

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 09/27/21 07:30 PM
Department: Clerk of the Borough
Category: Land Development
Prepared By: Sallie Graziano

Initiator: Sallie Graziano

Sponsors:

INTRODUCED

ORDINANCE 2021-26

DOC ID: 3599

First Reading: An Ordinance Accepting a Well Site, Waterline and Access Easement Over a Portion of Block 45, Lot 1

WHEREAS, the Mayor and Council of the Borough of Flemington, County of Hunterdon, State of New Jersey, wish to accept a Grant of Well Site, Waterline, and Access Easement for a portion of Block 45, Lot 1, which are attached hereto as an exhibit; and

WHEREAS, such easement is proposed to be acquired in order to develop a new potable water supply well; and

WHEREAS, N.J.S.A. 40A:12-4 authorizes the municipality to accept such easement; and

WHEREAS, attached hereto is a form of easement that has been reviewed by the Borough Engineer and Borough Attorney; and

WHEREAS, based upon an appraisal commissioned by the Borough setting forth the fair market value of the easement, the Borough has agreed to pay the property owners the amount of \$33,000 in exchange for the easement dedications; and

WHEREAS, it appears to the Mayor and Council that the public interest would be served by accepting the easements described herein.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Flemington, County of Hunterdon, State of New Jersey as follows:

1. The Borough of Flemington hereby accepts the above-referenced easements over a portion of Block 45, Lot 1 as more particularly described in the deed of easement attached hereto.

2. The Borough Clerk, Mayor, her designee, Borough CFO, and such Borough Professionals as are necessary, are hereby authorized and directed to take such actions as are necessary to effectuate the provisions of this Ordinance including but not limited to executing the above-referenced easements in a form substantially similar to that attached hereto and made a part hereof.

3. The Borough Clerk shall, within sixty (60) days of the effective date of this Ordinance, file a copy of this Ordinance certified by her under the seal of the municipality, to be a true copy thereof, together with proof of publication thereof, in the office of the Clerk of the County of Hunterdon in accordance with the provisions of N.J.S.A. 40:67-21.

4. At least one (1) week prior to the time fixed for further consideration of this Ordinance for final passage, a copy thereof together with the notice of the introduction thereof and the time and place when and where the Ordinance will be further considered for final passage shall be mailed to every person whose lands may be affected by this Ordinance so far as may be ascertained. Said notices shall be mailed by the Borough Clerk in accordance with the provisions of N.J.S.A. 40:49-6.

5. The acceptance of this Easement is contingent upon the Borough obtaining all necessary approvals to construct a potable water supply well and appurtenances on the Property.

The Borough may rescind this Ordinance and acceptance of the Easement if the Borough is unable to develop the intended well and appurtenances on the Property.

6. This Ordinance shall take effect immediately after final passage, approval and publication as provided by law.

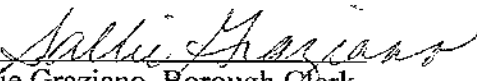
7. All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

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

Introduced: September 27, 2021

Adopted:

Attest:


Sallie Graziano, Borough Clerk


Betsy Driver, Mayor

RESULT:	INTRODUCED [UNANIMOUS]	Next: 10/12/2021 7:30 PM
MOVER:	Kimberly Tilly, Council Member	
SECONDER:	Jessica Hand, Council Member	
AYES:	Giles-McCormick, Hand, Johnston, Long, Runion, Tilly	

WELL SITE, WATERLINE, AND ACCESS EASEMENT

This Agreement made this _____ day of _____, 2021, by and between Dvoor Family, LLC., having an address of _____ ("Grantor") and THE BOROUGH OF FLEMINGTON, a municipal corporation of the State of New Jersey, with offices located at 38 Park Avenue, Flemington, New Jersey 08822 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of a certain tract of land located in the Borough of Flemington, County of Hunterdon, and State of New Jersey, more particularly described as Lot 1, Block 45 on the Tax Map of the Borough of Flemington (the "Property"); and

WHEREAS, Grantee desires to obtain from Grantor a permanent easement for the purposes of laying, constructing, maintaining, operating, repairing, altering, improving, inspecting, replacing or removing from time to time a potable water well with water lines, treatment building, emergency generator water services and all other appurtenant facilities (collectively, the "Well 12 Facility"), for the development, treatment and transfer of water through the Facility; and

WHEREAS, Grantee desires to obtain from Grantor a permanent access and utility easement, contiguous with a portion of the aforesaid permanent easement, for the purposes of laying and constructing the Water line and other service lines and permanent access; and

WHEREAS, Grantor desires to convey to Grantee such permanent easements;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for the sum of \$33,000, the receipt of which is hereby acknowledged, the parties agree as follows:

1. The recitals set forth above are hereby incorporated by reference as if set forth in full in the body of this Agreement.

