

STORMWATER CONTROL FACILITY MAINTENANCE AGREEMENT AND EASEMENT

WHEREAS, the **CITY OF BEACON** (“Municipality”) and **THE KEARNEY REALTY & DEVELOPMENT GROUP INC.** (“Facility Owner”) desire to enter into this agreement (the “Agreement”), dated this ____ day of March, 2018, to provide for the long term maintenance and continuation of stormwater control measures approved by the Municipality for certain real property located on Wolcott Avenue in the City of Beacon, shown and designated as “Proposed Lot 1” and “Proposed Lot 2” on a certain subdivision map prepared by Insite Engineering, Surveying & Landscape Architecture, P.C. entitled “West End Lofts”, filed in the Office of the Dutchess County Clerk on _____, 2018, as Filed Map No. _____ (the “Subdivision Map”), and further described by metes and bounds in Schedule A annexed hereto (the “Premises”); and

WHEREAS, this Agreement is provided in connection with a residential development project known as “West End Lofts”, which received Subdivision and Site Plan approval from the City of Beacon Planning Board on February 14, 2018, based on plans entitled (a) “Preliminary Plat prepared for West End Lofts”, dated January 30, 2017 and last revised January 30, 2018, and (b) “West End Lofts”, Sheets 1-15, dated January 31, 2017 last revised January 31, 2018, each prepared by Insite Engineering, Surveying & Landscape Architecture, P.C. and on file at the City of Beacon Building Department (“Approved Project Plans”), which Approved Project Plans include certain stormwater management facilities and stormwater control measures (collectively, the “Facility”) required to be constructed and maintained in accordance with the Approved Project Plans and the approved Stormwater Pollution Prevention Plan (“SWPPP”) dated July 25, 2017; and

WHEREAS, the Municipality and the Facility Owner desire that the Facility be built in accordance with the Approved Project Plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the Facility;

NOW, THEREFORE, IN WITNESS WHEREOF, the Municipality and the Facility Owner agree as follows:

1. This Agreement binds the Municipality and the Facility Owner, its successors and assigns, to the maintenance provisions depicted in the Approved Project Plans and described in Section 5.2 and Appendix G of the SWPPP, which are included in Schedule B of this Agreement.
2. The Facility Owner shall maintain, clean, repair, and replace the Facility and keep the Facility in continuous operation in accordance with the in the Approved Project Plans and the SWPPP 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: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes, culverts, soil absorption devices, detention ponds and retention ponds. The maintenance schedule of the SWPPP is included in Schedule B of this Agreement.

3. The Facility Owner hereby grants unto the Municipality, its successors and assigns a perpetual easement and right-of-way to enter upon the Premises in order to access the Facility at reasonable times and in a reasonable manner for periodic inspection by the Municipality to ensure that the Facility is maintained in proper working condition and meets the design standards established by the SWPPP.
4. The Facility Owner shall be responsible for all expenses related to the maintenance of the Facility and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities, as applicable, except as otherwise set forth hereinafter.
5. The Facility Owner shall provide for the periodic inspection of the Facility in accordance with the SWPPP, and shall have the facilities inspected on a yearly basis by a Professional Engineer licensed by the State of New York, to determine the condition and integrity of the stormwater control measures. The inspecting professional shall prepare and submit to the Municipality within 30 days of the inspection but not later than June 1 of each year, a written report of the findings including recommendations for those actions necessary for the continuation of the stormwater control measures.
6. The Facility Owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the Facility except in accordance with written approval of the Municipality which approval shall not be unreasonably withheld, delayed or conditioned.
7. The Facility Owner shall promptly undertake necessary repairs and replacement of the Facility at the direction of the Municipality or in accordance with the recommendations of the inspecting professional.
8. The Facility Owner hereby covenants that it is seized of the Premises in fee simple and has full authority to execute this Agreement; shall do nothing in the Premises which would prevent, impede or disturb the full use and intended purpose of this Agreement; and shall execute and deliver any further documents reasonably necessary to assure the benefits of this Agreement to the Municipality.
9. This Agreement shall not confer unto the Municipality any duty or obligation to repair or maintain the Facility. Further, the Municipality'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 Facility, except that any damage to the Facility caused by the Municipality's negligence during inspections or otherwise shall be restored, repaired or otherwise remedied by the Municipality at the Municipality's sole cost.
10. This Agreement shall be recorded in the Office of the County Clerk, County of Dutchess as a condition of final site plan approval and as a condition to the issuance of a final building permit.
11. If ever the Municipality determines that the Facility Owner has failed to construct or maintain the Facility in accordance with the Approved Project Plan or SWPPP, or has failed to undertake corrective action specified by the Municipality or by the inspecting engineer, the Municipality shall provide the Facility Owner with written notice via certified mail, return receipt

requested, specifying such failure. Copies of any written notices to the Facility Owner shall be contemporaneously provided to the Fee Owner, if different from the Facility Owner, via certified mail, return receipt requested. The written notice shall provide that the Facility Owner 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 Facility Owner shall advise the Municipality as to same in writing within fifteen (15) days of receipt of the Municipality's notice to cure. The Facility Owner shall be afforded the opportunity to request a reasonable time frame to cure said failure/defect if the Facility Owner so desires. If the Facility Owner fails to provide written notice requesting an extension of time to cure a failure/defect and the Facility Owner does not cure said failure/defect, the Municipality is authorized to undertake such steps as are reasonably necessary for the preservation, continuation or maintenance of the Facility and to affix the expenses thereof as a lien against the Premises.

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

13. All notice and demands shall be made in writing and delivered by certified mail, return receipt requested, with postage pre-paid thereon, addressed as follows:

City of Beacon:

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

Facility Owner:

The Kearney Realty & Development Group Inc.
34 Clayton Boulevard, Suite A
Baldwin Place, New York 10505
Attn: Kenneth Kearney

With a copy to:

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

With a copy to:

Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany, New York 12207
Attn: Melissa M. Beskid, Esq.

14. 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.

Signature pages follow.

IN WITNESS WHEREOF, the Facility Owner and the Municipality have each executed this Agreement as of the date first herein above set forth.

CITY OF BEACON

By: _____
Name:
Title:

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

On the ____ day of _____, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ 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

Signatures continue on next page.

THE KEARNEY REALTY & DEVELOPMENT GROUP INC.

By: _____
Kenneth Kearney, President

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

On the ____ day of _____, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared Kenneth Kearney 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:

Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany, New York 12207
Attn: Steven S. Heyman, Esq.

Section: 5954
Block: 26
p/o Lots: 688931 and p/o lot 708967
County: Dutchess

Schedule A

Description of Premises

Schedule B

SWPPP Maintenance Provisions