "General Conditions", Exhibit P-14.

101. As per DEP guidelines, notice of said application would have been provided to all adjacent property owners, including the Plaintiffs, Langenfelds, herein.

102. All oceanfront Owners would have received a copy of the proposed project and would have been led to believe that private walkovers would be permitted.

103. The purpose of CAFRA Notice to surrounding properties is to comply with Due Process under the 5th Amendment of the U.S. Constitution to the extent that property rights may be impacted by the project.

104. Based upon the notice and the contents of the said CAFRA, oceanfront owners reasonably relied upon same in determining the impact this project would have as it pertains to their respective property rights.

105. At the time of application, the Defendant, NBA, through its officers and/or agents, had no intention of permitting any private dune walkovers.

106. All of the oceanfront owners of Normandy Beach, including Plaintiffs herein, detrimentally relied upon the misrepresentations as contained in Defendant, NBA's CAFRA permit by not objecting or requesting an adjudicatory hearing on the proposed CAFRA application in order to secure and protect property rights in accordance with DEP regulations.

107. The NBA's DEP Permit was granted on December 6th, 2017 and remains in full force and effect until December 5th, 2022.

108. Defendant, NBA's, DEP Permit, was granted without modification and was thus issued pursuant to the following conditions:

(e) The construction of at-grade dune walkovers at single family homes and duplexes shall comply with the following:

1. Only one walkover per site is allowed;
2. The width of the walkover does not exceed four feet;
3. The walkover is fenced on both sides through the use of sand fencing, split rail fencing, or open handrails, unless prohibited by the municipality; and
4. Any grading or excavation associated with the installation of the walkover does not result in the lowering of the beach or dune below design specifications.

See, NBA CAFRA Permit "General Conditions", Exhibit P-14.

109. By granting Defendant, NBA, the CAFRA permit, DEP accepted and endorsed the use of at-grade dune walkovers, provided that they are consistent with DEP regulations.

COUNT ONE

(NBA's Unlawful Interference with 2016 Express DEP Walkover Easement on Langenfeld North Premises - 3666 Ocean Terrace, Normandy Beach)

110. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

111. On or about March 10th, 2014, the Defendant, NBA, relinquished any right to regulate the dune with respect to activities regulated by applicable Federal or State law or regulations and specifically conveyed those right to the Defendant, Toms River, and the State of New Jersey. See, NBA PSDRE to Toms River, Exhibit P-13.

112. More specifically, the Defendant, NBA, granted Defendant, Toms River, and the State of New Jersey the power to:

- g. Facilitate preservation of dune and vegetation through the limitation of public access to dune areas;...

See, NBA PSDRE to Toms River, Exhibit P-13.

113. The State of New Jersey DEP, after obtaining the 2014 PSDRE from Defendant, NBA, granted an express easement (hereinafter the "Walkover Easement") to Plaintiffs, Langenfelds, to construct a dune walkover. Specifically, the Declaration of Taking, dated April 21st, 2016, and recorded on May 31st, 2016 in the Ocean County Clerk's office in Deed Book 164, page 1938. Exhibit C attached thereto a page 1944 contains the following easement language:

This easement reserves to Bart Wenrich and Bonnie Simmons, their heirs, successors and assigns the right to construct a private dune overwalk structure ...Bart Wenrich and Bonnie Simons, their heirs, successors and assigns shall not grade or excavate the easement area or to place therein any structure or material, other than a dune walkover, without prior approval...from the Township....

See, DEP Easement for Dune Over Walk, Exhibit P-8.

114. The “Walkover Easement” runs with the land and inures to the benefit of the Plaintiffs, Langenfelds.

115. The 2016 PSDRE as conveyed by the Defendant, NBA, conveys preemptory power to the State of New Jersey to facilitate access over the dunes.

116. The Defendant, DEP, expressly granted Plaintiffs, Langenfelds’, predecessor an easement to construct a dune walkover without any prior approval from the Defendant, Toms River.

117. The Defendant, NBA, has no power or authority to grant or deny permission to build a dune walkover, as such rights were expressly granted to the State of New Jersey.

118. By refusing to consent or permit Plaintiffs, Langenfelds, to construct a dune walkover in accordance with the clear terms of Plaintiffs’ recorded “walkover easement”, Defendants, NBA has unlawfully interfered with Plaintiffs, Langenfelds’, property rights.

WHEREFORE, Plaintiffs, Langenfelds, demand judgment for:

- (a) An Order declaring and affirming Plaintiffs’ ability to construct a dune walkover without necessity of any prior approval from the Defendants or anyone else pursuant to the express walkover easement in full force and effect, including acknowledgement and recognition of Plaintiffs’ easement and riparian for access and right of way to the Atlantic Ocean from the Premises, over and through Defendant, NBA’s, Beach Property, known as Lot 1, Block 905, as shown on the tax map of Defendant, Toms River, to the area below the mean high-water line;
- (b) an Order declaring Defendant, NBA, in willful violation of Plaintiffs’ easement and riparian rights;
- (c) An Order compelling Defendant, NBA, to remove the fence and any other barrier that it has constructed along the ocean-side of the Premises, to preclude Defendant, NBA, from erecting a same or similar obstruction, and to enjoin Defendant, NBA’s, interference with Plaintiffs’ right of access to the beach area known as Lot 1, Block 905, as shown on the tax map of Defendant, Toms River;
- (d) compensatory damages;
- (e) punitive damages as a result of Defendant, NBA’s, willful actions;

- (f) attorneys' fees and costs of suit; and
- (g) such other and further relief as the court deems proper.

COUNT TWO

(NBA's and Toms River's Unlawful Interference with the Express Easement Appurtenant from Coast and Inland Development Co. on Langenfeld North and South Premises)

119. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

120. Beginning in 1921, Coast and Inland Development Co. began to acquire oceanfront property in the area that would later become known as Normandy Beach.

121. In 1924, a subdivision plan, the "Plan of Normandy Beach, Ocean County, N.J.," was approved by the then Dover Township Committee on May 5th, 1924 and filed on November 30th, 1925. The Plan, as recorded is verily believed to be the same map, dated March 1917, by Haines and Sherman C.E. See, 1925 Plan of Normandy Beach, Exhibit P-1.

122. When the subdivision plan of Normandy Beach creating twenty-five (25) blocks and numerous ocean-front lots was created, the oceanfront lot owners would have paid a premium price, as they had convenient access to the Atlantic Ocean by crossing over the Coast and Inland beach lot in an easterly direction. See, 1925 Plan of Normandy Beach, Exhibit P-1.

123. At all times relevant, when Coast and Inland Development Co. conveyed to Plaintiffs' predecessors, they retained ownership of the easterly strip of beach lands between the buildable oceanfront Lots, as conveyed, and the Atlantic Ocean to the east.

124. It is verily believed that *all Normandy Beach properties* located and as shown on the 1917 Haines and Sherman Map would have subsequently been conveyed out of Coast and Inland Development Co.

125. As part of the conveyance from Coast and Inland Development Co. to Plaintiffs' predecessors, the following express easement language was included: "***Together with all singular,***

the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments, and appurtenances, to the same belonging, or in any wise appertaining...” See, Appurtenant Deed North-Davis, Exhibit P-2; Appurtenant Deed South-Funk, Exhibit P-3 and Appurtenant Deed South-Wiss, Exhibit P-4.

Definitions of Appurtenances and Hereditaments

126. An incorporeal *hereditament* is an intangible right, which is not visible but is derived from real property. An access right of way easement is a classic example of this type of hereditament.

127. An *appurtenance* is an accessory or adjunct that is attached to and incidental to something that has greater importance or value.

128. An *appurtenance* inheres in the land, concerns the premises and is essentially necessary for the enjoyment thereof.

129. As applied to real property, an appurtenance is an object or a right to be used with land as an incidental benefit which is necessary to complete the use and enjoyment of the property.

130. Common appurtenances to land include rights of ways to adjacent waters and beaches.

131. *Liberties and privileges* include the right to access and use the beach.

132. As part of the conveyance from Coast and Inland Development Co. to Plaintiffs’ predecessors, the deed references the lots as being situated on the “Plan of Normandy Beach, Ocean County, N.J. made by Sherman and Haines C.E”. See, 1925 Plan of Normandy Beach, Exhibit P-1.

133. The Sherman and Haines map was incorporated by reference thereto and shows the beach as contiguous to the oceanfront lot as conveyed to Plaintiffs’ predecessor. See, 1925 Plan of Normandy Beach, Exhibit P-1.

134. At all relevant times of conveyance from Coast and Inland Development Co., as the developer, access to the contiguous beach and ocean was an incorporeal appurtenance and/or hereditament right having beneficial and unique value to the purchaser of the oceanfront lots.

135. At the time of these conveyances from Coast and Inland Development Co. to Plaintiffs' predecessors in title, the grantor was an upland shore-owner and/or riparian-owner having littoral rights.

136. A right of way to access the beach and Atlantic Ocean from the oceanfront lot as conveyed by deed, even without the use of the words "appurtenances, hereditaments, right, ways, liberties and privileges" was intended by the Grantor, Coast and Inland Development Co., as a conveyance for the benefit of Plaintiffs' predecessor and is to be considered as incidental to the use of and as a part and parcel of the realty so conveyed.

137. It is verily believed that *all Normandy Beach* deeds of conveyance from Coast and Inland Development Co. specifically reference the Sherman and Haine's map showing the beach and the Atlantic Ocean and further expressly conveying *ways, rights, liberties, privileges, hereditaments, and appurtenances*, to the same belonging, or in any wise appertaining..."

138. The developer, Coast and Inland Development Co., plotted the tract of land into building lots and prepared a subdivision map disclosing all the lots and the abutting ocean and beach and thereafter conveyed same by reference to the Sherman and Haine's map of 1925.

139. The purchaser of any Normandy Beach lot thereafter, having viewed said Deed of Conveyance and map, inherently relies upon same and an intention to convey access and use of the beach and ocean may be assumed by law. See, State v. Birch, NJ App. Div. 1971.

140. The sale, development, and subdivision of the lands resulted in an equally effective dedication, entitling all adjoining land owners a private interest in the right of way to access and use the beach. See, Soho Properties, LLC v. Centex Homes, LLC, NJ App. Div. 2013.

141. Coast and Inland Development Co. granted a right of way over the beach land as an easement appurtenant in the dominant estate as the grantee and a servitude upon the servient estate, Coast and Inland Development Co.

***“Surf Fishing” and “Surf Bathing” Advertised by the Developer as
an Attraction for All Prospective Normandy Beach Purchasers***

142. As a form of marketing, Coast and Inland Development Co. retained ownership of the beach until such time as all properties were sold and conveyed.

