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**TOWN OF HARRISON
VILLAGE OF HARRISON
ATTORNEY'S OFFICE**

MEMORANDUM

TO: Ronald Belmont, Supervisor
Members of the Town Board

FROM: Christopher M. Cipolla, Deputy Village Attorney 

DATE: May 21, 2014

SUBJECT: **Congregation Emanu-El of Westchester and
Town and Village of Harrison Stormwater Facility
Easement and Maintenance Agreement**

Attached is a copy of the Stormwater Facility Easement and Maintenance Agreement between Congregation Emanu-El of Westchester and the Town and Village of Harrison.

I have reviewed the Stormwater Facility Easement and Maintenance Agreement, deemed it to be in order, and accordingly, recommend that the Supervisor/Mayor execute same along with all other documents so that the Agreement may be recorded in the Westchester County Clerk's office.

Thank you.

CMC:ap
Attachment

STORMWATER CONTROL FACILITY EASEMENT
AND MAINTENANCE AGREEMENT

This Stormwater Control Facility Easement and Maintenance Agreement ("AGREEMENT") is made and entered into as of the ___ day of May 2014, by and between **Congregation Emanu-El of Westchester** (the "GRANTOR"), a (Non-profit Corporation-501(c)3), organized and existing under the laws of the State of New York, have an address at 2125 Westchester Avenue East, Rye, NY 10580 and **The TOWN of Harrison** (the "TOWN") and **The VILLAGE of Harrison** (the "VILLAGE"), New York, municipal corporations having their principal place of business at 1 Heineman Place, Harrison, New York 10528.

WITNESSETH:

WHEREAS, GRANTOR is the owner of certain real property ±11.52 acre wooded developed with a multi-functioning synagogue facility with associated off-street parking. The property is located at the corner of Westchester Avenue East and Kenilworth Road in the TOWN of Harrison, County of Westchester and State of New York, which is known as 2125 Westchester Avenue East, Rye, NY 10580 and also known and designated on the tax assessment map of the TOWN as Block 601, Lot 1, and which is described in Exhibit "A" attached hereto (the "PROPERTY"); and

WHEREAS, on or about 02/23/2010 Congregation Emanu-El of Westchester received site plan approval, Special Exception Use Approval and Freshwater Wetland Permit Approval from the Planning Board of the Town (collectively, the "APPROVALS") to permit (i) (Refer to Resolution PB2010-06); (ii) (Refer to Resolution PB2010-07); (iii) (Refer to Resolution PB2010-08); and

Chapter 130 of the Code of the TOWN of Harrison, entitled "Stormwater Management and Erosion and Sediment Control," requires GRANTOR to grant the Town and the VILLAGE an easement (the "Easement") as described and delineated on Exhibit A attached hereto permitting the TOWN access to the Property for the purposes of inspecting the stormwater management and erosion and sediment control facilities to be constructed as part of the Project (the "Stormwater Control Measures") which are shown on Drawings No. CD-5 "Grading Plan", CD-6 "Utilities Plan," CD-7 "Erosion and Sediment Control Plan," CD-8 "Landscaping and Wetland Mitigation Plan", CD-9 "Construction Details," CD-10 "Construction Details," CD-12 "Construction Details," CD-13 "Construction Details," CD-14 "Construction Details," CD-16 "Construction Details," prepared by John Meyer Consulting, PC, last revised 11/05/2010 and attached hereto as Exhibit "B" (collectively, the "Approved Plan"); and

GRANTOR, the Town and the VILLAGE agree that following the construction of the Stormwater Control Measures in accordance with the Approved Plan, the Stormwater Control Measures shall thereafter be maintained, cleaned and repaired by GRANTOR;

NOW, THEREFORE, GRANTOR, the TOWN and the VILLAGE agree as follows:

1. GRANTOR agrees to maintain, clean and repair the Stormwater Control Measures in accordance with the "Stormwater Pollution Prevention Plan (SWPPP)" for the Project, prepared by John Meyer Consulting, PC, last revised 11/05/2010, as necessary to ensure that the Stormwater Control Measures remain in good working order. GRANTOR shall be responsible for all expenses related to the maintenance, cleaning and repair of the Stormwater Control Measures.
2. On or about the date which is one (1) year after the date the certificate of occupancy for the Project is issued by the TOWN, and thereafter on or about the annual anniversary of such date, GRANTOR shall in accordance with the SWPPP cause the Stormwater Control Measures to be inspected to determine the condition and integrity of such facilities. A professional engineer licensed by the State of New York shall perform such inspection (the "INSPECTING ENGINEER"). GRANTOR shall submit a report to the TOWN and the VILLAGE prepared by the Inspecting Engineer within 30 days of the inspection, which report shall include the findings and recommendations for any actions necessary to ensure the continuation of the Stormwater Control Measures in good working order.
3. GRANTOR shall undertake any necessary repairs and replacement of the Stormwater Control Measures at the direction of the TOWN and the VILLAGE and in accordance with the recommendations of the Inspecting Engineer. GRANTOR shall not modify the Approved Plans or SWPPP, or undertake any alteration, modification or discontinuance of the Stormwater Control Measures except in accordance with the written approval of the TOWN.
4. GRANTOR hereby grants the TOWN and the VILLAGE a perpetual Easement to enter upon the Property at any reasonable time or times following reasonable written notice for the purpose of periodically inspecting the Stormwater Control Measures to ensure that the Stormwater Control Measures are maintained by GRANTOR in good working order; provided however, that in the event of a bona fide emergency, the TOWN shall have the right to enter upon the Property at all times without prior written notice to GRANTOR.

