

**STORMWATER CONTROL FACILITY
MAINTENANCE AGREEMENT AND EASEMENT**

WHEREAS, the CITY OF BEACON (“City of Beacon”) and BRENT C. SPODEK AND ALISON R. SPODEK (“OWNER”) desire to enter into this agreement (the “Agreement”) dated this ___ day of _____, 2019, to provide for the long term maintenance and continuation of stormwater control measures approved by the City of Beacon for certain real property located at 32 Alice Street, Beacon, New York, identified as tax parcel 6054-47-320616, more fully shown on a the subdivision map entitled “Subdivision Plan 32 Alice Street Subdivision”, prepared by Hudson Land Design Professional Engineering, P.C., dated June 26, 2018, last revised December _____ 2018 filed in the Dutchess County Clerk’s Office on _____ as Filed Map No. _____ (“Subdivision Plat”), and set forth on Schedule A (the “Premises”); and

WHEREAS, this Agreement is provided in connection with a subdivision of the Premises, which received Subdivision Approval from the City of Beacon Planning Board by resolution on October 10, 2018 based on a 5-sheet Preliminary Subdivision Plan set prepared by Hudson Land Design and on file at the City of Beacon Building Department (together with the Subdivision Plat the 5-sheet plan set is referred to herein as the “Approved Project Plans”), which Approved Project Plans include certain stormwater management facilities and control measures (collectively, the “Structures”) required to be constructed and maintained in accordance with the Approved Project Plans, and the Stormwater Structures Maintenance Obligation (the “SWSMO”) prepared by Hudson Land Design Professional Engineering, P.C., and set forth in Schedule B; and

WHEREAS, the City of Beacon and the Owner desire that the Structures be built in accordance with the Approved Project Plans set forth on said map and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the Structures;

NOW, THEREFORE, IN WITNESS WHEREOF, the City of Beacon and the Owner agree as follows:

1. This Agreement binds the Owner, its successors and assigns, to the maintenance provisions depicted in the Approved Project Plans and described in the SWSMO set forth at Schedule B. The Premises shall be held, transferred, sold, conveyed and occupied subject to this Agreement.
2. The owners of the respective lots shown on the Subdivision Plat shall maintain, clean, repair, and replace the Structures and keep the Structures in continuous operation in accordance with the Approved Project Plans and the SWSMO as necessary to ensure optimum performance of the stormwater control measures to design specifications. The stormwater control measures shall include, if applicable, but shall not be limited to, the following items located at the Premises: catch basins, piping, underground infiltration basin and rain garden. The maintenance schedule of the SWSMO is set forth on the Subdivision Plat.

3. The Declarant hereby grants unto the City of Beacon, its successors and assigns a perpetual easement and right-of-way to enter upon the Premises in order to access the Structures at reasonable times and in a reasonable manner for periodic inspection by the City of Beacon to ensure that the Structures are maintained in proper working condition and meets the design standards established by the SWSMO.
4. The Declarant its successors and/or assigns shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the Structures except in accordance with written approval of the City of Beacon which approval shall not be unreasonably withheld, delayed or conditioned.
5. The Declarant its successors and/or assigns shall promptly undertake necessary repairs and replacement of the Structures at the direction of the City of Beacon or in accordance with the recommendations of the inspecting professional.
6. The Declarant hereby covenants that it is seized of the Premises in fee simple and has full authority to execute this Agreement; shall do nothing to the Premises which would prevent, impede or disturb the full use and intended purpose of this Agreement.
7. This Agreement shall not confer unto the City of Beacon any duty or obligation to repair or maintain the Structures. Further, the City of Beacon's acceptance of any rights pursuant to this Agreement shall not be deemed as the acceptance of any duty or obligation to repair or maintain the Structures, except that any damage to the Structures caused by the City of Beacon's negligence during inspections or otherwise shall be restored, repaired or otherwise remedied by the City of Beacon at the City of Beacon's sole cost.
8. This Agreement shall be recorded in the Office of the County Clerk, County of Dutchess as a condition of final subdivision approval.
9. If ever the City of Beacon determines that the Declarant its successors and/or assigns has failed to construct or maintain the Structures in accordance with the SWSMO, or has failed to undertake corrective action specified by the City of Beacon, the City of Beacon shall provide the Declarant with written notice via certified mail, return receipt requested, specifying such failure. The written notice shall provide that the Declarant has fifteen (15) days to cure any defect and/or failure specified therein. In the event the failure cannot be cured within fifteen (15) days, the Declarant shall advise the City of Beacon as to same in writing within fifteen (15) days of receipt of the City of Beacon's notice to cure. The Declarant shall be afforded the opportunity to request a reasonable time frame to cure said failure/defect if the Declarant so desires. If the Declarant fails to provide written notice requesting an extension of time to cure a failure/defect and the Declarant does not cure said failure/defect, the City of Beacon is authorized but not obligated to undertake such steps as are reasonably necessary for the preservation, continuation or maintenance of the Structures and to affix the expenses thereof as a lien against the Premises. All notices and demands shall be made in writing and delivered by certified mail, return receipt requested, with postage prepaid thereon, if to Declarant to the address on file with the City Tax Assessor for the current owner of the Premises, and if to the City of Beacon, addressed as follows:

City Administrator
City Hall
1 Municipal Plaza
Beacon, New York 12508

With a copy to:
Keane & Beane, P.C.
445 Hamilton Avenue, Ste 1500
White Plains, New York 10601
Attn: Nicholas M. Ward-Willis, Esq.

10. In the event the City of Beacon exercises its rights hereunder, it shall return the Premises to a reasonably similar condition as it existed prior to the exercise of such rights.

11. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Declarant and the City of Beacon have executed this Agreement as of the date first herein above set forth.

DECLARANT

By: _____
Name: Brent C. Spodek

By: _____
Name: Alison R. Spodek

CITY OF BEACON

By: _____
Name: Anthony Ruggiero
Title: City Administrator

STATE OF NEW YORK)
)
COUNTY OF _____) SS.:

On the ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared BRENT C. SPODEK personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public – State of New York

STATE OF NEW YORK)
)
COUNTY OF _____) SS.:

On the ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared ALISON R. SPODEK personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public – State of New York

STATE OF NEW YORK)
)
COUNTY OF _____) SS.:

On the ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared ANTHONY RUGGIERO personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public – State of New York

Record & Return:

Keane & Beane, P.C.
445 Hamilton Avenue, Ste 1500
White Plains, New York 10601
Attn: Nicholas M. Ward-Willis, Esq.

Section: 6054
Block: 47
Lot(s): 320616
County: Dutchess

Schedule A
Description of Premises

Schedule B
Stormwater Structures Maintenance Obligation (SWSMO)