143. In fact, it was the beach and its use that was the main attraction to prospective purchasers.

144. Historical records reveal that Coast and Inland Development Co. advertised the lands’ attractions as “surf bathing”, “Stillwater bathing”, “Surf Fishing” on the ATLANTIC OCEAN BARNEGAT BAY Water-way”. See, Bicher at p.6, Exhibit P-7.

145. There is no history indicating that any purchasers from Coast and Inland Development Co. was required to pay any additional charges for access to or use of the beach and ocean either direct or through any homeowners association. These amenities would have been “as advertised” as pertaining to the lands as a privilege and liberty.

146. There is no history of Coast and Inland Development Co. interfering with or denying beach access to any purchasers of Normandy Beach lands.

147. The value of each Normandy Beach parcel as conveyed was wholly dependent upon location and proximity to the beach and Atlantic Ocean.

148. Oceanfront lot owners would have paid Coast and Inland Development Co. a premium price based upon location, proximity and direct access to step off their property onto the Coast and Inland beach for recreational use.

149. Purchasers of inland parcels would pay less depending on the distance they had to walk to obtain access to the beach.

150. Location and proximity to the beach to this day are directly tied to the value of any beach property.

151. The Deed conveyances from Coast and Inland Development Co. contain no language which imposes any obligation on the part of the grantee to pay any rent, premium, join any association, or purchase stock as a precondition to accessing or using the Coast and Inland Development Co. beach.

152. All of the amenities, as advertised and conveyed, are littoral rights which include the right of access for ingress and egress to the beach and are considered “ways, rights, liberties, privileges, hereditaments, and appurtenances, to the same belonging” to each parcel conveyed by Coast and Inland Development Co.

153. Under ordinary circumstances, the thread of land constituting the Coast and Inland Development Co. beach would have great value to the contiguous lots, and it is of no value separated from them.

154. No vendee of any Normandy Beach lot would be willing to take it separated in ownership from the beach.

155. The history is clear that the vendor, Coast and Inland Development Co., had no intention to separate the vendees from the beach lot.

156. At the time of the conveyance to Plaintiffs’ predecessors in title, the grantees, and their successors in title, had no convenient access other than to walk directly across the Coast and Inland Development Co. beach lot.

157. It is verily believed that all other non-oceanfront property owners would have free beach access through the “paper street” ends bordering the western line of Coast and Inland Development Co.’s beach lot. See, 1925 Plan of Normandy Beach, Exhibit P-1.

158. As further evidence that Coast and Inland Development Co. intended to convey all tracts together with easements and rights of way, said language is more specifically referenced when they conveyed a large parcel of the bay lots to Henry Uhden by deed, dated March 23rd, 1940, and recorded April 20th, 1940, that deed contains the following easement language:

TOGETHER with *the use and right of way and easement to all that strip of beach land shown on “Plan of Normandy Beach, Ocean County, New Jersey, made October 1923 by Sherman and Sleeper, C.E.” and filed in the Ocean County Clerk’s Office November 30, 1926*, bounded Westerly by the Westerly line of a strip of land which lies to the West of and adjoining the boardwalk as show on said filed plan of Normandy Beach; and Easterly by the mean high water line of the Atlantic Ocean; and Northerly and Southerly by the North and South lines of Normandy Beach as show on the filed plan above recited, *for bathing, fishing and recreational purposes; and together with the right and privilege of ingress, egress and regress in and over all streets shown on said filed plan of “Normandy Beach” and such streets as are now or may hereafter be constructed in said “Normandy Harbor Tract.”*

See, Uhden Deed, Exhibit P-15.

159. The easement language in the 1940 Uhden deed above comports in a more modern linguistic sense, the very same intention as the older deeds from ***“Together with all singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments, and appurtenances, to the same belonging, or in any wise appertaining...***

Compare, Uhden deed, Exhibit P-15 with Appurtenant Deed North-Davis, Exhibit P-2, Appurtenant Deed South-Fun, Exhibit P-3 and Appurtenant Deed South-Wiss, Exhibit P-4.

160. Said easement rights of access and riparian right of way, as conveyed by Coast and Inland Development Co., run with the land on all future conveyances and successors in interest of Davis and said right remains in existence to present date.

161. Upon information and belief, all of Plaintiffs' predecessors in title from 1926 through 2018, as a matter of claim or right, traversed in an easterly fashion on a regular and continuous basis over the beach lands owned by Normandy Beach Association, as well as their predecessors in title, for access to and enjoyment of their riparian and/or littoral rights for use of the beach and the Atlantic Ocean.

162. At the time of these conveyances, access to the beach by the upland owner would have been by walking and traversing the beach lands in an easterly perpendicular fashion from the upland lot to the Atlantic Ocean.

163. These rights to use the beach lands for access to and from the Atlantic Ocean have been exercised as a claim of right by Plaintiffs and others similarly situated without interruption since the 1920s.

164. Historical records reflect that beach access and use was free of charge to all Normandy Beach property owners notwithstanding that title ownership of the beach remained in Coast and Inland Development Co. from 1921 through approximately 1935.

165. In or about 1935, the first lifeguard was hired and the property owners voluntarily formed The Normandy Beach Improvement Association ("NBIA"), which charged \$5.00 for dues and membership. See, (Bicher, Helen M., Normandy Beach, *A Brief History 1916 to 2016*, Second Ed., 2016 at p11), Exhibit P-7.

166. Notwithstanding membership in the NBIA, all rights of access and use of the beach remained with the property owners.

167. These rights run with the land and have passed with the Premises to Plaintiffs upon their acquisition of the property.

168. Plaintiffs, Langenfelds, have continuously exercised their rights to walk over the NBA beach property abutting the Premises in order to enjoy swimming and other recreational activities in the Atlantic Ocean below the mean high-water line.

Unlawful Interference with Easement Rights

169. Beginning on or about 2019, upon completion of the Dune Replenishment Project, Defendant, NBA, willfully interfered with Plaintiffs' rights to walk over the NBA Beach Property and to access the Atlantic Ocean below the mean high-water line.

170. Defendant, NBA, permitted by easement the installation a wooden fence along the ocean-side of the Premises, thereby preventing and excluding Plaintiffs, Langenfelds, their invitees, and guests, from utilizing the easement to access the NBA beach area and the Atlantic Ocean below the mean high-water line.

171. Defendant, NBA, specifically has refused to honor the conditions of it's CAFRA permit by not providing private crosswalk overs in disregard of Plaintiffs use and enjoyment of the Premises and said fence remains in place at present.

172. On September 8th, 2019, Defendant, NBA, held its "annual meeting" and used the proceeding in a way designed to further undermine Plaintiffs' use and enjoyment of the easement, soliciting a vote among a minority of the association members to rationalize Defendant, NBA's, efforts and intention to preclude Plaintiffs from exercising their right to pass over the NBA beach property to access the Atlantic Ocean below the mean high-water line.

173. Defendant, NBA, perpetrated this sham meeting after having been advised of Plaintiffs, Langenfelds', rights, even going so far as to deny Plaintiffs the right to have counsel present and threatening Plaintiffs' counsel with charges of trespass should they seek to accompany Plaintiffs, Langenfelds, to the meeting.

174. On or about October 1st, 2019, Plaintiff, through counsel, advised Defendant, Toms River, of Plaintiffs, Langenfelds', easement rights on both the North and South Premises and requested a permit to construct a dune walkover. See, Toms River Zoning Request, Exhibit P-9.

175. On or about October 1st, 2019, the Defendant, Toms River, directed Plaintiffs first obtain consent from Defendant, NBA. See, Toms River Zoning Response, Exhibit P-10.

176. On or about October 2nd, 2019, Plaintiff request consent from the NBA for a dune walkover. See, Exhibit P-11.

177. On or about October 17th, the defendant, refused to provide consent for a dune walkover. See, Exhibit P-12.

178. As a result of Defendant, NBA's acts and failure to act, both Plaintiffs, no longer have access to the NBA beach property or the ability to cross the same to gain access to the Atlantic Ocean below the mean high-water line from the Premises.

179. Defendant, NBA's, denial of such access to Plaintiffs has caused irreparable harm to Plaintiffs and has diminished the value of both Premises and their enjoyment thereof.

180. To protect Plaintiffs' rights, it is necessary for the Court to intercede on Plaintiffs' behalf, restrain and enjoin Defendants, Toms River and NBA, and persons acting on their behalf, from interfering with and obstructing Plaintiffs' use of their easement and use of the same to access the NBA beach property and the Atlantic Ocean below the mean high-water line.

WHEREFORE, Plaintiffs, each respectively, demand judgment for:

- (a) An Order declaring and affirming Plaintiffs' ability to construct a dune walkover without necessity of any prior approval from the Defendants or anyone else pursuant to the express walkover easement in full force and effect, including acknowledgement and recognition of Plaintiffs' easement and riparian for access and right of way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's, beach property, known as Lot 1, Block 905, as shown on the tax map of Defendant, Toms River, to the area below the mean high-water line;

- (b) An Order declaring Defendant, NBA, in willful violation of Plaintiffs' easement and riparian rights;
- (c) An Order compelling Defendant, NBA, to remove the fence and any other barrier that it has constructed along the ocean-side of the Premises, to preclude Defendant, NBA, from erecting a same or similar obstruction, to and to enjoin Defendant, NBA's, interference with Plaintiffs' right of access to the beach area known as Lot 1, Block 905, as shown on the tax map of Defendant, Toms River;
- (d) compensatory damages;
- (e) punitive damages as a result of Defendant, NBA's, willful actions;
- (f) attorneys' fees and costs of suit; and
- (g) such other and further relief as the court deems proper.

COUNT THREE

(NBA's Easement by Implication Based upon Estoppel and Prior Use)

181. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

182. At all times relevant from and after 1925 when Coast and Inland Development Co. conveyed out all oceanfront lots as referenced on the filed Sherman and Haines map of 1925, the implied intention the Grantor was to provide direct access to and from the beach and the Atlantic Ocean.

183. The easement by implication is supported by the grantors' advertising as attractions "the beach" (which the grantor owned) for *fishing and bathing*. See, Bicher History, Exhibit P-7, (pp.6-11).

184. The easement by implication is supported by reference to the general plan as reflected by the Haines and Sherman map of 1925 and incorporated by deed.

185. The easement by implication is supported by the historical use of the property from 1925 through present which included all oceanfront lot owners accessing the beach and ocean by vertical ingress and egress.

186. The original grantor of the oceanfront lots in Normandy Beach, Coast and Inland Development Co. induced purchasers by use of the advertising and reference to the “Plan of Normandy Beach”.

187. The Plan of Normandy Beach shows the beach area adjacent to the oceanfront lots as being made available for their open use and enjoyment.

