

**RESOLUTION NO. 172-2022**

**AUTHORIZING THE EXECUTION OF A DEVELOPER'S AGREEMENT BETWEEN MOUNTAIN VIEW VILLAS AT SEA BRIGHT, LLC AND THE BOROUGH OF SEA BRIGHT AFFECTING ALL OF THE REAL PROPERTY IDENTIFIED AS BLOCK 34, LOTS 3.08 and 3.07 and BLOCK 33, LOTS 20.03 and 20.04**

Councilmember Birdsall offered the following Resolution and moved its adoption; seconded by Councilmember Bieber:

**WHEREAS**, Mountain View Villas at Sea Bright, LLC (hereinafter referred to as "Developer) with a location at 754 Hyslip Avenue, Westfield, NJ 07090, received final major site plan and subdivision approval by the Sea Bright Unified Planning and Zoning Board to develop certain real properties designated as Block 34, Lots 3.08 and 3.07 and Block 33, Lots 20.03 and 20.04 on the official tax map of the Borough of Sea Bright; and

**WHEREAS**, the nature and the extent of the improvements/development aforesaid are set forth in the Resolution adopted by the Sea Bright Unified Planning and Zoning Board dated January 12, 2021, a copy of which is on file in the Office of the Borough Clerk; and

**WHEREAS**, the Planning Board resolution requires the Developer to enter into a Developer's Agreement with the Borough of Sea Bright setting forth the rights, duties and obligations of the parties in connection with the subdivision and improvements; and

**WHEREAS**, there has been prepared a Developer's Agreement which has been reviewed and approved by the Developer and the Borough Attorney dated June 7, 2021; and

**WHEREAS**, the Borough wishes to authorize the execution of the Developer's Agreement, a copy of which is attached hereto.

**NOW, THEREFORE, BE IT RESOLVED** that the Borough Council of the Borough of Sea Bright, County of Monmouth, State of New Jersey does hereby authorize the Mayor and Borough Clerk to execute a Developer's Agreement between the Borough of Sea Bright and Mountain View Villas at Sea Bright, LLC for improvements on property known as Block 34, Lots 3.08 and 3.07 and Block 33, Lots 20.03 and 20.04 as shown on the official tax map of the Borough of Sea Bright; and

**BE IT FURTHER RESOLVED**, the Borough Clerk is hereby authorized to send a certified copy of the fully executed Developers Agreement to the Borough Attorney for recording with the Clerk of the County of Monmouth; and

**BE IT FURTHER RESOLVED** that a certified copy of this resolution be forwarded to the following:

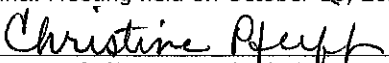
1. Planning Board Secretary & Engineer
2. Borough Attorney
3. Developer

**Roll Call:** Bieber, Birdsall, Booker, Catalano, Keeler, Lamia  
Yes Yes Yes Yes Yes Yes

October 18, 2022

**CERTIFICATION**

I, Christine Pfeiffer, do hereby certify that the foregoing is a resolution adopted by the Borough Council of the Borough of Sea Bright, County of Monmouth, State of New Jersey, at a Council Meeting held on October 18, 2022.

  
Christine Pfeiffer, Borough Clerk

**DEVELOPER'S AGREEMENT**

**THIS AGREEMENT**, entered this \_\_\_\_\_ day October, 2022

**BETWEEN:**

BOROUGH OF SEA BRIGHT, a municipal corporation of the State of New Jersey,  
located in the County of Monmouth,

Hereinafter referred to as "Borough"

**AND:**

MOUNTAIN VIEW VILLAS AT SEA BRIGHT, LLC, a New Jersey limited  
liability company, having a mailing address of c/o Jeffrey Muhlgeier, 754 Hyslip  
Avenue, Westfield, NJ 07090,

Hereinafter referred to as "Developer;"

affects all of the real property located along Mountain View Way previously known as

Block 34, Lots 3.03, 3.04; now being identified as Block 34, Lots 3.08 and 3.07,  
respectively; and

Block 33, Lot 20.02; now being identified as Block 33, Lots 20.03 and 20.04

on the official tax maps of the Borough of Sea Bright, Monmouth County, New  
Jersey and herein referred to as the "Subject Property" which has been approved  
for four (4) single family homes being marketed as part of "Mountain View Villas,"  
(the "Project").

