

16. MEADOW WINDS: Developer's Agreement

DRAFT:8/7/12

DEVELOPER'S AGREEMENT

THIS AGREEMENT is made this _____ day of _____ 2012, by and between Meadow Winds One, LLC, maintaining an office at 2899 Route 9W, New Windsor, New York 12553 (hereinafter the "Developer") and the Town of Newburgh, a municipal corporation maintaining an office at 1496 Route 300, Newburgh, New York 12550 (hereinafter the "Town");

RECITALS

WHEREAS, the Developer has purchased from Orange County certain real property identified as the following Town of Newburgh Tax Map Parcel Nos.: Section 118 Block 1 Lot 66, Section 119 Block 1 Lot 1, Section 123 Block 1 Lots 1.1 through 1.16 and Section 123 Block 1 Lots 1.20 and 1.21, located in the Meadow Winds development (hereinafter the "Project"); and

WHEREAS, the Developer has commenced a "bar claim" action under Article 15 of the Real Property Actions and Proceedings Law in Orange County Supreme Court with regard to the real property it has purchased from Orange County in order to quiet title to the property (the "Bar Claim Action"); and

WHEREAS, Section 118 Block 1 Lot 66 and Section 119 Block 1 Lot 1 are "road parcels" in the Project, including sections of roadway which the Town has accepted as Town highways and sections which are proposed as Town highways but have not yet been completed to Town highway standards (the "Road Parcels"); and

WHEREAS, Section 123 Block 1 Lots 1.1 through 1.16 and Section 123 Block 1 Lot 1.21 are incomplete or un-built condominium units in the Highland Manor townhouse buildings identified as Buildings 10, 11, 12 and 13 (collectively the "Buildings") on Orleans Road, an incomplete private road on the common areas of the Highland Manor townhouses condominium in the Project; and

WHEREAS, the six (6) dwelling units composing Building 12 have been designated on the Tax Map for the Town of Newburgh as Section 123 Block 1 Lots 1.11 through 1.16, Building 11's four (4) dwelling units have been designated as Section 123 Block 1 Lots 1.7 through 1.10, Building 10's six (6) dwelling units have been designated as Section 123 Block 1 Lots 1.1 through 1.6 and Building 13 contains the dwelling unit designated as Section 123 Block 1 Lot 1.21, as well as Lot 1.20 and other completed and occupied units; and

WHEREAS, building permits have been issued by the Town for all of the Buildings and/or units and will be reissued to the Developer without additional fees; and

WHEREAS, the Town Board heretofore found and determined that the former developer of the Project, Mountain Ridge Development, LLC and its predecessor in interest, Newburgh Silver Star Development Corp. (together the "Prior Developers") had defaulted on the obligation to the Town of Newburgh to complete the proposed public improvements known as East Meadow Wind Lane and West Meadow Wind Lane in the Project, sections of which comprise portions of the Road Parcels, and which commence at the respective intersections of the two roads with NYS Route 52; and

WHEREAS, in order to guarantee that East Meadow Wind Lane, West Meadow Wind Lane and Orleans Road will be completed in accordance with Town standards and specifications, the Developer has offered to enter into this agreement which will establish a schedule for the completion of Project improvements by the Developer, the performance of work on the Buildings and the issuance of certificates of occupancy for the above dwelling units by the Town; and

WHEREAS, the Developer and the Town have therefore entered into this Agreement for the purpose of memorializing the mutual consent of the Developer and the Town to the terms and conditions herein, and to set forth the Developer and Owner's obligations; and

WHEREAS, this Agreement is an unlisted action under SEQRA, and based on the Environmental Assessment Form provided for the Agreement to the Town of Newburgh Town

Board, the Town has heretofore (1) determined that this Agreement is an Unlisted Action, and (2) conducted an uncoordinated review and adopted a SEQRA negative declaration that this Agreement will not have a significant adverse environmental impact on the environment.

TERMS

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. 1. Upon execution of this Agreement, the Developer will deliver to the Town of Newburgh Town Clerk in escrow an executed deed to those portions of the Road Parcels which are roads, the dedication of which as Town highways, the Town Board has already consented and Superintendent of Highways has already accepted dedication to the Town, including Hibbing Way, Angelina Alley, Wesley Court and Johanna Drive, Alix Drive and a section of East Meadow Wind Lane and West Meadow Wind Lane described in Schedule A annexed hereto, together with a signed Equalization and Assessment Form and signed Form TP-584. The deed shall be a Bargain and Sale Deed with Covenant against Grantor's Acts, conveying title to the sections of the Road Parcels free and clear of all exceptions, liens, encumbrances, easements, covenants and restrictions of record that would limit or adversely affect the Town's use of the property for highway and utility purposes, said title to be insurable (subject to covenants, easements and restrictions of record, if any, provided the same do not render title unmarketable) by a Title Insurance Company licensed to do business within the County of Orange, at ordinary rates. Developer shall execute and deliver such other instruments in connection with such transfer as are reasonably required by and acceptable to the Town's Attorney. The Deed shall be accompanied by a check payable to the Town of Newburgh equal to the charges to record the deed and related documents, and the estimated amount of any taxes which will be imposed on the road parcels accepted in connection with the current tax roll in effect as of the date of this Agreement. The Developer shall deliver a copy of the final judgment in the bar claim action upon its receipt and thereupon or upon such earlier date as the Town obtains a copy of the final judgment the deed and related instruments shall be released from escrow by the Town Clerk and may be recorded by the Town. The Developer shall simultaneously execute and deliver an irrevocable offer of dedication of the remaining Road Parcels sections of West Meadow Winds Lane and East Meadow Winds Lane in form acceptable to the Town's attorney and a Form TP-584.
2. In consideration for the completion of West Meadow Wind Lane in accordance with the outstanding punch list attached hereto and made a part hereof as Schedule B to the satisfaction of the Town's Superintendent of Highways and Town Engineer, the Developer will be allowed to apply for eight (8) Certificates of Occupancy for the six (6) existing