188. The purchasers of all oceanfront lots acted upon the inducement of the grantor in the honest belief that they would have direct access easterly and vertical to the beach and ocean.

189. By reasonable necessity for the convenient use and enjoyment of the beach and ocean, the grantor conveyed direct vertical access for ingress and egress across the Grantor’s beach lot.

190. The easement referred to herein runs with the land and exists in perpetuity.

WHEREFORE, Plaintiffs, each respectively, demand judgment for:

- (a) An Order declaring and affirming Plaintiffs’ ability to construct a dune walkover without necessity of any prior approval from the Defendants or anyone else pursuant to the express walkover easement in full force and effect, including acknowledgement and recognition of Plaintiffs’ easement and riparian for access and right of way to the Atlantic Ocean from the Premises, over and through Defendant, NBA’s, beach property, known as Lot 1, Block 905, as shown on the tax map of Defendant, Toms River, to the area below the mean high-water line;
- (b) An Order declaring Defendant, NBA, in willful violation of Plaintiffs’ easement and riparian rights;
- (c) An Order compelling Defendant, NBA, to remove the fence and any other barrier that it has constructed along the ocean-side of the Premises, to preclude Defendant, NBA, from erecting a same or similar obstruction, to and to enjoin Defendant, NBA’s, interference with Plaintiffs’ right of access to the beach area known as Lot 1, Block 905, as shown on the tax map of Defendant, Toms River;
- (d) compensatory damages;

- (e) punitive damages as a result of Defendant, NBA's, willful actions;
- (f) attorneys' fees and costs of suit; and
- (g) such other and further relief as the court deems proper.

**COUNT FOUR
(NBA-Prescriptive Easement)**

191. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

192. Plaintiffs and their predecessors in title on both the North and South Premises have traversed Defendant's beach lot since they were originally conveyed out from Coast and Inland Development Co.

193. Plaintiffs and their predecessors in title have openly and notoriously used Defendant's beach lot vertical access for ingress and egress to the beach and ocean.

194. Plaintiffs' and their predecessors' use was in fact continuous and uninterrupted in excess of 75 years.

195. Plaintiffs and their predecessors have used Defendant's beach lot as a claim of right so that Defendant was aware of such continued use.

196. The easement herein runs with the land and exists in perpetuity.

WHEREFORE, Plaintiffs, each respectively, demand judgment for:

- (a) An Order declaring and affirming Plaintiffs' ability to construct a dune walkover without necessity of any prior approval from the Defendants or anyone else pursuant to the express walkover easement in full force and effect, including acknowledgement and recognition of Plaintiffs' easement and riparian for access and right of way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's, beach property, known as Lot 1, Block 905, as shown on the tax map of Defendant, Toms River, to the area below the mean high-water line;
- (b) An Order declaring Defendant, NBA, in willful violation of Plaintiffs' easement and riparian rights;

- (c) An Order compelling Defendant, NBA, to remove the fence and any other barrier that it has constructed along the ocean-side of the Premises, to preclude Defendant, NBA, from erecting a same or similar obstruction, to and to enjoin Defendant, NBA's, interference with Plaintiffs' right of access to the beach area known as Lot 1, Block 905, as shown on the tax map of Defendant, Toms River;
- (d) compensatory damages;
- (e) punitive damages as a result of Defendant, NBA's, willful actions;
- (f) attorneys' fees and costs of suit; and
- (g) such other and further relief as the court deems proper.

COUNT FIVE

(NBA's Unlawful Interference with Riparian and/or Littoral Rights)

197. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

198. All oceanfront lot owners, including Plaintiffs, are riparian owners holding incorporeal rights which are held as an appurtenance to the land.

199. These riparian rights of access and use of the beach and waters run with the land upon conveyance to the dominant tenement, here the Premises.

200. Riparian rights provide the possessor with a right or privilege to access and make reasonable use of the water, here the Atlantic Ocean below the mean high-water line.

201. By removing Plaintiffs' at grade-dune walkover and erecting a fence between the Premises and the beach property, Defendant, NBA, knowingly, intentionally, and unlawfully interfered with Plaintiffs' riparian/littoral rights.

202. Furthermore, by refusing to acknowledge Plaintiffs' easement and riparian/littoral rights even after it had been advised of the same and claiming to treat Plaintiffs "as any other homeowner", Defendant, NBA, has indicated that it will continue to unlawfully interfere with Plaintiffs' riparian/littoral rights.

WHEREFORE, Plaintiffs, each respectively, demand judgment for:

- (a) An Order declaring Plaintiffs have riparian/littoral rights that give them legal right of access and right of way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's, beach property, known as Lot 1, Block 1, as shown on the tax map of Brick Township, to the area below the mean high-water line;
- (b) an Order declaring Defendant, NBA, in willful violated Plaintiffs' riparian rights;
- (c) an Order compelling Defendant, NBA, to remove the fence and any other barrier that it has constructed along the ocean-side of the Premises and precluding Defendant, NBA, or its agents from installing or erecting any same or similar obstruction that is designed or has the effect of preventing or inhibiting Plaintiffs from utilizing their riparian rights that gives them legal right of access and right of way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's, beach property, known as Lot 1, Block 1, as shown on the tax map of Brick Township, to the area below the mean high-water line;
- (d) compensatory damages;
- (e) punitive damages as a result of Defendant's willful actions;
- (f) attorneys' fees and costs of suit; and
- (g) such other and further relief as the court deems proper.

**COUNT SIX
(Trespass-NBA)**

203. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

204. At all times relevant to this complaint, Plaintiffs, Langenfelds, owned the North and South Premises and were in possession of an easement that provided them with lawful access and right of way from the Premises over and through Defendant, NBA's, beach property to the Atlantic Ocean below the mean high-water line and Plaintiffs, Davi, as of September 31, 2021, now in possession of the South Premises, claim possession of said easement.

205. Since acquiring the North and South Premise, respectively, Plaintiffs, predecessors, have openly and continuously exercised their rights under the easement by accessing and using a

right of way from the Premises over and through Defendant, NBA's, beach property to access the Atlantic Ocean at the area below the mean high-water line.

206. Defendants, Toms River, and Defendant, NBA, erected fences and blocked access, presumably on the NBA beach property, at or on the boundary line between the ocean-side of the Premises and the NBA beach property, Defendant, NBA, intentionally encroached and continue to encroach on Plaintiffs' easement in a manner intended to deny Plaintiffs, their guest and invitees, the ability to use the easement and deprived Plaintiffs of their lawful right to access and right of way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's, beach property to the area below the mean high-water line.

207. Defendant, NBA's, fences remained in place throughout July, August and September 2019 and remain in place at present, indicating that Defendant, NBA, intends to deny Plaintiffs access to and right of way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's, beach property to the Atlantic Ocean below the mean high-water line presently and hereinafter.

208. Plaintiffs, Langenfelds, access to and enjoyment of the beach on the ocean-side of the Premises was impaired and limited for the entirety of the summer of 2019, through Labor Day 2019 and continues unabated to the present time to the detriment of Plaintiff's Davi's use and enjoyment.

WHEREFORE, Plaintiffs, each respectively, demand judgment for:

- (a) An Order declaring that Plaintiffs have an easement and riparian rights that gives them legal right of access and right of way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's, beach property, known as Lot 1, Block 905 on the tax map of Defendant, Toms River, to the area below the mean high-water line;
- (b) an Order declaring that Defendant NBA in willful violation Plaintiffs' easement and riparian rights;

- (c) an Order compelling Defendant NBA to remove the fence and any other barrier that it has constructed along the ocean-side of the Premises and precluding Defendant NBA or its agents from installing or erecting any same or similar obstruction that is designed or has the effect of preventing or inhibiting Plaintiffs from utilizing their easement and riparian rights that gives them legal right of access and right of way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's, beach property, known as Lot 1, Block 905, as shown on the tax map of Defendant, Toms River, to the area below the mean high-water line;
- (d) compensatory damages;
- (e) punitive damages as a result of Defendant's willful actions;
- (f) attorneys' fees and costs of suit; and
- (g) such other and further relief as the court deems proper.

COUNT SEVEN
(Equitable Estoppel – NBA)

209. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

210. In 2016, Defendant, NBA, entered into a PSDRE with Defendant, Toms River, related to post-Hurricane Sandy beach repair and replenishment.

211. Defendant, NBA's 2016 PSDRE with Defendant, Toms River, at Paragraph III(h), Page 5, provided for and specifically enabled residential property owners to construct private at-grade dune walkover structures that complied with applicable Federal, state and local laws and regulations, provided that such structures did not violate the integrity of the dunes in dimension or function. See, Exhibit P-17.

212. DEP accepted Defendant, NBA's, 2016 PSDRE with Defendant, Toms River, on February 23, 2016 with this condition. See, Exhibit P-17.

213. In August 2017, Defendant, NBA, filed a CAFRA Permit application with the DEP that specifically provided for at-grade dune walkovers for residential properties abutting its beach

lands, known as Lot 1, Block 1 on the tax map of Defendant, Toms River, as a special permit condition.

214. It is verily believed that Defendant, NBA, provided notice by certified mail to all adjacent property owners subject to its CAFRA Permit, including Plaintiffs, Langenfelds, advising them of its intention to permit oceanfront property owners to the use of at-grade dune walkovers, thereby enabling them to have access to the area below the mean high-water line as they had enjoyed for years before Hurricane Sandy, and in some cases, decades.

215. It is verily believed that Defendant, NBA, represented an intent to permit the construction and installation of at-grade dune walkovers to abutting oceanfront property owners, including Plaintiffs, Langenfelds.

216. Plaintiffs, Langenfelds, had reason to believe and did rely on Defendant, NBA's representations regarding Plaintiffs, Langenfelds, continuing ability to have access and right-of-way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's Beach Lands, known as Lot 1, Block 1 on the tax map of Defendant, Toms River, to the area below the mean high-water line.

217. Having been advised that Defendant, NBA, intended to permit the construction and installation of at-grade dune walkovers to abutting oceanfront property owners, including Plaintiffs, Langenfelds, Plaintiffs, Langenfelds, did not file an objection to Defendant, NBA's, CAFRA Permit application.

218. On April 21, 2016, DEP granted Plaintiffs' predecessor an express easement allowing for a dune walkover on Plaintiffs' North Premises. See, Exhibit P-8.

219. In contradiction of the conditions of Defendant, NBA's, PSDRE and DEP Permit, on June 6, 2019, Defendant, NBA, refused to honor Plaintiffs, Langenfelds', right to install an at-grade dune walkover. See, Exhibit P-10.

220. Plaintiffs relied on Defendant, NBA's statements and commitments in publicly filed documents, including the 2016 PSDRE and its 2017 DEP Permit.