**WHEREAS**, the Developer applied to the Sea Bright Land Use Board for the Preliminary  
and Final Major Site Plan & Subdivision Approval for five (5) lots on June 12, 2020 (Application  
# Z 2020-10);

**WHEREAS**, the Sea Bright Land Use Board (the "Board") granted approval for the  
creation of four (4) residential lots, which approval was memorialized by final Resolution adopted  
by the Board on January 12, 2021, (the "Resolution");

**NOW, THEREFORE**, the parties to this Agreement, for and in consideration of the mutual promises and covenants to each other made and for other good and valuable consideration, hereby agree as follows:

1. This Developer's Agreement shall apply only to this project by the Developer.
2. The Terms and conditions of this Agreement shall be applicable to the following described property consisting of the following four (4) lots: Lots 3.08 and 3.07 in Block 34 and Lots 20.03 and 20.04 in Block 33, as are included on the Preliminary & Final Major Site Plan & Subdivision Plans for: Mountain View Villas at Sea Bright, LLC, dated June 12, 2020, as subsequently revised through August 2, 2022, as prepared by Engenuity Infrastructure, LLC, Jaelyn J. Flor, P.E., P.P., CME, Red Bank, N.J. (the "Development Plans") which shall be filed in the Monmouth County Clerk's Office.
3. The Developer agrees to be bound by the testimony, representations, commitments, approved map and requirements of the Board, matters of fact and law which constitute the file and record of the Board in this matter and included but not limited to all conditions set forth in the resolution of the Board and the Plan submitted to the Board and that it will faithfully discharge all of the obligations and commitments thereof, including, but not limited to site work improvements, streets, curbs, parking, fencing, signs, streetlights, sanitary sewers, water mains, fire hydrants and property monuments to the extent applicable, and in accordance with the specifications and ordinances of the Borough of Sea Bright, as amended to date or as further clarified and set forth subsequently in this Agreement.
4. Developer will construct the improvements as set forth in the Development Plans in accordance with specifications of the Land Use Ordinance of the Borough as amended to date,

in a manner satisfactory to the Borough Engineer, and in accordance with the Development Plans and in compliance with the Resolution (the "Improvements").

5. Developer will post with the Borough performance guarantees as follows

10% Cash	\$ 20,873.40
90% Bond	\$187,860.60
Safety and Security Guarantee	\$ 9,980.88

total aggregate amount of \$218,714.88.

6. Developer shall post an engineering inspection fee of \$14,961.75 in cash with respect to the Improvements which are to be constructed.

7. The Improvements contemplated in this Agreement and in the application shall be performed with a period two (2) years from the date hereof, or such additional periods of time as may be granted by the Borough in accordance with N.J.S.A. 40:55D-52. In the event of an extension, the Borough may annually review the amount of performance guarantees with regards to its sufficiency to insure faithful completion of remaining required improvements, and if found insufficient, required the Developer to increase the amount of the performance guarantees. The issuance of Certificates of Occupancy by the Borough within the two (2) year period shall not be deemed a waiver for defects ascertained during said period or subsequent thereto. If the Project, or any part of the same, is sold, or otherwise conveyed by the Developer to another Developer prior to the installation of all of the Improvements, new security (bond and Developer's Agreement) shall be required from the any such successive Developer. The Developer agrees to obtain same for and on behalf of the Borough.

8. The Borough Engineer, or its designated representative consultant engineer, shall maintain appropriate records of inspections and related reviews and upon the Developer's written

request, said records shall be made available for inspection by the Developer or its representative during regular business hours of the Borough Engineer.