2. It is the intention of the parties that the well site easement granted above shall allow for and permit Grantee to develop, construct and operate a potable water well and well house (having dimensions of approximately 1.4 acres) on and within the well site easement area described above, together with all necessary appurtenances and related equipment to operate and maintain a potable water well house in accordance with law and State of New Jersey Department of Environmental Protection. It is further the intention of the parties that the water line easement granted above shall allow for and permit Grantee to place, construct, operate, repair, maintain, rebuild, replace and remove a subterranean water line pipeline within the water line easement area described above for purposes of the transmission of water from the aforesaid well site. The access easement granted above is intended to permit Grantee to access the well site and waterline easement area. The well site easement area and access easement area are more particularly described on the site plan attached hereto as **Schedule A**.

3. Grantor hereby gives, grants and conveys to Grantee, its successors and assigns with general warrant, (i) a permanent, non-exclusive right, privilege and easement in, under, across, over, and through a portion of the Property, which portion of the Property is more particularly described as the "Access and Utility Easement" in Schedule "A" attached hereto and made a part hereof (the "Permanent Access and Utility Easement"), and (ii) a permanent non-exclusive right, privilege and easement in, under, across, over and through a portion of the Property, which portion of the Property is more particularly described as the "Permanent Well and Treatment Building Easement" in Schedule "A" attached hereto and made a part hereof, (the "Permanent Access and Utility Easement," which collectively with the "Permanent Well and Treatment Building Easement" shall hereafter be referred to as the "Easements"), for the purposes set forth above together with such other rights as may be necessary, or convenient, for the full enjoyment or use of the rights herein granted including, among others, (a) the right to enter upon and pass along the Easements with equipment, persons and materials at such time as Grantee may elect; (b) the right to keep said Easements free from trees, undergrowth or other obstructions that may endanger or interfere with the construction, operation, maintenance or

removal of the Well and Treatment Facility; and (c) the right at any time of free and unobstructed ingress, egress and access to and from the Easements on foot, with vehicles, machinery and materials necessary for the purposes set forth herein. The easements granted herein shall be used only for the limited purposes expressed herein.

4. It is expressly agreed that the easement, rights, and privileges conveyed to Grantee are subject to and limited by the following conditions and obligations:

(a) All expenses, costs, and fees, of any nature or amount associated with and incident to the construction, placement, locating, operation, repair, maintenance, building, rebuilding, replacement and relocation (if required) of the well, well house, water line, and all necessary appurtenances and related equipment, and all excavation, site work, grading, fences and landscaping, shall be the sole responsibility of Grantee.

(b) In connection with the design, construction, maintenance and operation of a commercial potable water well on the well site, Grantee agrees to do the following:

(i) The well house will be landscaped and screened by Grantee in a manner consistent with the landscaping and screening as approved by Grantor whose approval shall not be unreasonably withheld or delayed;

(ii) Grantee will provide Grantor with written notice of its intention to proceed with construction of the well house. Grantee will provide an architectural design of the exterior of the well house which shall be subject to Grantor's prior approval which approval shall not be unreasonably withheld or delayed. Such design will allow Grantee to construct a well house in a commercially reasonable manner without unreasonable expense or delay;

(iii) The well house will be secured by appropriate fencing and/or cover so as to prevent any foreseeable risk of injury to persons and to prevent any foreseeable risk of damage to vehicles/equipment in the area. Said fencing shall be approved by Grantor prior to installation which approval by Grantor shall not be unreasonably withheld or delayed.

(iv) The well house building will be of a design aesthetic consistent with the appearance of the neighboring golf course business.

(v) The Grantee shall maintain a cleared 20 foot wide trail adjacent to the well house to enable Grantor to access the rear of the Property. Said trail shall not be required to be paved or improved with gravel and maintenance will only require the clearing of brush or other debris.

(vi) The Grantee shall not unreasonably interfere with the operation of the adjacent golf course business.

5. Grantor expressly agrees that Grantee may enter upon the lands for the purposes set forth herein with reasonable notice to Grantor.

6. Grantor agrees not to build any structure on the Easements, change the grade thereof, or otherwise interfere with Grantee's immediate access to the Easements without Grantee's prior written approval. Additionally, Grantee shall not apply any fertilizers or other chemicals to landscaping or grass within the Easements without prior approval from the Borough. The Borough acknowledges that the Access and Utility Easement runs through an existing parking area, which shall be permitted to remain within the utility and access easement area. However, such parking area shall not be altered in such a way to interfere with Grantee's access rights under this easement. Nothing herein shall prevent Grantor from paving and / or performing routine maintenance on the parking area.