221. Principles of equitable estoppel preclude Defendant, NBA, from disavowing the terms and conditions of its 2016 PSDRE and the special permit conditions of its 2017 CAFRA Permit, on which Plaintiffs, Langenfelds, relied to their detriment.

WHEREFORE, Plaintiffs, each respectively, demand judgment for:

- (a) An Order finding that Defendant, NBA's, conduct contravenes its statements, commitments and representations set forth in public filings, including its 2016 PSDRE with Defendant, Toms River, and the 2017 CAFRA application made to and granted by DEP on the basis of Defendant, NBA's statements, commitments and representations that it would allow residential homeowners to utilize at-grade dune walkovers;
- (b) An order finding that Defendant, NBA, is estopped and precluded from disavowing its statements, commitments and representations to allow Plaintiffs right of access and right-of-way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's Beach Lands, known as Lot 1, Block 1 on the tax map of Defendant, Toms River, to the area below the mean high-water line;
- (c) An Order declaring the actions of Defendant, NBA, in willful violation of its 2016 PSDRE with Defendant, Toms River, and its 2017 CAFRA Permit;
- (d) An Order mandating the zoning approval of Defendant, Toms River, to issue permits for Plaintiffs, Langenfelds, allowing a pedestrian dune walkover;
- (e) An Order compelling Defendant, NBA, to remove the fence and any other barrier that it has constructed along the ocean-side of the Premises and precluding Defendant, NBA, or its agents from installing or erecting any same or similar obstruction that is designed or has the effect of preventing or inhibiting Plaintiffs from utilizing their easement and riparian rights that give access and right-of-way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's Beach Lands, known as Lot 1, Block 1, as shown on the tax map of Defendant, Toms River, to the area below the mean high-water line;

- (f) Compensatory damages for interference with, obstruction of and Plaintiffs, Langenfelds', loss of use of easement and riparian rights;
- (g) Punitive damages as a result of Defendant's willful actions;
- (h) Attorneys' fees and costs of suit; and
- (i) Such other and further relief as the court deems proper.

COUNT EIGHT
(Promissory Estoppel – NBA)

222. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

223. In 2016, Defendant, NBA, entered into a PSDRE with Defendant, Toms River, related to post-Hurricane Sandy beach repair and replenishment. See, Exhibit P-17.

224. Defendant, NBA's PSDRE with Defendant, Toms River, at Paragraph III(h), Page 5, provided for and specifically enabled residential property owners to construct private at-grade dune walkover structures that complied with applicable Federal, state and local laws and regulations, provided that such structures did not violate the integrity of the dunes in dimension or function. See, Exhibit P-17.

225. DEP accepted Defendant, NBA's 2016 PSDRE with Defendant, Toms River, on February 23, 2016, with this condition. See, Exhibit P-17.

226. In August 2017, Defendant, NBA, filed a CAFRA Permit with the DEP that specifically provided for at-grade dune walkovers for residential properties adjacent to its Beach Lands, known as Lot 1, Block 1 on the tax map of Defendant, Toms River, as a special permit condition.

227. Defendant, NBA, was by law obligated to provide notice by certified mail to all property owners subject to its CAFRA Permit, including Plaintiffs, Langenfelds, advising them of its intention to permit oceanfront property owners to use at-grade dune walkovers, thereby enabling

them to have access to the area below the mean high-water line as they had enjoyed for years before Hurricane Sandy, and in some cases, decades.

228. It is verily believed that Defendant, NBA, represented an intend and promise to permit oceanfront property owners to construct and install at-grade dune walkovers/

229. Plaintiffs had reason to believe and did rely on Defendant, NBA's, representations regarding Plaintiffs, Langenfolds, continuing ability to have access and right-of-way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's, Beach Lands, known as Lot 1, Block 1 on the tax map of Defendant, Toms River, to the area below the mean high-water line as they had enjoyed since 2000.

230. Having been advised that Defendant, NBA, intended to permit the construction and installation of at-grade dune walkovers to abutting oceanfront property owners, including Plaintiffs, Langenfolds, Plaintiffs did not file an objection to Defendant, NBA's, 2017 CAFRA Permit application.

231. DEP granted Defendant, NBA's, CAFRA Permit on December 6, 2017 and said permit remains in full force and effect until December 5, 2022. See, Exhibit P-14.

232. Plaintiffs, Langenfolds, relied on Defendant, NBA's statements, promises and commitments in publicly filed documents, including the 2016 PSDRE and its 2017 DEP Permit.

233. Principles of promissory estoppel preclude Defendant, NBA, from disavowing the terms and conditions of its 2016 PSDRE and the special permit conditions of its 2017 CAFRA Permit, on which Plaintiffs, Langenfolds, relied to their detriment and which now serve as a detriment to Plaintiffs, Davi, as assignee of said claim.

WHEREFORE, Plaintiffs each respectively, demand judgment for:

- (a) An Order finding that Defendant, NBA, conduct contravenes its statements, commitments and representations set forth in public filings including its 2016

PSDRE and Defendant, Toms River, and its 2017 CAFRA application made to and granted by DEP on the basis of Defendant, NBA's statements, commitments and representations to allow at-grade dune walkovers;

(b) An Order finding that Defendant, NBA, is estopped and precluded from disavowing its statements, commitments and representations to allow Plaintiffs right of access and right-of-way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's Beach Lands, known as Lot 1, Block 1 on the tax map of Defendant, Toms River, to the area below the mean high-water line;

(c) An Order declaring the actions of Defendant, NBA, in willful violation of its 2016 PSDRE with Defendant, Toms River, and its 2017 CAFRA Permit;

(d) An Order mandating the zoning approval of Defendant, Toms River, to issue permits for Plaintiffs, allowing a pedestrian dune walkover;

(e) An Order compelling Defendant, NBA, to remove the fence and any other barrier that it has constructed along the ocean-side of the Premises and precluding Defendant, NBA, or its agents from installing or erecting any same or similar obstruction that is designed or has the effect of preventing or inhibiting Plaintiffs from utilizing their easement and riparian rights that give them access and right-of-way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's Beach Lands, known as Lot 1, Block 1, as shown on the tax map of Defendant, Toms River, to the area below the mean high-water line;

(f) Compensatory damages for interference with, obstruction of and Plaintiff's loss of use of easement and riparian rights;

(g) Punitive damages as a result of Defendant's willful actions;

(h) Attorneys' fees and costs of suit; and

(i) Such other and further relief as the court deems proper.

COUNT NINE
(Consumer Fraud – Defendant NBA, NBIA)

234. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

235. Plaintiffs and all Normandy Beach property owners who received deeds from Coast and Inland Development Co. with similar easement language have rights to use and access the beach via easement appurtenant to access the beach as a matter of deeded right free of any charge.

236. Notwithstanding these property rights, the Defendants have unlawfully refused such property owners beach access unless they either become member of the NBA through purchase of stock and pay annual dues or purchase and pay for beach badges.

237. The Defendants, NBA and NBIA, are merchants as defined by the New Jersey Consumer Fraud Act, selling shares of stock, beach badges, and merchandise and services to members of the general public.

238. Plaintiffs are consumers as defined by the New Jersey Consumer Fraud Act.

239. The Defendants violated the Consumer Fraud Act as follows:

(a) Engaging in affirmative false and deceptive practices by leading Plaintiffs and others similarly situated in a false belief that they cannot access the beach and ocean except through the purchase of stock, membership and/or beach badges.

(b) Affirmatively misrepresenting the extent and nature of ownership of the beach and the rights of ways as appurtenances belonging to Plaintiffs and all other Normandy Beach property owners similarly situated.

(c) Affirmatively misleading and deceiving all Oceanfront lot owners including Plaintiffs herein that “private dune walkovers” would be allowed and permitted as set forth in the CAFRA application and permit.

(d) Engaging in deceptive and unconscionable conduct by unilaterally extinguishing Plaintiffs’ beach access rights without prior notice to shareholders, meeting, vote, and resolution by the NBA or NBIA.

(e) Unlawfully oppressing oceanfront property owners by corporate officers whose actions are ultra vires.

240. As a direct and proximate result of Defendants’ unconscionable commercial practices, the Plaintiffs, Langenfels, as well as others similarly situated have suffered ascertainable losses, including but not limited to devaluation of all Normandy Beach Properties, payments of shares, dues and beach badges which are not required of Plaintiffs or others similarly situated in order to access the beach.

240a. To extent that plaintiff's Davi are forced by the defendants NBA/NBIA to pay any fees for the use and enjoyment of the beach and/or which not tied directly to the operational beach cost, they assert all claims under New Jersey Civil Rights and the Consumer Fraud Act .

WHEREFORE, Plaintiffs, respectively, by way relief, hereby demand:

- (a) Declaratory relief restraining Defendant, NBA, from charging any premium to Plaintiffs or others similarly situated for access to the beach;
- (b) Declaratory relief compelling Defendants to remove all offending structures and dune grass and provide reasonable access to beach and ocean;
- (c) Compensatory damages for devaluation of lands and all association fees and dues;
- (d) Treble damages; and
- (e) All fair and reasonable attorneys' fees, and cost of suit.

COUNT TEN
(Common Law Fraud – Defendant NBA, NBIA)

241. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

242. Plaintiffs and all Normandy Beach property owners who received deeds from Coast and Inland Development Co. with similar easement language have rights to use and access the beach via easement appurtenant to access the beach as a matter of deeded right free of any charge.

243. Historical records reflect that in 1939, Coast and Inland Development Co. had made the Beach Lot available for sale. Hudson, a local owner and active member of the NBIA acquired title as an investment and formed the Normandy Beach Owners Inc. for “the sole purpose of assuring that the beaches would be accessible to all resident members who bought stock to pay back the Hudson family for their investment.” E. Stephen Kirby, Bicher History at P. 33, See, Exhibit P-7.

244. Hudson, as successor in interest to the servient estate Coast and Inland Development Co., had no ability to extinguish, limit, or impair any of the beach access privileges as previously granted by Coast and Inland Development Co.

245. Hudson had no power to charge any Normandy Beach property owner a fee to access or use the beach he purchased in 1939.

246. The NBO, as successor to Hudson in 1940, had no power or ability to change or alter all previously granted rights as they pertain to all Normandy Beach properties.

247. The NBO had no power or right to charge any Normandy Beach property owner a fee for beach access.

248. The NBO had no power to mandate, require or force any Normandy Beach owner to purchase a bond or stock certificate as a precondition to access or use of the beach.

249. Notwithstanding same, homeowners were assessed \$25 each for the purchase of a bond to reimburse Hudson for the funds he laid out for the beach purchase. See, Bicher History, Exhibit P-7.

