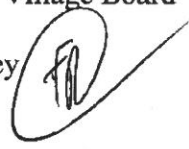


**TOWN OF HARRISON  
VILLAGE OF HARRISON  
ATTORNEY'S OFFICE**

**MEMORANDUM**

TO: Ronald Belmont, Supervisor/Mayor  
Members of the Town Board and Village Board

FROM: Frank P. Allegretti, Town Attorney 

DATE: May 24, 2018

SUBJECT: **Stormwater Control Facility Easement and Maintenance Agreement  
between Wegmans Food Markets, Inc. and Town/Village of Harrison**

Attached herewith is a copy of the Stormwater Facility Easement and Maintenance Agreement between Wegmans Food Markets, Inc. and the Town/Village of Harrison that has been signed by Wegmans Food Markets, Inc. and is being held in escrow awaiting Town Board approval. In addition, attached is a copy of a Performance Bond in the amount of \$10,000 as requested in Section 7 of the Agreement.

I have reviewed the Stormwater Facility Easement and Maintenance Agreement, deemed it to be in order, and accordingly, recommend that the Supervisor/Mayor execute the Agreement along with all other documents for filing of the Agreement with Westchester County.

FP:ap  
Attachments

**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 \_\_\_\_\_ 2018, by and between Wegmans Food Markets, Inc. (the "GRANTOR"), a New York corporation, organized and existing under the laws of the State of New York, have an address at 100 Wegmans Market Street, Rochester, New York, 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 in the TOWN of Harrison, County of Westchester and State of New York, which is known as 106 to 110 Corporate Park Drive and also known and designated on the tax assessment map of the TOWN as Block 621, Lot 11, and which is described in Exhibit "A" attached hereto (the "PROPERTY"); and

WHEREAS, on or about August 17, 2017, GRANTOR received Site Plan Approval from the Planning Board, and on or about May 15, 2018, GRANTOR received a Land Development Permit from the Building Department of the TOWN (collectively, the "APPROVALS") to permit construction of a Wegmans Supermarket and adjacent retail/restaurant on the PROPERTY; 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 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 Drawing No. C-7.1 through C-7.5 and C-8 entitled "Phasing Plans" (C-7.1 to C-7.5) and "Erosion and Sediment Control Notes and Details" (C-8), prepared by Kimley-Horn of New York, PC last revised November 15, 2017, and attached hereto as Exhibit "B" (collectively, the "Approved Plans"); and

GRANTOR, the TOWN and the VILLAGE agree that following the construction of the Stormwater Control Measures in accordance with the Approved Plans, 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 Kimley-Horn of New York PC, last revised September 2017, 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 completion of construction 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 reasonably necessary repairs 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 approval of the TOWN.
4. GRANTOR hereby grants the TOWN and the VILLAGE a perpetual nonexclusive easement (the "Easement") to enter upon such portion of the Property reasonably necessary 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. The TOWN and the VILLAGE each agree to use its best efforts not to interfere with

GRANTOR's business on the Property in connection with the exercise of the rights granted herein.

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 in the amount of \$10,000.00 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 thirty (30) 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. The TOWN and the VILLAGE shall each indemnify, defend and hold GRANTOR harmless from all liabilities, damages, claims, suits and actions arising out of the exercise by the TOWN and the VILLAGE of any of the rights herein granted or the

operations, acts, omissions or negligence of the TOWN and the VILLAGE, its employees, servants, agents, contractors, or invitees upon the Property.

10. 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.

Grantor's address for notices shall be as follows:

Wegmans Food Markets, Inc.

1500 Brooks Avenue

PO Box 30844

Rochester, New York 14603-0844

Attn: Senior Vice President, Real Estate/Development

With a copy to the attention of General Counsel at the same address

and

With a copy to:

Mr. Michael Junghans, PE, Kimley-Horn

1 N. Lexington Ave, White Plains, NY 10601

(914) 368-9189

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 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.

**WEGMANS FOOD MARKETS, INC.**

By:   
Name: Ralph A. Uttaro  
Title: Senior Vice President, Real Estate/Development

**TOWN OF HARRISON**

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

**VILLAGE OF HARRISON**

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

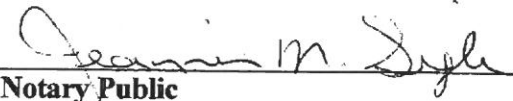
STATE OF NEW YORK

COUNTY OF MONROE

) ss.:

On the 17<sup>th</sup> day of May, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared RALPH A. UTTARO, 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.

JEANNIN M. SIGLER  
Notary Public, State of New York  
Qualified in Monroe County  
Reg. No. 01SI5058380  
Commission Expires April 22, 2022

  
\_\_\_\_\_  
Notary Public

STATE OF NEW YORK

COUNTY OF WESTCHESTER

) 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 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 \_\_\_\_\_, 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 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**



**ATTACH COMPLETED COPY OF FORM TP-584**

**NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE - COMBINED  
REAL ESTATE TRANSFER TAX RETURN, CREDIT LINE MORTGAGE  
CERTIFICATE, AND CERTIFICATION OF EXEMPTION FROM THE PAYMENT  
OF ESTIMATED PERSONAL INCOME TAX**



# AIA Document A312 TM -2010

## Performance Bond

Bond No. 837073259

### CONTRACTOR:

(Name, legal status and address)

WEGMANS FOOD MARKETS, INC.  
1500 BROOKS AVENUE  
ROCHESTER, NY 14624

### SURETY:

(Name, legal status and principal place of business)

LIBERTY MUTUAL INSURANCE COMPANY  
175 BERKELEY STREET  
BOSTON, MA 02116

### Mailing Address for Notices:

Liberty Mutual Insurance Company  
Attention Surety Claim Department  
1001 4<sup>th</sup> Avenue, Suite 1700,  
Seattle, WA 98154

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable  
AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

### OWNER:

(Name, legal status and address)

TOWN AND VILLAGE OF HARRISON  
1 HEINEMAN PLACE  
HARRISON, NY 10528

### CONSTRUCTION CONTRACT:

DATE: May 16, 2018

Amount: \$10,000.00

Description: STORMWATER CONTROL FACILITY EASEMENT AND MAINTENANCE AGREEMENT

(Name and locations)

### Bond

Date: MAY 16, 2018

(Not earlier than contract date)

Amount: \$10,000.00

Modifications to Bond:

☒ None

☐ See Section 16

### Contractor as Principal:

Company: WEGMANS FOOD MARKETS, INC.

(Corporate Seal)

Signature: 

Name and Title: STEPHEN R. VAN ARSDALE, ESQ., SENIOR  
VICE PRESIDENT, GENERAL COUNSEL & SECRETARY

### Surety:

Company: LIBERTY MUTUAL INSURANCE COMPANY

(Corporate Seal)

Signature: 

Name and Title: MATTHEW RIEDINGER, ATTORNEY-IN-FACT

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER

BROWN & BROWN OF NEW YORK  
45 East Avenue  
Rochester, NY 14604

### OWNER REPRESENTATIVE:

(Architect, Engineer or other party:)