



BOROUGH OF RIVERDALE NEW JERSEY



Resolution No: 119-2016

Date of Adoption: September 28, 2016

TITLE:

RESOLUTION AUTHORIZING THE EXECUTION OF AN EASEMENT AND MAINTENANCE AGREEMENT BETWEEN THE BOROUGH OF RIVERDALE AND MOUNTAIN VIEW II, LLC AND ACCEPTING A WATER TANK AND IMPROVEMENTS TO THE WATER TANK LOCATED ON BLOCK 11, LOT 8, IN THE BOROUGH OF RIVERDALE

WHEREAS, Mountain View II, LLC is the owner of certain property identified on the Tax Map of the Borough of Riverdale as Block 11, Lot 8; and

WHEREAS, there is located on the subject property a 263,000 gallon water tank, telemetry pit and control system, water mains and valves as well as above and below ground electrical wiring servicing the water tank and telemetry pit; and

WHEREAS, Mountain View II, LLC wishes to convey an Easement to the Borough of Riverdale upon the property where the water tank is located as well as an Easement to access the water tank which services the municipal water system; and

WHEREAS, Mountain View II, LLC wishes to formally relinquish any interest it may have in the water tank and improvements by way of a Bill of Sale to the Borough of Riverdale; and

WHEREAS, the Borough of Riverdale wishes to accept the water tank and the Access Easement to the area where the tank is located as well as access to the tank.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Riverdale, County of Morris and State of New Jersey, as follows:

1. The Borough of Riverdale hereby accepts the water tank and improvements located on Block 11, Lot 8 in the Borough of Riverdale, as shown on the bill of sale from Mountain View II, LLC.
2. The Borough of Riverdale hereby accepts the Access Easement over Block 11, Lot 8 from Mountain View II, LLC and authorizes the execution of an Easement and Maintenance Agreement attached in the form hereto by the Mayor and Township Clerk.