250. To the extent that a property owner refused to purchase the stock or pay for membership or purchase a beach badge, the NBO and its successor in interest, Defendant, NBA, would deny access and use of the beach to such Normandy Beach lot holder.

251. At all relevant times herein, Defendant, NBA, is a successor interest to the NBO and retains all liability for past fraudulent conduct of the NBO as well as current fraud presently perpetrated on Plaintiffs and all those similarly situated.

252. To the extent that Defendant, NBA, has forced Normandy Beach owners to buy a badge or purchase a stock or bond and or pay annual dues as a precondition to beach access and use they are perpetrating a fraud upon Plaintiffs and all other Normandy Beach lot owners whose ability

to access and use the beach is anchored as inherent property right as an appurtenance from inception of the Coast and Inland Development Co. conveyances.

253. In an effort to induce payment of annual fees and badges, the Defendant, NBA, fails to disclose that each landowner already has pre-existing deeded rights to access and use the beach free of charge.

254. As a direct and proximate result of Defendants' unconscionable commercial practices, the Plaintiffs, as well as others similarly situated, have suffered ascertainable losses, including but not limited to devaluation of all Normandy Beach Properties, payments of shares, dues and beach badges which are not required of Plaintiffs or others similarly situated in order to access the beach.

WHEREFORE, Plaintiffs, respectively, by way of relief, hereby demand:

- (a) Declaratory relief restraining Defendant, NBA, from charging any premium to Plaintiffs or others similarly situated for access to the beach;
- (b) Declaratory relief compelling Defendants to remove all offending structures and dune grass and provide reasonable access to beach and ocean;
- (c) Compensatory Damages for devaluation of lands and all association fees and dues;
- (d) Punitive Damages in the amount of \$10,000,000.00; and
- (e) All fair and reasonable attorneys' fees, and cost of suit.

COUNT ELEVEN
(Violation of Public Trust Doctrine – Defendants NBA, Toms River)

255. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

256. Oceanfront property is uniquely suitable for bathing and other recreational activities.

257. Because it is unique and highly in demand, there is growing concern about the reduced availability to the public of its priceless beach areas.

258. Statewide policy of New Jersey encourages, consonant with environmental demands, greater access to ocean beaches for recreational purposes.

259. Expressions of this policy can be found in three sources: the decisions of the NJ Supreme Court concerning the Public Trust Doctrine (*See, for example, Lusardi v. Curtis Point Property Owners Ass'n*, 86 N.J. 217 (N.J. 1981), *Van Ness v. Borough of Deal*, 78 N.J. 174, 180 (1978), *Hyland v. Borough of Allenhurst*, 78 N.J. 190 (1978), and *Borough of Neptune City v. Borough of Avon-by-the-Sea*, 61 N.J. 296, (1972)) legislation such as the Beaches and Harbors Bond Act of 1977, L. 1977, c. 208, and the Coastal Resource and Development Policies promulgated by the Department of Environmental Protection, *N.J.A.C. 7:7E-1.1 to -9.23*.

260. The Public Trust Doctrine is premised on the common rights of all the State's citizens to use and enjoy the tidal land seaward of the mean high water mark.

261. These rights are not limited to the ancient prerogatives of navigation and fishing, but extend as well to recreational uses, including bathing, swimming and other shore activities.

262. Because the use of dry sand beaches is practically inseparable from enjoyment of ocean swimming, the courts have expanded this private right to include public accessibility to municipally owned beaches.

263. Plaintiff, as a private oceanfront property owner, has a direct right of access to the lands seaward of their property for purposes of recreational use.

264. Defendants, NBA and Toms River, have denied that direct access and unreasonably diminished and impaired this right of access.

WHEREFORE, Plaintiffs, by way of relief, hereby demand:

- (a) An Order compelling Defendant, Toms River, to cease and desist from requiring Plaintiffs to obtain written consent from the NBA in order to exercise their easement and riparian rights and from using the police power inherent to the municipality to obstruct Plaintiffs use of same;

- (b) an Order compelling Defendant, Toms River, to cease and desist its interference with Plaintiffs' efforts to exercise their easement and riparian rights, as well as the rights reserved to Plaintiffs to construct an at-grade dune walkover as provided for in the PSDRE entered into by Plaintiffs and Defendant, Toms River, in December 2013 PSDRE and Defendant NBA's DEP 2017 Permit; and
- (c) An Order declaring Defendant, NBA, in willful violation of the Public Trust Doctrine;
- (d) An Order compelling Defendant, NBA, to remove the fence and any other barrier that it has constructed along the ocean-side of the Premises, to preclude Defendant, NBA, from erecting a same or similar obstruction, to and to enjoin Defendant, NBA's, interference with Plaintiffs' right of access to the beach area known as Lot 1, Block 905, as shown on the tax map of Defendant, Toms River;
- (e) compensatory damages;
- (f) punitive damages as a result of defendant's willful actions;
- (g) attorneys' fees and costs of suit; and
- (h) such other and further relief as the court deems proper.

COUNT TWELVE
(Violation of Corporate Duties, NBA)

265. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

266. It is verily believed that the NBA failed to comply with their own Certificate of Incorporation and By-Laws.

267. By letter, dated September 6, 2019, counsel for NBA advised that the NBA, in concert with the NBIA, has as of that date already voted to "limit stockholders....access to the beach." See, NBA Edwards/Chang correspondence, dated September 6, 2019, Exhibit P-16.

268. Notwithstanding same as a stockholder, Plaintiffs, Langenfelds, never received any notice, written or otherwise, that its capital asset was being diminished by limited beach access.

269. Such advance written notice is required by Sections 2 and 4 of the By-Laws.

270. Failure to provide such notice violates public policy and the New Jersey Nonprofit Corporation Act. N.J.S.A. 15A:1-1 to 16-2, etc.

271. The judgment to limit beach access was not made in good faith.

272. The judgment to limit beach access for oceanfront property owners was not supported by any reasonable business knowledge or data.

273. It is verily believed that at the time the NBA voted to limit access for all oceanfront properties, no oceanfront owner was on the Board of Directors.

274. The actions of the Board of Directors in limiting access for oceanfront owners was fraudulent, self-dealing and unconscionable insofar as:

- (a) No advance notice was provided to the oceanfront owners.
- (b) The vote directly contradicted express language in the CAFRA application leading all oceanfront owners to believe overwalks would be permitted.
- (c) None of the non-oceanfront owner director suffered any detriment by the vote.
- (d) As minority shareholders, all oceanfront owners have been oppressed.

275. As a direct result of the acts and or omission of the NBA board of directors, Plaintiffs have suffered harm, including, impairment of the use and enjoyment of their property, impairment of property rights, diminution in land value plus costs of counsel and court.

WHEREFORE, Plaintiffs, each respectively, by way of relief, hereby demand:

- (a) Enjoining the NBA from further implementing any rules affecting oceanfront property owners;
- (b) Declaring any votes by the NBA and/or NBIA as void *ab initio*;
- (c) Enjoining the NBA from interfering with Plaintiffs' easement rights;
- (d) All reasonable counsel fees pursuant to N.J.S.A. 15A:1, *et seq.* and

(e) All such other relief as the court may award including, counsel fees, and costs.

COUNT THIRTEEN
(Temporary Injunctive Relief-NBA and Toms River)

276. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

277. In refusing to consent to a permitted dune walkover, the Defendant, NBA, has acted in an arbitrary and capricious manner.

278. By requiring any consent from the NBA and passage of Ordinance #4651-19, the Defendant, Toms River's denial of a permitted walkover is arbitrary and capricious.

279. As a result of the Defendant's failure to allow or permit a pedestrian dune walkover, Plaintiffs will be deprived of the full use and enjoyment of their property.

280. As a result of the Defendant's failure to allow or permit a pedestrian dune walkover, a bundle of Plaintiffs' property rights are negatively impacted, namely the right to sell, rent, lease as well as the right of ingress and egress to the beach.

281. Dune walkovers are permitted by New Jersey State law.

282. As originally enacted, Dune Walkover were permitted by the Defendant, Toms River, and are currently permitted in the Brick Township portion of Normandy Beach.

283. Several Pedestrian dune walkovers have been in place in Deauville Beach directly north of Normandy Beach.

284. Defendants will suffer no hardship if a pedestrian walkway is permitted on Plaintiffs' properties.

285. Plaintiffs' hardship outweighs any alleged hardship by the Defendants.

WHEREFORE, Plaintiffs, each respectively, by way of relief, hereby demand:

- (a) Enjoining the NBA from further implementing any rules affecting oceanfront property owners;
- (b) Declaring any votes by the NBA and/or NBIA as void *ab initio*;
- (c) Enjoining the NBA from interfering with Plaintiffs' easement rights;
- (d) Directing the Township of Toms River to issue a permit for a dune walkover on Plaintiffs' North and South Premises;
- (e) All reasonable counsel fees pursuant to N.J.S.A. 15A:1, *et seq.*; and
- (f) All such other relief as the court may award including, counsel fees and costs.

COUNT FOURTEEN
(Inverse Condemnation – Defendant Toms River)

286. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

287. On or about 2008, Defendant, Toms River, passed a Beach Protection Ordinance Chapter 189 et. seq. for the purpose of dune protection.

288. Ordinance Section 189-4 provides access for private walkovers subject to permit conditions:

Access to the open beach in this zone shall be obtained across street ends or along properly constructed and authorized walkways and steps designed to protect dune grass from trampling. Where boardwalks and steps are constructed in a street and its extensions, access shall be across such boardwalks and steps, controlled by appropriate fencing. No access shall be constructed by a private owner without a permit described below.

289. Ordinance Section 189-7 provided for conditions for obtaining a walkover permit:

No such permit shall be issued without a determination by the Conservation Officer or Township Engineer based upon an inspection of the area involved and a report thereon by the Township Engineer that such removal will not create or increase a danger or hazard to life or property. No permit will be granted if the proposed moving or displacement will:

- (1) Adversely affect the littoral drift of the dune area.
- (2) Result in a reduction of dune protection and of the dune area as defined in § 189-2 of this chapter.

(3) Interfere with the general configuration of the dune area, of the subject property or of neighboring properties.

290. On or about December 23, 2019 the Defendant, Toms River enacted ordinance number 4651-19 which amended Chapter 189-7 so as to add a fourth condition which prohibits any walkover permit “if there is a public walkover within 250’.”

291. Plaintiffs, Langenfelds’, North Premises and Plaintiff’s, Davi’s, South Premises are located within 250’ of a public walkway.

292. As a result of the enactment of Ordinance # 4651-19, Plaintiffs can no longer access the beach via a private pathway from their house, vertically to the shoreline.