9. Any payments, posting of bonds or other financial obligation required to be performed by the Developer in this Agreement, unless specifically set forth otherwise, shall be done and/or performed and tendered to the Borough Clerk prior to the release of the Final Subdivision Plat for Mountain View Villas at Sea Bright, LLC and prior to the signing of any such Plat for filing in the office of the Monmouth County Clerk.

10. During the course of construction of the Improvements as shown on the Development Plans, Developer shall maintain, or shall be responsible for maintaining the subject premises in a manner which shall be safe, and shall have caused no damage to adjacent publicly owned or privately owned properties, or to members of the public. The date of final acceptance for the purposes of this Agreement is deemed to be the date upon which Developer is released from its performance bond, posted a maintenance bond, if same is required, and a resolution of acceptance pertaining to the required improvements is adopted by the governing body of the Borough.

11. With regard to Block 23, Lot 130, it will construct a public stairway access to the beach and convey the lot to the Borough.

12. Applicant will construct the improvements to the public park area providing river access and will enter into a Developer's Agreement with the municipality.

13. Applicant will grant an easement for the north side sidewalk.

14. If requested by Land's End within six months of the Board's approval, the landscaping on lot 20.02 will be extended along the Land's End border.

15. Developer shall perform all work in full compliance and observance of all ordinances of the Borough, as amended by the governing body or modified by the development approvals, and all proper recommendations of the Borough Engineer.

16. Developer shall deliver to Borough, a Certificate of Insurance for general liability coverage in the amounts of not less than \$1,000,000.00/\$2,000,000.00 naming the Borough as an additional insured and in a form acceptable to the Borough Attorney. This insurance shall be in effect until the date of final acceptance as previously defined in this Agreement.

17. Developer grants permission for this Agreement to be recorded in the Monmouth County Clerk's Office at its expense, and remain on record until it has complied with the obligations herein, at which time the governing body shall adopt a Resolution authorizing the execution of a Release and Satisfaction of Developer's Agreement in recordable form.

18. In the event the Borough is required to resort to litigation, or other similar action to enforce the terms of this Agreement, it will be entitled to recover costs, including reasonable attorneys' fees and expert witness fees from Developer.

19. The Borough, its consultants, employees, and agents, shall be given free access to observe construction details as set forth on the approved Development Plans. The purpose of such observation shall be limited to providing the Borough with a greater degree of confidence that such improvements will be constructed in accordance with the Developer's approved submittals. The Borough, or its representatives, consultants, employees, or agents, shall not supervise, direct, or have control over the Developer's work during such observations, nor shall they have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Developer, or safety precautions and programs incident to the work of the Developer, or for any failure of the Developer to comply with the applicable laws, rules,

regulations, ordinances, codes or orders. The Developer hereby expressly agrees to indemnify and hold the Borough, its representatives, consultants, employees, and agents harmless from and against all claims, costs and liability of every kind and nature, for injury, damage, or loss received or sustained by any person or entity in connection with, or on account of, the performance of work at the development Site and elsewhere pursuant to this Agreement, provided said injury, damage, or loss is not the result of the negligence of the Borough, its representatives, consultants, employees, and agents. The Developer further agrees to aid and defend the Borough, its representatives, consultants, employees, and agents in the event that the Borough, its representatives, consultants, employees, and agents, is named as a defendant in an action concerning the performance of work pursuant to this Agreement. The Developer is not an agent or employee of the Borough.

20. If any terms, provisions, or conditions of this Agreement are determined invalid by a court of competent jurisdiction, the remainder shall remain in full force and effect.

21. The Developer has attached hereto a list setting forth the names and addresses of the individuals and/or entities each having an interest of ten percent (10%) or more in this development and hereby certifies the correctness of that list. The Developer further agrees that it will provide the Borough with any changes in this list, in writing or within 30 days of the date of this occurrence.

22. All notices required or permitted under this Agreement shall be in writing by Certified Mail, return receipt requested, to the address set forth herein or as otherwise designated by the parties in writing.