7. Grantor agrees to have and to hold said Easements unto said Grantee, its successors and assigns, until expressly released by Grantee, its successors and assigns.

8. Grantee, by its acceptance hereof, covenants and agrees (a) to restore all areas disturbed by the Well, Utility Lines and Treatment Building construction to as near their original condition as reasonably possible; and (b) to defend and indemnify Grantor from any claim or

suits which may be asserted against Grantor arising out of any negligent acts of Grantee, its agents and employees, in the exercise of the rights herein granted.

9. The Easements are hereby granted to the Grantee for the purpose of obtaining a "Permit to Construct" from New Jersey Department of Environmental Protection Bureau of Water Systems Engineering in accordance with Plans and Specifications prepared by Robert Martucci, P.E. Payment hereunder from Grantee to Grantor shall not be due and payable until and unless said permit is granted.

10. If said permit is not obtainable the easement agreement shall be null and void.

The agreements and covenants herein made shall be binding upon and the benefits shall inure to the parties hereto, their heirs, administrators, executors, successors and assigns.

It is agreed that this Agreement covers all the agreements between the parties and no verbal representations or statements have been made modifying, adding to or changing the terms of this Agreement.

[SIGNATURES BEGIN ON THE NEXT PAGE]

IN WITNESS WHEREOF, Grantor has set its hand and seal or caused its proper corporate officers to sign and seal these Easements on this _____ day of _____, 2021.

Signed, sealed and delivered in
the presence of, or attested to by:

Dvoor Family, LLC

By: _____
Name:
Title:

STATE OF NEW JERSEY)

SS:

COUNTY OF _____)

I CERTIFY that on _____, 2021,

_____ personally appeared before me and this person acknowledged under oath, to my satisfaction, that this person:

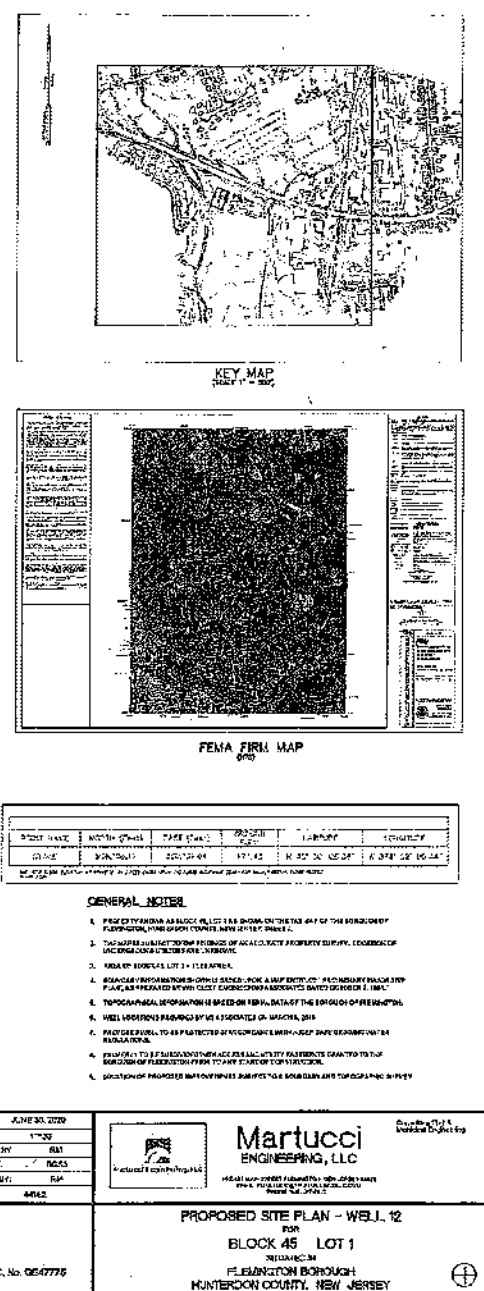
(a) signed the attached instrument as _____ of Dvoor Family, LLC, a limited liability company of the State of New Jersey;

(b) was authorized to execute the attached instrument on behalf of such limited liability company;

(c) executed the attached instrument as the act of such limited liability company; and

(d) made this instrument for \$_____ as the full and actual consideration paid or to be paid for the transfer of title. (Such consideration is defined in N.J.S.A. §46:15-5.)

Notary Public of New Jersey
My Commission Expires:



**Schedule A
Site Plan**