293. As a result of the enactment of Ordinance #4651-19, Plaintiffs’ preexisting easement rights of direct ingress and egress beach access have been completely eliminated.

294. As a result of the enactment of Ordinance #4651-19, Plaintiffs’ North and South Premises have been devalued.

295. Prior to the erected dune and enactment of the offending ordinance, Plaintiffs have enjoyed unimpeded access and right of way to the Atlantic Ocean from the Premises, over and through Defendant NBA’s beach property, an area described as Block 905, Lot 1 on the Tax Map of the Township of Brick.

296. Defendant, Toms River, has failed and refused to honor the specific terms and conditions of the Plaintiffs, Langenfelds’, express easement as granted by the State of New Jersey on Plaintiffs’ North Premises.

297. Defendant, Toms River, also failed and refused to acknowledge the terms and conditions of Defendant, NBA’s, valid DEP Permit that specifically enabled oceanfront residents to utilize at at-grade dune walkovers.

298. When put specifically on notice by the DEP that applicable state regulations allow and permit use of at-grade dune walkovers, Defendant, Toms River, refused the permit and required consent from Defendant, NBA.

299. Defendant, Toms River, has refused to acknowledge Plaintiffs' easement rights and, by its Township Attorney, insists it is merely treating Plaintiffs as it would any other homeowner, even though Plaintiffs are not similarly situated to other homeowners.

300. Defendant, Toms River, in September 2019 demanded that Plaintiffs, Langenfelds, obtain written consent from Defendant, NBA, for a dune walkover and advised that upon receipt of consent they would "reconsider" the permit application.

301. Thereafter, the Defendant Toms River, passed Ordinance #4651-19 introducing a bureaucratic impediment designed to deprive Plaintiffs of their lawful rights.

302. An easement obviates any need for written consent, as it is a specifically granted access right that has no such condition placed upon it.

303. At the time of Plaintiffs, Langenfelds', application for a dune walkover, walkovers were permitted within 250' of public walkovers.

304. Ordinance #4651-19 was enacted on December 23, 2019 after Plaintiffs, Langenfelds, threatened litigation by letter, dated October 1, 2019. See, P-19.

305. Defendant, Toms River, is a government entity.

306. Government entities are required to act in good faith towards their citizens.

307. In condemnation matters, government entities are required to "turn square corners" at all times in their dealings with condemnees.

308. By its refusal to engage in meaningful discussions with Plaintiffs, Langenfelds, related to the issues raised in this Complaint, Defendant, Toms River, has failed to deal with Plaintiffs in good faith.

309. By its refusal to engage in meaningful discussions with Plaintiffs related to the issues raised in this Complaint, Defendant, Toms River, has failed to “turn square corners” with regard to its condemnation actions.

310. Through its actions, Defendant, Toms River, has taken Plaintiffs’ property rights without payment of just compensation in violation to the Fifth Amendment to the United States Constitution, the New Jersey Constitution, New Jersey’s Eminent Domain Act and other laws and regulations.

311. Further, this taking has deprived Plaintiffs of the proper use and enjoyment of their lands.

WHEREFORE, Plaintiffs, each respectively, demand judgment for:

- (a) an Order declaring a taking by inverse condemnation;
- (b) a Writ of Mandamus requiring Defendant, Toms River, to cease and desist in enforcing a written consent requirement in order for Plaintiffs to utilize an at-grade, dune walkover as provided for in the 2013 PSDRE between Defendant, Toms River, and Plaintiffs and allowed in Defendant NBA’s 2017 DEP Permit;
- (c) an Order directing a formal condemnation proceeding by initiated by Defendant, Toms River, pursuant to the laws of condemnation;
- (d) compensatory damages;
- (e) punitive damages as a result of defendant’s willful actions;
- (f) attorneys’ fees and costs of suit; and
- (g) such other and further relief as the court deems proper.

COUNT FIFTEEN
(Invalid Ordinance Toms River Township)

312. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length in this Count.

313. Insofar as Ordinance #4651-19 violates the fifth amendment of the United States Constitution, it holds no presumption of validity.

314. The ordinance only affects oceanfront landowners in Toms River.

315. Toms River beaches run an approximate total of 2.3 miles in total length from north to south.

Ortley Beach South Section

316. Of the 2.3 miles of Toms River beaches, the Ortley Beach section consumes approximately $\frac{3}{4}$ of a mile and the ordinance in question has little or no impact as there are only 3 residential lots on the south end which border the beach, two of which are directly adjacent to a public walkway and have sand footpaths to the public accessway.

317. There are 11 crosswalkovers in Ortley Beach, 3 of which are private.

318. All crosswalkovers in Ortley Beach are less than 250' feet of each other and some are within 150' feet of each other.

319. On the north end of Ortley Beach, there are 2 condominium complexes on 2nd Avenue, each having a promenade for sand path access to the public walkover and the northern complex has a private walkover for full beach access.

320. The Oceanfront condominium complex on the north side of 2nd Avenue has a private walkover within approximately 100 feet of the public walkover.

321. In the center of Ortley Beach, there is one Seagull Condominium Complex which has a private walkover provided and is within 50' of a public walkover.

322. There is also the privately-owned Joey Harrison’s complex, which is currently vacant but has 2 private walkovers each within 250 feet of each other and the public walkover.

323. The three private walkovers in Ortley Beach are approximately 200 feet apart.

Northern Section of Oceanfront Properties in Toms River

324. The northern section of Oceanfront Beach in Toms River consumes a section from East Shore Way “**Ocean Beach One**” to Fifth Avenue, “**Normandy Beach**”.

325. The northern section of Toms River beaches are approximately **1.75** miles in contiguous length.

Ocean Beach One

326. E. Shore Way to Rutherford Lane and is known as “**Ocean Beach One**”. (OB1) There are approximately **20** oceanfront homes spanning a distance of approximately 500 feet.

327. OBI has **3** private crosswalkovers each **within 125’** feet of each other.

328. Every oceanfront home in OBI has an easterly beach promenade allowing for access by sand to the private walkovers.

329. The North section of OBI is Brighton and Rutherford Lanes, which are private roads each hosting a private walkover and each being **within 125 feet** of each other.

330. Brighton and Rutherford have **6** oceanfront homes, all of which have an easterly promenade allowing for direct easterly sand path to the private walkovers.

331. North of Brighton is Plainfield Avenue, which has a public walkover on the end of the street.

332. Plainfield Avenue has 2 oceanfront homes to the north and south, each contiguous to the public walkover and each having a sand foot path to access same.

Ocean Beach Surf Club

333. North of Plainfield Avenue is privately owned land known as **Ocean Beach Surf Club (OBSC)**, which runs the end of Ocean Beach Blvd. intersection Ocean Road.

334. OBSC is approximately 275' feet in oceanfront length.

335. OBSC has **one (1)** private walkover which serves five oceanfront homes.

336. Each of **the 5 oceanfront homes** in OBSC have easterly promenades allowing for a sand footpath to the private walkover.

Monterey Beach

337. North of OBSC is a private beach known as "**Monterey Beach**", it runs from Las Vegas Avenue to Malibu Road and is approximately 400' in length, hosting 12 oceanfront homes.

338. Monterey Beach has **two (2)** private walkovers.

339. The Monterey walkovers are each within 200' of each other.

340. All of the oceanfront lot owners in Monterey Beach have easterly promenades allowing for direct sand path access to the walkover paths.

Ocean Beach Yacht Club

341. North of Monterey Beach is a private beach known as "**Ocean Beach Yacht Club**".

342. Ocean Beach Yacht Club beach runs from East Sea Way to East Dune Way and is approximately 400' in length along the oceanfront.

343. Ocean Beach Yacht Club has **9** oceanfront homes.

344. Ocean Beach Yacht Club has **2** private walkovers within approximately 150' feet of each other.

345. All of Ocean Beach Yacht Club oceanfront owners have easterly promenades which provide for sand path access to the walkovers.

Ocean Beach III

346. North of Ocean Beach Yacht Club is a privately-owned beach known as **Ocean Beach Three (OBIII)** which runs from Murray Lane to Kittywake Ave and is approximately 500' in length along the beach.

347. OBIII has **14 Oceanfront Homes**.

348. OBIII has **2** walkovers, 1 private walkover and one street Public walkover on Kittywake Avenue.

349. All of the oceanfront owners in OBIII have an easterly beach promenade allowing for sand path travel access to the walkovers.

Rustic Dunes

350. On the north side of Kittywake Avenue, there is a private oceanfront beach condominium complex known as "**Rustic Dunes**" which is **adjacent to the Kittywake Avenue public walkover**.

351. Rustic Dunes has **1 private walkover** which is **less than 100 feet** from the public walkover.

Seacrest Beach

352. North of Rustic Dune is a private beach known as "**Seacrest Beach**" from E. Tuna Way to E. Swordfish Way.

353. Seacrest Beach is approximately 800' in oceanfront length.

354. Seacrest Beach has **19 oceanfront Homes**.

355. Seacrest Beach has **5 private crosswalks**, each within 200' feet of each other.

356. All of the oceanfront owners in Seacrest beach have an easterly beach promenade allowing for sand path access to the walkovers.

Chadwick Beach

357. North of Seacrest Beach is a privately own beach known as “**Chadwick Beach**” running from East Cormorant Way to East Kingfisher Way.

358. Chadwick Beach is approximately 650’ in oceanfront length.

359. Chadwick beach has **20 oceanfront homes**.

360. Chadwick Beach has **5 private walkovers**, each **within 150’ feet** of each other.

361. All oceanfront owners in Chadwick beach has an easterly beach promenade which allows for direct sand path access to the walkovers.

Silver Beach

362. North of Chadwick Beach is a private beach known as “**Silver Beach Association**” which runs from Beach Way to Fishermans Road.

363. Silver Beach is approximately 1,500’ in oceanfront length.

364. Silver Beach **has 27 oceanfront homes**.

365. Silver Beach has **10 total walkovers**, 7 of which are street end public walkovers and 3 are private walkovers.

366. All of the walkovers in Silver Beach are **approximately 100’ from each other** but no more than 150’ feet of each other.

367. All of the oceanfront owners in Silver Beach have easterly beach promenades allowing for direct sand path access to the walkovers.

Normandy Beach

368. North of Silver Beach is a private beach which is known as “**Normandy Beach**”. It runs from Jacobson Lane to 9th Avenue.

369. The Toms River section of Normandy Beach ends at Fifth Avenue, and from Jacobson Avenue is approximately 1,700 feet in oceanfront length.

370. The Toms River section of Normandy Beach has **28 oceanfront properties**.

371. There are **6 walkovers** in the Toms River section of Normandy Beach, 5 are public walkovers and 1 appears as a private walkover in the Normandy Shore section off of Jacobsen Lane.