5. The parties agree that the TOWN and the VILLAGE may enter upon the Property for purposes of inspecting and/or repairing the Stormwater Control Measures (the "Work") (i) in the event of a bona fide emergency, and/or (ii) if GRANTOR fails to maintain and/or repair the Stormwater Control Measures in good working order and such failure shall remain uncured for a period of thirty (30) days after written notice of such failure is given by the TOWN or the VILLAGE to GRANTOR (the "Notice Period") (or in the case of a failure which cannot be cured within the Notice Period, GRANTOR fails to commence to cure such failure within the Notice Period and/or thereafter fails to diligently prosecute such cure to completion).
6. The TOWN and the VILLAGE shall, upon the completion of any such Work, expeditiously replace and restore the Property to as near to the same condition as existed before the undertaking of such Work as is reasonably practicable under the circumstances.
7. GRANTOR shall provide to the TOWN or the VILLAGE within thirty (30) days of the date of this Agreement security for the maintenance and continuation of the Stormwater Control Measures in the form of a bond, letter of credit or escrow account.
8. If the TOWN or the VILLAGE performs any Work, then the TOWN or the VILLAGE shall be reimbursed for such Work by the GRANTOR. Unless otherwise agreed to by the TOWN or the VILLAGE, payment shall be made to the TOWN or the VILLAGE within fifteen (15) days after the TOWN or the VILLAGE gives GRANTOR written notice identifying the work performed and the costs thereof in reasonable detail; provided that if GRANTOR fails to timely make such payment, the TOWN or the VILLAGE may draw in the amount of such costs upon any letter of credit, escrow deposit or maintenance bond required to be provided to the TOWN or the VILLAGE as security for the maintenance and continuation of the Stormwater Control Measures. The TOWN and the VILLAGE shall give GRANTOR prompt written notice of any such draw. Notwithstanding the foregoing, any amounts not paid by GRANTOR which are either not covered by, or in excess of, such security may be made a lien against the Property in favor of the TOWN or the VILLAGE, as may be the case.
9. Unless otherwise provided for in this Agreement, any notice to be given pursuant to this Agreement shall be in writing and sent by prepaid certified or registered U.S. mail, Return Receipt Requested, or by a reputable overnight courier, to the address of the parties below specified or at such other address as may be given by written notice in the manner prescribed in Section 8. Any notices shall be deemed delivered when accepted or refused.

10. Grantor's address for notices shall be as follows:

Congregation Emanu-El of Westchester, 2125 Westchester Avenue East, Rye, NY
10580 (Mr. Scott Allen; Executive Director)

With a copy to:

John Meyer Consulting, PC, 120 Bedford Road, Armonk, NY (David Lombardi, PE)

And to:

Robin, Panero, Herrick, Esq., 44 Church Street (Suite 100), White Plains, NY 10601

(Paul R. Herrick Esq.)

The TOWN's and the VILLAGE'S address for notices shall be as follows:

Town and Village of Harrison
1 Heineman Place
Harrison, New York 10528
Attention: Town (or Village) Engineer
Attention: Town (or Village) Attorney

10. GRANTOR shall promptly record this Agreement at its own cost and expense in the Office of the Westchester County Clerk, Division of Land Records.

11. This Agreement, the Easement and all rights hereunder granted shall run with the land and shall be binding up on the successors, legal representatives and assigns of the respective parties and the failure of the parties to enforce any provisions contained herein shall not be deemed a waiver of the right to do so thereafter.

[Nothing further on this page]

IN WITNESS WHEREOF, this Stormwater Control Facility Easement and Maintenance Agreement has been duly executed by the parties hereto the day and year first written above.

Congregation Emanu-El of Westchester

By: 
Name: Mr. Scott Allen
Title: Executive Director

TOWN OF HARRISON

By: _____
Name: _____
Title: _____

VILLAGE OF HARRISON

By: _____
Name: _____
Title: _____

STATE OF NEW YORK

Westchester
COUNTY OF (INSERT COUNTY)) ss.:

On the 2nd day of May, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Scott R. Allen, 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 he/she acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

LISA F. GRECO
NOTARY PUBLIC, State of New York
No. 01GR6089461
Qualified in Westchester County
Commission Expires
3/24/15

[Signature]
Notary Public

STATE OF NEW YORK

COUNTY OF WESTCHESTER) ss.:

On the _____ day of _____, 2014, 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 he/she acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK

COUNTY OF WESTCHESTER

) ss.:

On the _____ day of _____, 2014, 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 he acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public