

**TOWN OF BOONTON
ORDINANCE # 10- 21**

**AN ORDINANCE OF THE TOWN OF BOONTON, COUNTY OF MORRIS AND STATE OF NEW JERSEY,
ACCEPTING A DEED OF EASEMENT (WATERLINE EASEMENT) AT AVALON BAY COMMUNITIES
AND LOCATED WITHIN THE TOWN OF BOONTON**

WHEREAS, Boonton Urban Renewal, LLC c/o AvalonBay Communities (hereinafter “Avalon Bay”) and with a business location of 105 Elm Street, 1st Floor, Westfield, New Jersey 07090, is the owner of certain land identified as Block 69, Lot 72 on the official tax map of the Town of Boonton, County of Morris, State of New Jersey (hereinafter “the Property”), and Avalon Bay is the designated redeveloper of the subject Property.; and

WHEREAS, by Resolution dated May 8, 2013, Avalon Bay received site plan approval to construct a 350-unit multi-family residential project on the Property; and

WHEREAS, Avalon Bay constructed this residential project in accordance with the approved plans; and

WHEREAS, the Project is serviced through the Town of Boonton’s existing water system with a connection, consisting of water mains, laterals, curb boxes and other related appurtenances and facilities (hereinafter, the “Water Facilities”), that have been constructed by Avalon Bay and are to be dedicated to the Town of Boonton for public use; and

WHEREAS, Avalon Bay desires to give, grant and convey unto the Town of Boonton, its successors and assigns, licensees, invitees and their duly authorized agents, employees and contractors, a perpetual, non-exclusive easement on, under and over a portion of Avalon Bay’s Property (hereinafter, the “Waterline Easement Area”) for the purposes of maintaining, using, altering, repairing, replacing, inspecting, improving, locating, operating and reconstructing the Water Facilities, together with and a free, uninterrupted and unobstructed right of way in, under, across and over Avalon Bay’s Property to permit the Town of Boonton access to the Water Facilities for the transmission and distribution of water.

NOW THEREFORE, BE IT RESOLVED by the Mayor and Town Council of the Town of Boonton, in the County of Morris and State of New Jersey, as follows:

SECTION 1:

In consideration of the agreements herein, for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound, the following is agreed to by Avalon Bay (hereinafter also “Grantor”) and the Town of Boonton (hereinafter also Grantee”):

1. Grantor hereby gives, grants and conveys unto Grantee, its successors and assigns,

licensees, invitees and their duly authorized agents, employees and contractors, a perpetual, non-exclusive easement over, on or under the Waterline Easement Area for the purposes of maintaining, using, altering, repairing, replacing, inspecting, improving, locating, operating and reconstructing the Water Facilities, together with and a free, uninterrupted and unobstructed right of way in, under, across and over Grantor's Property to permit Grantee access to the Water Facilities for the transmission and distribution of water. A copy of a map depicting the 20' wide Waterline Easement Area, entitled "Avalon-Boonton, Waterline Easement Exhibit is annexed hereto as Exhibit "A". A copy of the metes and bounds description of the Waterline Easement Area is annexed hereto as Exhibit "B".

2. Grantee, its successors and assigns, licensees, invitees and their duly authorized agents, employees and contractors shall have the right to enter in and upon the Waterline Easement Area with personnel, machinery, vehicles and material at any and all times for the purposes stated above by giving Grantor reasonable advanced notice when feasible.
3. Grantor has completed the construction of the Water Facilities, which, upon grant of this Easement shall at all times be and remain the property of, and subject to the sole control of, Grantee, its successors and assigns.
4. If any access pursuant to this Easement causes damage to the Water Facilities, Grantor's Property or any other property owned by Grantor, then the Grantee shall restore said facilities or any property owned by Grantor to the condition existing immediately before such access occurred.
5. Grantor shall have the right to use, occupy and enjoy the Easement for any purposes which do not unreasonably interfere or threaten the safe, proper or convenient use or enjoyment of same by the Grantee as set forth herein.
6. The grant of this Easement and access shall in no way restrict Grantor from constructing further buildings and structures on any part of Grantor's Property, provided that no such building or structure shall materially interfere with rights herein granted to Grantee.
7. The easement granted and conveyed herein, and all rights and obligations set forth in this Easement, shall be construed as running with the land and shall be binding upon and inure to the benefit of Grantor and the Grantee and their successors and assigns in title or interest, in perpetuity.
8. If any provisions of this Easement shall to any extent be held invalid or unenforceable, the remaining provisions of this Easement shall not be affected thereby.
9. The recitals set forth in the beginning of this Easement are incorporated herein by reference as if set forth at length in the body of this Easement, and constitute material terms of this Easement.

10. This Easement may not be changed, modified or terminated except by an instrument executed by the Parties. No waiver by any party of any failure or refusal of another party to comply with its obligations shall be effective unless in writing and shall not be deemed a waiver of any other or subsequent failure or refusal to so comply.
11. This Easement may be executed and delivered in several counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

SECTION 2. All ordinances of the Town of Boonton that are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3. If any section, paragraph, article, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply to the section, paragraph, article, subdivision, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

SECTION 4. This Ordinance may be renumbered for codification purposes.

SECTION 5. This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

The foregoing ordinance having been introduced and passed on first reading by the Mayor and Town Council of the Town of Boonton, County of Morris, State of New Jersey, on April 19, 2021 and then ordered to be published according to the law, will be further considered for final passage and adoption at a public hearing to be held at a meeting beginning at 7:30 p.m. on May 3, 2021 at the Town Hall, 100 Washington Street, Boonton, NJ 07005, when and where, or at such time and place to which said meeting may be adjourned. All persons interested will be given an opportunity to be heard concerning said ordinance.