BOROUGH OF RIVERDALE NEW JERSEY



RECORD OF COUNCIL VOTE

Motion - by Councilman: _____ Second - by Councilman: _____

COUNCILMAN Yes No Absent Abstain COUNCILMAN Yes No Absent Abstain

Astarita						Pellegrini				
Revis						Desai				
Clinton						Oswald				

A.J. Jalloh, Borough Clerk

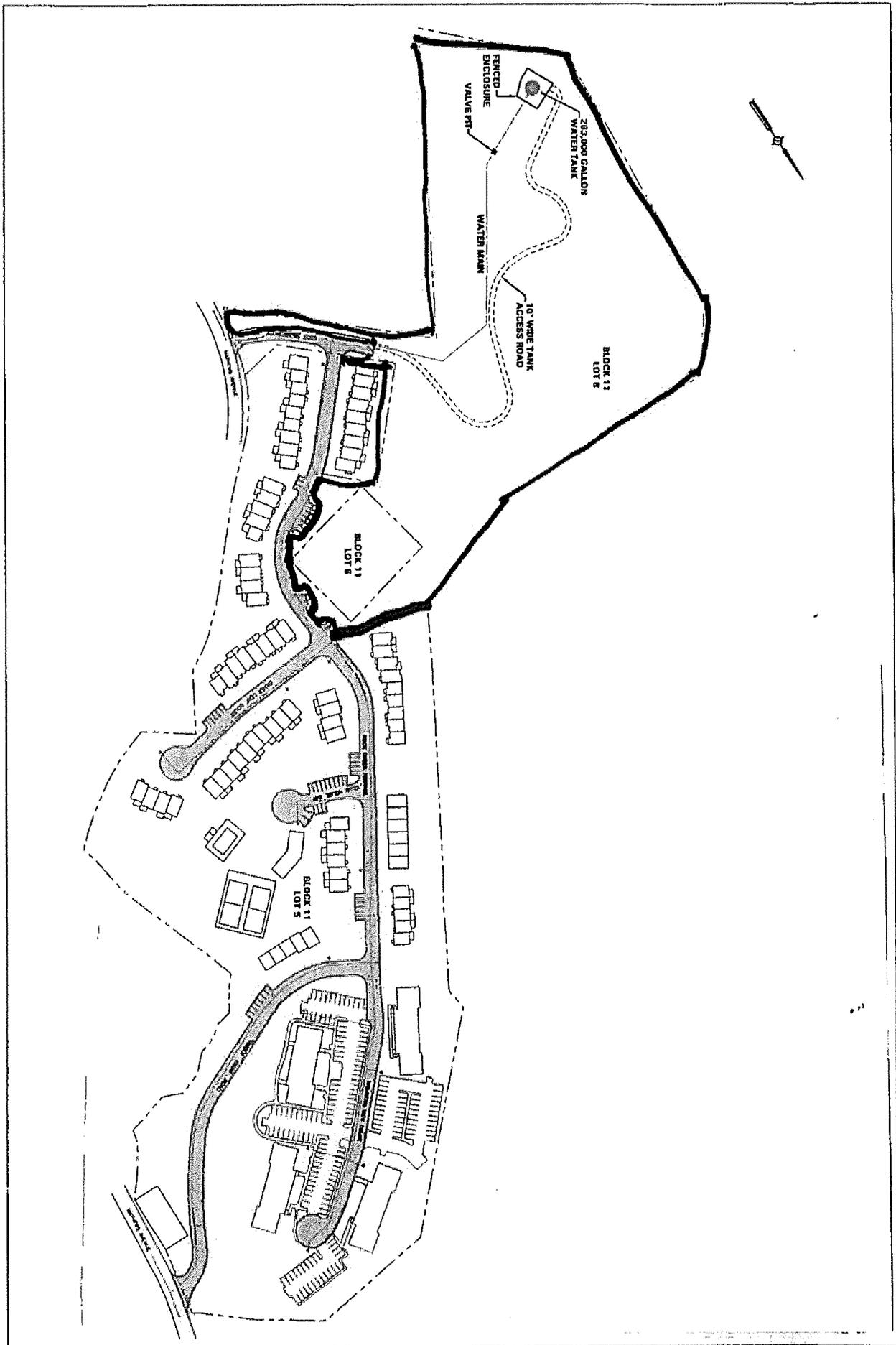
Paul M. Carelli, Mayor

This resolution, when adopted, must remain in the possession of the Borough Clerk. Certified copies are available.

CLERK'S CERTIFICATION

I hereby certify the foregoing to be a true copy of a resolution duly adopted by the Mayor and Council of the Borough of Riverdale at a regular meeting held on September 28, 2016.

Municipal Clerk



EASEMENT AND MAINTENANCE AGREEMENT

This Easement and Maintenance Agreement (this "*Agreement*") is made as of the ____ day of September, 2016, by **Mountain View II, LLC** ("*Grantor*") a New Jersey limited liability company having offices at 101 Cosgrove Avenue, Suite 260, Chapel Hill, North Carolina, 27514 and the **Borough of Riverdale** ("*Grantee*"), a municipal corporation of the State of New Jersey, with an address of 91 Newark-Pompton Turnpike, Riverdale, New Jersey 07457.

RECITALS:

A. Grantor is the owner in fee of certain property identified on the Tax Map of the Borough of Riverdale as Block 11, Lot 8 (the "*Grantor Property*").

B. Grantee owns and operates a municipal water system which services the residents and businesses in Riverdale.

C. Grantor and Grantor's predecessors have caused to be repaired, upgraded and maintained on the Grantor Property an approximately 263,000 gallon water tank, telemetry pit and control system, water mains and valves as well as above and below ground electrical wiring servicing the water tank and telemetry pit (collectively, the "*Water Tank and Improvements*"). The water tank is enclosed with a protective fence (the "*Fence*") and is reachable over the Grantor Property via an existing access road (the "*Access Road*").

D. Grantor intends to convey to the Grantee and Grantee intends to accept the Water Tank and Improvements and all duties, obligations and liabilities associated therewith.