23. This Developer's Agreement shall be binding upon parties who sign it and upon their successors and interests and assigns. If the Developer conveys title to be affected by the

Developer's Agreement to a third-party purchaser or should other third party succeed to the interest of the Developer by way of purchase, deed in lieu of foreclosure, Sheriff's or foreclosure sale and deeds and/or other methods of succession of title, the third party shall be bound by the terms of this Agreement and complete the project in accordance with the terms of the Agreement unless otherwise modified by the Borough.

24. The Developer shall submit evidence to the Board of approval of outside agencies, as required by the Resolution of approval, including but not limited to Freehold Soil Conservation District, Monmouth County Planning Board, Coastal Area Facilities Review Act, Sea Bright Fire Department, Flood Plain Official, and local and/or Regional Sewerage Authority, and all applicable Federal, State, County, and/or Municipal Agencies having regulatory jurisdiction over this development prior to proceeding with the Project.

25. For purpose of construction of this Agreement, the following terms, except as the context may otherwise require, mean:

- A. "Shall" is mandatory and "may" is permissive.
- B. "Neuter" gender includes the masculine and the feminine.

The Developer or its successors or assigns is required to comply with the Development Fee Ordinance of the Borough of Sea Bright pursuant to the Land Development Ordinance of the Borough of Sea Bright to the extent applicable. The Developer shall make any Affordable Housing Contribution Section 130-118 et seq. as amended and by paying a fee of one and a half percent (1.5%) of the equalized assessed value for all new residential development. This fee shall be payable by Applicant, its successors or assigns. Collection of the fee shall be as set forth in Section 130-123.

26. As part of the overall site improvements which are to be made by the Developer of this approved subdivision, the Developer shall construct the improvements which are to create a



public park area, to be located within the westerly end of the public right of way known as Mountain View Way, as indicated on the Development Plans, so as to provide enhanced public access to the Shrewsbury River.

27. With regard to Block 23, Lot 130, Developer will construct a public stairway access to the beach prior to conveying the lot to the Borough.

28. The Developer will install a sidewalk on the north side of the street along lots 3.05, 3.06, 3.07, and 3.08 and will grant an easement to the Borough with respect to same.

29. The Developer will pay \$1,375.00 per sewer connection to “The Borough of Sea Bright.”

**[Signatures on next page]**

**IN WITNESS WHEREOF**, the Developer has hereunto caused these presents to be duly executed. The Borough has caused this instrument to be signed by its Mayor and attested by its Clerk, and its proper corporate seal to be affixed as of the date and year first above written.

**BOROUGH OF SEA BRIGHT**

(SEAL)

By: \_\_\_\_\_  
BRIAN P. KELLY, Mayor

ATTEST:

\_\_\_\_\_  
CHRISTINE PFEIFFER, RMC  
Municipal Clerk

**MOUNTAIN VIEW VILLAS AT SEA  
BRIGHT, LLC,  
Developer**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Jeffrey Muhlgeier  
Member

**INDIVIDUAL INTERESTS**

<b><u>Name</u></b>	<b><u>Address</u></b>	<b><u>Percentage</u></b>
Jeffrey Muhlgeier	c/o Robert J. McGowan, Esq., 24 Merchants Way, Suite 210 Colts Neck, NJ 07722	100%

STATE OF NEW JERSEY :  
SS :  
COUNTY OF MONMOUTH :

I CERTIFY that on \_\_\_\_\_, 2022, CHRISTINE PFEIFFER, RMC personally came before me, and this person acknowledged under oath, to my satisfaction that:

- (a) this person is the MUNICIPAL CLERK of the BOROUGH OF SEA BRIGHT, the municipal corporation named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer, who is Mayor of the municipal corporation;
- (c) this document was signed and delivered by the municipal corporation as its voluntary act duly authorized by a proper resolution of the Borough Committee;
- (d) this person knows the proper seal of the municipal corporation which was affixed to this document; and
- (e) this person signed this proof to attest to the truth of these facts.