372. All of the walkovers in Normandy Beach are less than 250' feet from each other.

373. Of the 28 oceanfront owners in the Toms River section of Normandy Beach, 12 are directly adjacent to the one of the 6 walkovers and have direct sand foot path to the walkover.

374. The remaining **14 lots**, including the lots belonging to the Plaintiffs herein, have no available sand promenade for access and must now use the street in order to access the beach.

375. Ordinance 4651-19 only affects **14 oceanfront lot** owners in Toms River of having direct beach access thru the sand to the walkover.

376. In effect, this ordinance only impacts those oceanfront lot owners, such as Plaintiffs herein, who are landlocked without promenades and have no feasible access to the beach other than to use the street.

377. A large majority of oceanfront landowners have horizontal beach promenades which provide direct easterly beach access and sand path to the public walkover.

378. Other than the 14 landlocked oceanfront properties in Normandy Beach, there is no present need for any other oceanfront owners in Toms River to apply for a walkover permit because direct beach access is provided.

No Rationale Basis

379. There are approximately **153** Developed Residential Oceanfront lots in Toms River.

380. There are approximately **52** total dune walkovers in Toms River.

381. All of the 52 dune walkovers in Toms River are **less than 250 feet** apart and 18 of the walkovers are less than 150 feet apart.

382. None of the existing walkovers within 250 feet of each other in the Township of Toms River pose any harm to the dune structure or integrity.

383. The 250' proximity limit as set forth in Ordinance 4651-19 is a random and arbitrary distance which serves no rational or legitimate governmental interest.

384. The Township Minutes of Ordinance #4651-19 do not reflect any discussion or comment concerning or relating to the basis or reasoning for its passage.

385. There are no studies or reports relied upon by the Township Council in passage of Ordinance #4651-19.

386. Many other municipalities along the Jersey Shore permit private crosswalkovers within 250' of each other.

387. The 250' proximity access restriction does not exist in any other Federal, State, or local governmental law, regulation or code.

388. Ordinance #4651-19 is not supported by any scientific or geological facts or data.

389. Ordinance #4651-19 bears no rational relationship to the public health, morals, safety or welfare.

390. Ordinance #4651-19 is clearly arbitrary, capricious or unreasonable or plainly contrary to the fundamental principles of zoning or the zoning statute.

WHEREFORE, Plaintiffs demand judgment for:

- (a) an Order declaring Ordinance #4651-19 invalid;
- (b) a Writ of Mandamus requiring Defendant, Toms River, to cease and desist in enforcing a written consent requirement in order for Plaintiffs to utilize an at-grade, dune walkover as provided for in the 2013 PSDRE between Defendant, Toms River, and as allowed in Defendant NBA's 2017 DEP Permit;

- (c) an Order directing the defendants Toms River, to issue a zoning permit for an at grade dune walkover in accordance with DEP guidelines;
- (d) compensatory damages;
- (e) punitive damages as a result of defendant's willful actions;
- (f) attorneys' fees and costs of suit; and
- (g) such other and further relief as the court deems proper.

COUNT SIXTEEN
(Ultra Vires Ordinance – Toms River Township)

391. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length in this Count.

392. Ordinance #4651-19 by its terms and condition affects the development of Oceanfront lands.

393. Ordinance #4651-19 restricts the use of lands on oceanfront for ingress and egress to the beach if the lands are within 250' feet of a public walkover.

394. Toms River's Beach Protection Ordinance chapter 189-1 et. seq., specifically regulates the uses and development oceanfront lands and construction, including but not limited to, such things as movement of sand, erection of fences and structures in the dune area.

395. Ordinance#4651-19 was not referred to the planning board in accordance with N.J.S.A. 40:55D-23.

396. Ordinance#4651-19 was enacted in violation of the New Jersey Municipal Land Use Laws, N.J.S.A. 40:55D-1 et seq.

WHEREFORE, Plaintiffs demand judgment for:

- (a) an Order declaring Ordinance #4651-19 invalid as ultra vires;
- (b) a Writ of Mandamus requiring Defendant, Toms River, to cease and desist in enforcing a written consent requirement in order for Plaintiffs to utilize an at-

grade, dune walkover as provided for in the 2013 PSDRE between Defendant, Toms River, and as allowed in Defendant NBA's 2017 DEP Permit;

- (c) an Order directing the defendants Toms River, to issue a zoning permit for an at grade dune walkover in accordance with DEP guidelines;
- (d) compensatory damages;
- (e) punitive damages as a result of defendant's willful actions;
- (f) attorneys' fees and costs of suit; and
- (g) such other and further relief as the court deems proper.

COUNT SEVENTEEN
(Spot Zone – Toms River Township)

397. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length in this Count.

398. The Defendant NBA, owns the beach front lot east of Plaintiffs property in the Normandy Beach Section of Toms River.

399. The Defendant, NBA , and the Defendant, NBIA, have expressed an intention whereby they do not want to have private walkovers because they are deemed unsightly and would destroy the beauty of the dune.

400. The President of the Defendant, NBA, has met with the engineer and other officials in Toms River and has expressed an intention not to allow or permit private walkovers.

401. In response to the NBA's demands and desire to prohibit dune walkovers, the Defendant, Toms River, passed Ordinance #4651-19.

402. Ordinance #4651-19 was passed for the sole purpose benefitting the NBA's property interests by prohibiting a land use for ingress and egress that is wholly incompatible with the surrounding uses and not for the purpose of furthering the comprehensive zoning plan.

403. Ordinance #4651-19 only benefits the Defendant, NBA's beach lot.

404. As a result, the NBA beach lot has been rezoned and “spot zoned” for the sole benefit of the Defendant, NBA.

WHEREFORE, Plaintiffs demand judgment for:

- (a) an Order declaring Ordinance #4651-19 invalid as an improper spot zone;
- (b) a Writ of Mandamus requiring Defendant, Toms River, to cease and desist in enforcing a written consent requirement in order for Plaintiffs to utilize an at-grade, dune walkover as provided for in the 2013 PSDRE between Defendant, Toms River, and as allowed in Defendant NBA’s 2017 DEP Permit;
- (c) an Order directing the defendants Toms River, to issue a zoning permit for an at grade dune walkover in accordance with DEP guidelines;
- (d) compensatory damages;
- (e) punitive damages as a result of defendant’s willful actions;
- (f) attorneys’ fees and costs of suit; and
- (g) such other and further relief as the court deems proper.

COUNT EIGHTEEN
(Procedurally Deficient Ordinance – Toms River Township)

405. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length in this Count.

406. Defendant, Toms River, failed to comply with statutory notice and publication requirements in the passage of the Beach Protection Ordinances, including, but not limited to, Ordinance #4651-19.

WHEREFORE, Plaintiffs demand judgment for:

- (a) an Order declaring Ordinance #4651-19 invalid as an improper spot zone;
- (b) a Writ of Mandamus requiring Defendant, Toms River, to cease and desist in enforcing a written consent requirement in order for Plaintiffs to utilize an at-grade, dune walkover as provided for in the 2013 PSDRE between Defendant, Toms River, and as allowed in Defendant NBA’s 2017 DEP Permit;
- (c) an Order directing the defendants Toms River, to issue a zoning permit for an at grade dune walkover in accordance with DEP guidelines;

- (d) compensatory damages;
- (e) punitive damages as a result of defendant's willful actions;
- (f) attorneys' fees and costs of suit; and
- (g) such other and further relief as the court deems proper.

COUNT NINETEEN
(Pre-existing Non-Conforming Use – Toms River Township)

407. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length in this Count.

408. The historical development and use by Plaintiffs, Langenfelds, and all Plaintiff's predecessors included direct beach access vertically across the dune to the beach and ocean.

409. Plaintiffs' means of ingress and egress has always been on a walkover pathway that was within 250' feet of the public walkovers.

410. Plaintiffs' prior use of lands is now a pre-existing nonconforming use since the passage of Ordinance #4651-19.

411. Plaintiffs' nonconforming use may be continued by statutory mandate under N.J.S.A. 40:55D-68.

WHEREFORE, Plaintiffs, each respectively, demand judgment for:

- (a) an Order declaring Ordinance #4651-19 invalid as an improper spot zone;
- (b) a Writ of Mandamus requiring Defendant, Toms River, to cease and desist in enforcing a written consent requirement in order for Plaintiffs to utilize an at-grade, dune walkover as provided for in the 2013 PSDRE between Defendant, Toms River, and as allowed in Defendant NBA's 2017 DEP Permit;
- (c) an Order directing the defendant Toms River, to issue a zoning permit for an at grade dune walkover in accordance with DEP guidelines;
- (d) compensatory damages;
- (e) punitive damages as a result of defendant's willful actions;
- (f) attorneys' fees and costs of suit; and

(g) such other and further relief as the court deems proper.

COUNT TWENTY
(Unlawful Interference with Easement Rights – Toms River Township)

412. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length in this Count.

413. By virtue of the easement, Plaintiffs, like their predecessors in title, have enjoyed at least until on or about July 2019, unimpeded access from Premises to the Atlantic Ocean below the mean high-water line, by crossing over and through Defendants, NBA, beach property, an area described as Block 905, Lot 1 on the Tax Map of the Township of Toms River.

414. Plaintiffs have easement appurtenances on both the North and South premises.

415. After Hurricane Sandy and upon pain of condemnation, Plaintiffs, Langenfelds', predecessor, Wenrich, conveyed land under a Declaration of Taking and expressly reserving an easement for the benefit of Plaintiffs' Northerly premises. See, Wenrich DEP Easement, Exhibit P-8.

416. Plaintiffs, Langenfelds, relied on representations made by Defendant, Toms River, its agents, and assigns, that the taking would not preclude them from enjoying the same water access that they had enjoyed before the storm.

417. Pursuant to that PSDRE, Plaintiffs, Langenfelds, retained the right to utilize an at-grade dune walkover structure to gain access to the Atlantic Ocean from their Premises, over and through Defendant, NBA's, beach property.

418. The PSDRE did not address, nor did it modify, diminish, extinguish or vacate Plaintiffs' easement or riparian/littoral rights.

419. In 2017, Defendant, Toms River, was put on notice by Defendant, NBA, that it intended to allow the abutting, oceanfront members to use at-grade dune walkover structures to gain

access to the Atlantic Ocean from their respective premises, over and through Defendant, NBA's, beach property to the area below the mean high-water line by virtue of a DEP permit application that Defendant, NBA, filed with DEP on August 7th, 2017.