E. Grantor and Grantee have further agreed to impose an access easement granted herein on a portion of the Grantor Property for the benefit of the Grantee in those areas more fully described herein for the purposes of accessing and maintaining the Water Tank and Improvements, the Fence, and the Access Road, and subject to the limitations hereinafter set forth.

NOW, THEREFORE, in consideration of the above Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Grantor hereby declares, grants, transfers, conveys and delivers to Grantee a perpetual, non-exclusive access easement over and under that portion of the Grantor Property as depicted on the drawing which is designated Exhibit "A" and annexed hereto and made a part hereof (the "*Grantor Easement Area*") which easement shall include the right as determined by Grantee to maintain, inspect, operate, repair, and replace in kind (and conduct all reasonably related activities with respect to) the Water System and Improvements as is reasonably required to effectuate the purposes of this Agreement.

Section 2. Grantee shall be liable and responsible for any and all damages that might occur to the Grantor Property or improvements constructed thereon, in connection with Grantee's use of this easement. If Grantee undertakes any work within the Grantor Easement Area, it shall return said Grantor Easement Area, and affected portions of Grantor Property, if applicable, to as close to its original condition as is reasonably practicable promptly after completion of such work.

Section 3. This easement shall run with the land and shall be binding upon and inure to the benefit of the parties, their legal representatives, successors and assigns and shall be interpreted and applied in accordance with New Jersey law.

Section 4. The parties shall execute such other documents as may be reasonably necessary to implement and effectuate the terms and conditions of this Agreement.

Section 5. Failure by any party to enforce or seek to enforce any provision of this Agreement shall not constitute a waiver or forfeiture of the right to enforce such provision in the future.

Section 6. If any clause, paragraph or portion of this Agreement shall become illegal, null or void for any reason whatsoever, or held by any court of competent jurisdiction to be so or to be unenforceable, the remaining portion of this Agreement shall remain in full force and effect.

Section 7. Each party shall be liable to the other for all reasonable costs, including attorney fees, incurred by such party in any action or proceeding brought to enforce the rights conferred by this Agreement.

Section 8. Grantee shall exercise the rights herein granted in such manner as to cause the least practicable amount of interference with Grantor's use of the Grantor Easement Area and the balance of the Grantor Property.

Section 9. The rights granted to Grantee hereunder are not exclusive and Grantor may locate other utilities (approved by governmental agencies whose approval may be required) in the Grantor Easement Area and may use the Grantor Easement Area for any reasonable purposes, provided such uses do not materially interfere with the use by Grantee of the Grantor Easement Area for the purpose for which the easement is granted. Grantor may also elect to relocate the Access Road and, correspondingly, redefine the Grantor Easement Area. In such event, Grantee shall not unreasonably withhold Grantee's consent to a modification of this Agreement.

Section 10. Grantee shall permanently maintain and repair the Grantor Easement Area, including without limitation the Fence and the Access Road, consistent with Grantee's use, maintenance, safeguarding, and insurance of the Water System and Improvements.

Section 11. Grantee shall maintain comprehensive public liability insurance covering injuries to persons and property in or about the Grantor Easement Area in amounts of no less than \$500,000 for injury or death to one person, \$1,000,000 for injuries or death to more than one person and \$500,000 for property damage. A copy of the insurance policy or a certificate therefor shall be delivered by Grantee to Grantor prior to the exercise of any rights hereunder;

such insurance shall designate Grantor as an additional party insured; and Grantor shall be given thirty days prior written notice of any modification or termination of such insurance.

Section 12. Grantee's entry into the Grantor Easement Area for the purposes set forth herein shall not give rise to any liability on the part of Grantor. Grantee shall indemnify, hold harmless and defend Grantor, its members, managers, officers, servants, agents, trustees, employees, administrators, successors and assigns, from and against any and all claims, actions and proceedings for any losses or damages, including death or bodily injury to any person, which may be brought or asserted by or on behalf of any person or entity arising from or in connection with this Agreement (including, but not limited to, Grantee's use of or entry on to the Grantor Easement Area for the purposes set forth in this Agreement), irrespective of the act, omission or neglect of any such person or entity, and all costs, expense and liabilities incurred in connection with any such claim, action or proceeding (including reasonable attorney's fees and expenses), unless such act, omission or neglect is determined to have been caused by the willful misconduct of Grantor.