\_\_\_\_\_

Signed and sworn to before me  
on this \_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_

**STATE OF NEW JERSEY**           :  
  **SS** :  
**COUNTY OF MONMOUTH**        :

I CERTIFY that on \_\_\_\_\_, 2022, JEFFREY MUHLGEIER personally came before me, and this person acknowledged under oath, to my satisfaction that:

- (a) this person is named in and personally signed the attached document;
- (b) this person acknowledges he is a Member of Mountain View Villas at Sea Bright, LLC;
- (c) this person signed, sealed, and delivered this document as his or her act and deed duly authorized by a proper resolution of Developer; and
- (d) this person knows the proper seal of the Developer, which was affixed to this Document.

\_\_\_\_\_

Signed and sworn to before me  
on this \_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_

**DEED OF DEDICATION**

Prepared By: \_\_\_\_\_  
Joseph C. Falk, Esq.

This Deed of Dedication is made on \_\_\_\_\_ of \_\_\_\_\_, 2022, **BETWEEN** Mountain View Villas at Sea Bright, LLC, a New Jersey limited liability company, whose mailing address is 754 Hyslip Avenue, Westfield, New Jersey 07090, referred to as the **“GRANTOR”**

**AND**

**BOROUGH OF SEA BRIGHT, a MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY**, whose address is **Borough Hall, 1099 Ocean Avenue, Sea Bright, New Jersey 07760**, referred to as the **“GRANTEE.”**

The words **“GRANTOR”** and **“GRANTEE”** shall mean all Grantors and all Grantees listed above.

**Transfer of Ownership.** The **“GRANTOR”** grants and conveys (transfers ownership of) the property described below to the **“GRANTEE.”** This transfer is made for the sum of **ONE (\$1.00) DOLLAR.** The **“GRANTOR”** acknowledges receipt of this money.

Tax Map Reference: N.J.S.A. 46:15-2.1) Municipality of the **Borough of Sea Bright**,  
Block 23, Lot 130

No Property Tax Identification Number is available on the date of this deed.

**Property:** The Property consists of the land and all building and structures on the land in the Municipality of the **Borough of Sea Bright**, the County of Monmouth and the State of New Jersey. The legal description is attached as Schedule A.

The foregoing premises being dedicated to the Borough of Sea Bright for any and all lawful public purpose including but not limited to a public stairway access to the beach and maintenance of improvements. This Deed of Dedication will also serve to implement the Public Trust Doctrine and ensure permanent public access, use and enjoyment of the beach and ocean,

AND; the "GRANTOR" covenants that it has not done or executed, or there has not been done or executed, any act, deed or thing whatsoever whereby or by means whereof the premises conveyed herein, or any part thereof, now are or at any time thereafter, will or may be charged or encumbered in any matter or way whatsoever, including, without limitation, any mortgage, judgment lien or tax lien of any kind whatsoever. This covenant shall be binding on the "GRANTOR", its heirs/or successors or assigns.

**Signatures.** The "GRANTOR" signs this Deed of Dedication as of the date at the top of the first page.

WITNESSED or ATTESTED

GRANTOR

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

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

\_\_\_\_\_  
(Type Name & Title)

\_\_\_\_\_  
Jeffrey Muhlgeier, Managing Member

**(Signature(s) must be witnessed or attested to;  
If applicable, corporate seal must be affixed)**

The address of the person to whom the document will be returned after filing must be indicated on the back of the document.

STATE OF NEW JERSEY

:SS

COUNTY OF MONMOUTH

I CERTIFY that on \_\_\_\_\_ of \_\_\_\_\_, 2022, personally came before me and acknowledged under oath, to my satisfaction, that this person

- (a) is named in and personally signed this Deed;
- (b) signed, sealed and delivered this deed as his or her act and Deed; and
- (c) made this Deed for \$1.00 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)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name of Attesting Witness and Title  
If, Notary Public affix seal)