420. In fact, Defendant, NBA's, 2017 DEP permit application explicitly featured this ability as a specific General Permit Condition:

(e) The construction of at-grade dune walkovers at single family homes and duplexes shall comply with the following:

1. Only one walkover per site is allowed;
2. The width of the walkover does not exceed four feet;
3. The walkover is fenced on both sides through the use of sand fencing, split rail fencing, or open handrails, unless prohibited by the municipality; and
4. Any grading or excavation associated with the installation of the walkover does not result in the lowering of the beach or dune below design specifications.

See, NBA CAFRA Permit recorded Ocean County Book 16985 page 954, General Conditions of Permit at page 960, Exhibit P-14.

421. Defendant, NBA, provided notice of this General Permit Condition by certified mail to Plaintiffs and other Normandy Beach oceanfront homeowners and Defendant, Toms River, as is required by DEP procedures.

422. By including this General Permit Condition and soliciting DEP's approval of same, Defendant, NBA, consented to use of such structures to cross the NBA beach property for purposes of accessing the Atlantic Ocean below the mean high-water line.

423. Moreover, since July 2019, Defendant, Toms River, has demanded that Plaintiffs, Langenfelds, obtain written consent from Defendant, NBA, to install an at-grade dune walkover structure on the NBA beach property even though there is no requirement for written consent set forth in Defendant, Toms River's, application form.

424. Written consent is not an element set forth in either the Plaintiffs, Langenfelds', PSDRE, Defendant NBA's PSDRE, Defendant NBA's DEP Permit or even DEP's CAFRA permit application.

425. Defendant, Toms River, has inserted the written consent requirement into the process of obtaining an at-grade dune walkover without any reason or authority for doing so.

426. So, despite the fact that Plaintiffs have: an easement that allows them the right of way and access from the Premises to the Atlantic Ocean, over and through Defendant NBA's beach property to the area below the mean high-water line, and having exercised his right to do so for nearly 100 years; a PSDRE with Defendant, Toms River, specifically enabling Plaintiffs to utilize an at-grade dune walkover; notice of Defendant, NBA's 2017 DEP Permit that was specifically predicated on the condition that Defendant, NBA, would permit at-grade dune walkovers across the NBA beach property; on or about November 7, 2019, Plaintiffs, Langenfelds, were compelled by Defendant, Toms River, to file an application for approval of an at-grade dune walkover that demonstrated Defendant, NBA's, affirmative, written consent to Plaintiffs, Langenfelds,' use of the walkover.

427. The Defendant, Toms River, has no power to grant or deny a permit for a dune walkover as the State of New Jersey, Defendant, DEP, has expressly granted permission to construct a dune walkover without prior approval from Toms River. See, DEP Easement for Dune Over Walk, Exhibit P-8.

428. By refusing to consent or permit Plaintiffs, Langenfelds, to construct a dune walkover in accordance with the clear terms of Plaintiffs, Langenfelds', recorded "walkover easement", Defendants, NBA and Toms River, have unlawfully interfered with Plaintiffs, Langenfelds', property rights.

429. Defendant, Toms River, knowingly and willfully breached its express representations to oceanfront homeowners regarding post-Hurricane Sandy water access.

430. Defendant, Toms River, knowingly and willfully breached the terms and conditions of its 2013 PSDRE with Plaintiffs, Langenfeld, and Plaintiffs', Davi's, predecessors and its 2016 PSDRE with Defendant, NBA.

431. By further exercise of a zoning ordinance #4651-19 by improper use of police power, Defendant, Toms River, effectively aided and abetted Defendant, NBA, in denying Plaintiffs', Langenfeld's and Plaintiffs', Davi's, their right to utilize their easement and riparian rights, by introducing a written consent "element" where there is none and creating a bureaucratic impediment that Plaintiffs cannot overcome.

432. Defendant, Toms River, in December of 2019, improperly passed Ordinance #4651-19 in an effort to completely deny Plaintiffs any direct access to the beach regardless of any consent requirement.

433. Accordingly, it is necessary for the Court to issue a permanent injunction restraining and enjoining Defendant, Toms River, and persons acting on its behalf, from denying Plaintiffs their lawful right to utilize their easement and construct the dune walkover as contemplated by the PSDRE and Defendant NBA's DEP Permit.

WHEREFORE, Plaintiffs, each respectively, demand judgment for:

(a) An Order compelling Defendant, Toms River, to cease and desist from requiring Plaintiffs to obtain written consent from the NBA in order to exercise their easement and riparian rights and from using the police power inherent to the municipality to obstruct Plaintiffs use of same;

(b) an Order compelling Defendant, Toms River, to cease and desist its interference with Plaintiffs' efforts to exercise their easement and riparian rights, as well as the rights reserved to Plaintiffs to construct an at-grade dune walkover as provided for in the PSDRE entered into by Plaintiffs and Defendant, Toms River, in December 2013 PSDRE and Defendant NBA's DEP 2017 Permit; and

- (c) compensatory damages;
- (d) punitive damages as a result of defendant's willful actions;
- (e) attorneys' fees and costs of suit; and
- (f) such other and further relief as the court deems proper.

COUNT TWENTY-ONE
(North Premises Promissory Estoppel – Toms River)

434. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

435. On or about May 13, 2016, the State of New Jersey filed a Declaration of Taking against Plaintiffs, Langenfelds', North Premises predecessors, Bart Wenrich and Bonnie Simmons (hereinafter "Wenrichs").

436. Prior to filing same, Wenrichs retained attorney, John Doyle, Esquire and engaged a settlement conference with Toms River Township engineer, Robert J. Chankalian, P.E., O.M.E. and Toms River Township attorney, Kenneth B. Fitzsimmons, Esquire.

437. At said meeting, Defendant, Toms River, through its agents, Township engineer and counsel, verbally promised Wenrichs that they would be permitted to have a private dune walkover.

438. In reliance upon same, Plaintiffs, Langenfelds', predecessors agreed to the Declaration of Taking.

439. As these rights run with the land, Defendant, Toms River, is prohibited from denying a dune walkover permit based upon doctrine of promissory estoppel.

WHEREFORE, Plaintiffs Langenfeld, demand judgment for:

- (a) An Order finding that Defendant, NBA, conduct contravenes its statements, commitments and representations set forth in public filings including its 2016 PSDRE and Defendant, Toms River, and its 2017 CAFRA application made to and granted by DEP on the basis of Defendant, NBA's statements, commitments and representations to allow at-grade dune walkovers;

- (b) An Order finding that Defendant, NBA, is estopped and precluded from disavowing its statements, commitments and representations to allow Plaintiffs right of access and right-of-way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's Beach Lands, known as Lot 1, Block 1 on the tax map of Defendant, Toms River, to the area below the mean high-water line;
- (c) An Order declaring the actions of Defendant, NBA, in willful violation of its 2016 PSDRE with Defendant, Toms River, and its 2017 CAFRA Permit;
- (d) An Order mandating the zoning approval of Defendant, Toms River, to issue permits for Plaintiffs, allowing a pedestrian dune walkover;
- (e) An Order compelling Defendant, NBA, to remove the fence and any other barrier that it has constructed along the ocean-side of the Premises and precluding Defendant, NBA, or its agents from installing or erecting any same or similar obstruction that is designed or has the effect of preventing or inhibiting Plaintiffs from utilizing their easement and riparian rights that give them access and right-of-way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's Beach Lands, known as Lot 1, Block 1, as shown on the tax map of Defendant, Toms River, to the area below the mean high-water line;
- (f) Compensatory damages for interference with, obstruction of and Plaintiff's loss of use of easement and riparian rights;
- (g) Punitive damages as a result of Defendant's willful actions;
- (h) Attorneys' fees and costs of suit; and
- (i) Such other and further relief as the court deems proper.

**COUNT TWENTY-TWO
(Additional Parties-Davi)**

440. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

441. Joseph H. Davi and Danielle R. Davi (hereinafter "Davi") are residents of the State of New Jersey located at 399 Mendham Road, Bernardsville, New Jersey 07924.

442. On or about September 31, 2021, Davi closed and purchased property known as 3628 Ocean Terrace, Normandy Beach, New Jersey. See, deed, dated September 27, 2021, between Langenfeld and Davi, attached as Exhibit PL-120.

443. On or about September 29, 2021, Plaintiffs, Langenfeld, assigned all rights and claims regarding the easement appurtenant to Plaintiffs, Davi, with respect to said property. See, Mutual Assignment, dated September 29, 2021, attached as Exhibit PL-121.

444. Pursuant to said Mutual Assignment, Plaintiffs, Langenfeld, retained all monetary claims with respect to said property.

445. Plaintiffs, Davi, as successors in interest and as assignee, do hereby assert and join in all claims as Plaintiffs as stated in Counts 2 through 12, as against the Defendant, NBA, and Defendant, NBIA.

446. Plaintiffs, Davi, as successors in interest and as assignee assert all claims as set forth in Counts 2, 11 and 13 through 20 , as against Defendant, Toms River.

WHEREFORE, Plaintiffs demand judgment for:

(a) An Order finding that Defendant, NBA, conduct contravenes its statements, commitments and representations set forth in public filings including its 2016 PSDRE and Defendant, Toms River, and its 2017 CAFRA application made to and granted by DEP on the basis of Defendant, NBA's statements, commitments and representations to allow at-grade dune walkovers;

(b) An Order finding that Defendant, NBA, is estopped and precluded from disavowing its statements, commitments and representations to allow Plaintiffs right of access and right-of-way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's Beach Lands, known as Lot 1, Block 1 on the tax map of Defendant, Toms River, to the area below the mean high-water line;

(c) An Order declaring the actions of Defendant, NBA, in willful violation of its 2016 PSDRE with Defendant, Toms River, and its 2017 CAFRA Permit;

(d) An Order mandating the zoning approval of Defendant, Toms River, to issue permits for Plaintiffs, allowing a pedestrian dune walkover;

(e) An Order compelling Defendant, NBA, to remove the fence and any other barrier that it has constructed along the ocean-side of the Premises and precluding Defendant, NBA, or its agents from installing or erecting any same or similar obstruction that is designed or has the effect of preventing or inhibiting Plaintiffs from utilizing their easement and riparian rights that give them access and right-of-way to the Atlantic Ocean from the Premises, over and through Defendant, NBA's

Beach Lands, known as Lot 1, Block 1, as shown on the tax map of Defendant, Toms River, to the area below the mean high-water line;

- (f) Compensatory damages for interference with, obstruction of and Plaintiff's loss of use of easement and riparian rights;
- (g) Punitive damages as a result of Defendant's willful actions;
- (h) Attorneys' fees and costs of suit; and
- (i) Such other and further relief as the court deems proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Philip G. Mylod, Esquire is designated as trial counsel in this matter.

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that the matters in controversy in this action are not the subject of any other action pending in any other court or of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated.

Dated: November _____, 2021

Philip G. Mylod

PHILIP G. MYLOD