Section 13. Any notices required or permitted hereunder shall be addressed to the parties at their addresses set forth above, or to such other address as any party shall hereafter designate. All notices shall be in writing and shall be deemed to have been duly given when sent by registered or certified mail, return receipt requested.

IN WITNESS WHEREOF, Grantor and Grantee have each hereunto set its respective hand and seal or caused these presents to be signed by its proper corporate official, as of the day and the year first above written.

GRANTOR:

MOUNTAIN VIEW II, LLC

WITNESS:

By: _____

Name: _____

Title: _____

GRANTEE:

BOROUGH OF RIVERDALE

WITNESS:

By: _____

Name: _____

Title: _____

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that **MOUNTAIN VIEW II, LLC**, a New Jersey limited liability company, having offices at 101 Cosgrove Avenue, Suite 260, Chapel Hill, North Carolina 27514 ("*Mountain View*"), in consideration of the sum of Ten and 00/100 (\$10.00) Dollars and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby bargain, sell and convey unto the **BOROUGH OF RIVERDALE**, a municipal corporation of the State of New Jersey, having offices at 91 Newark-Pompton Turnpike, Riverdale, New Jersey 07457 (the "*Borough*"), all of the Water Tank and Improvements (as hereinafter defined) located on the property known as Block 11, Lot 8 in the Borough of Riverdale.

TO HAVE AND TO HOLD all the Water Tank and Improvements to the Borough, its successors and assigns, to its own use and behoof forever.

And Mountain View hereby covenants with and warrants to the Borough that Mountain View has good and marketable title to all of the water tank and related improvements set forth on Schedule 1 attached hereto (the "*Water Tank and Improvements*"), free and clear of all security interests, liens and encumbrances of whatever kind or nature, and that Mountain View has good right to convey the same as aforesaid to the Borough.

The Borough has inspected the Water Tank and Improvements and Mountain View is conveying and delivering the same in "AS IS", "WHERE IS" condition. The undersigned being an appropriate corporate representative on behalf of the Borough, the Borough of Riverdale hereby fully releases Mountain View, its members, managers, officers, servants, agents, trustees, employees, administrators, successors and assigns, from any and all past, present or future liability whatsoever arising out of the acceptance, use, maintenance, inspection, operation, repair or replacement of the Water Tank and Improvements by the Borough or its servants, agents, employees or trustees, except for liability arising out of the willful misconduct of Mountain View.

Further, for the consideration specified hereinabove, the Borough hereby covenants and agrees to save harmless, indemnify and defend Mountain View, its members, managers, officers, servants, agents, trustees, employees, administrators, successors and assigns, from any and all loss, damage or expenses, including but not limited to reasonable attorney's fees, arising from any claim which may hereafter be presented by anyone for loss, damage or personal injury as a result of the acceptance and use of the Water Tank and Improvements by the Borough or its servants, agents, employees or trustees, except for liability arising out of the willful misconduct of Mountain View.

All of the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto, their legal representatives, successors and assigns, respectively.

IN WITNESS WHEREOF, Mountain View has caused these presents to be executed this ____ day of September, 2016.

WITNESS:

MOUNTAIN VIEW II, LLC

By: _____

Name: _____

Title: _____

WITNESS:

BOROUGH OF RIVERDALE

By: _____

Name: _____

Title: _____

SCHEDULE 1

780 Lin. Ft. 16" Ductile Iron Water Main

263,000 Gallon Ground Level Storage Tank (32' dia x 46' h)

Underground Concrete Valve Pit

Electric Service

Telemetry Control System

Site Fencing