partially complete units in Building 12 and the one (1) existing partially complete units in Building 13 on Orleans Road. The written acceptance of Town Engineer and the Town Superintendent of Highways of the work must be provided to the Town Code Compliance Department prior to and as a necessary condition for the release of the Certificates of Occupancy. The Developer shall pay the fees normally chargeable by the Town for Certificates of Occupancy and all other required permits and approvals in accordance with the Town's schedule of fees.

3. In consideration for the completion of East Meadow Wind Lane in accordance with the outstanding punch list attached hereto and made a part hereof as Schedule C to the satisfaction of the Town's Superintendent of Highways and Town Engineer, the Developer will be allowed to apply for four (4) Certificates of Occupancy for the units to be constructed on the partially completed foundation for Building 11 on Orleans Road. The written acceptance of the Town Engineer and the Town Superintendent of Highways of the work must be provided to the Town Code Compliance Department prior to and as a necessary condition for the release of the Certificates of Occupancy. The Developer shall pay the fees normally chargeable by the Town for Certificates of Occupancy and all other required permits and approvals in accordance with the Town's schedule of fees.
4. In consideration for the completion of the outstanding site plan requirements for Orleans Road including but not limited to paving and landscaping, the Developer will be allowed to apply for six (6) Certificates of Occupancy for Building 12 to be newly constructed. The written acceptance of the Town Engineer and the Town Superintendent of Highways of the work must be provided to the Town Code Compliance Department prior to and as a necessary condition for the release of the Certificates of Occupancy. The Developer shall pay the fees normally chargeable by the Town for any amended approvals it may request, certification letters and reinspections for the same site in accordance with the Town's schedule of fees.
5. The Developer will supply all materials, equipment and labor to complete the work described in Schedules B and C and for the completion of the Orleans Road site plan. No materials or supplies for the work on East Meadow Wind Lane and West Meadow Wind Lane described hereunder supplied by the Developer shall be purchased by the Developer, or by any contractor or sub-contractor, subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Developer shall timely pay all real estate taxes on the Road Parcels when due.
6. The Town will provide full time observation of all work on West and East Meadow Wind Lanes and identify acceptable means and methods for the correction of hidden defects uncovered during the course of work.

7. Upon completion of the work on West Meadow Wind Lane, the Developer shall deliver to the Town of Newburgh Town Clerk in escrow a deed to the remaining West Meadow Wind Lane section of the Road Parcels to the Town, together with a signed Equalization and Assessment Form and signed Form TP-584. The deed shall be a Bargain and Sale Deed with Covenant against Grantor's Acts, conveying title to the section of the Road Parcels free and clear of all exceptions, liens, encumbrances, easements, covenants and restrictions of record, that would limit or adversely affect the Town's use of the property for highway and utility purposes, said title to be insurable (subject to covenants, easements and restrictions of record, if any, provided the same do not render title unmarketable) by a Title Insurance Company licensed to do business within the County of Orange, at ordinary rates. The Developer shall execute and deliver such other instruments in connection with such transfer as are reasonably required by and acceptable to the Town's Attorney. The deed and related documents shall be accompanied by a check payable to the Town of Newburgh equal to the charges to record the deed and related documents and the estimated amount of any unpaid taxes which will be imposed on the road parcels in connection with the current tax roll in effect as of the date of this Agreement. The Developer shall deliver a copy of the final judgment in the bar claim action upon its receipt and thereupon or upon such earlier date as the Town obtains a copy of the final judgment, the deed and related instruments shall be released from escrow and may be recorded by the Town. Delivery of the deed and related instruments to the West Meadow Wind Lane section of the Road Parcels to the Town Clerk in form acceptable to the Town's attorney will be required to be completed before any Certificates of Occupancy are issued for the dwelling units in Building 12 and Building 13.

8. Upon completion of the work on East Meadow Wind Lane, the Developer shall deliver to the Town of Newburgh Town Clerk in escrow a deed to the remaining East Meadow Wind Lane section of the Road Parcels to the Town, together with a signed Equalization and Assessment Form and signed Form TP-584. The deed shall be a Bargain and Sale Deed with Covenant against Grantor's Acts, conveying title to the section of the Road Parcels, free and clear of all exceptions, liens, encumbrances, easements, covenants and restrictions of record that would limit or adversely affect the Town's use of the property for highway and utility purposes, said title to be insurable (subject to covenants, easements and restrictions of record, if any, provided the same do not render title unmarketable) by a Title Insurance Company licensed to do business within the County of Orange, at ordinary rates. Developer shall execute and deliver such other instruments in connection with such transfer as are reasonably required by and acceptable to the Town's Attorney. The deed and related documents shall be accompanied by a check payable to the Town of Newburgh equal to the charges to record the deed and related documents and the estimated amount of any taxes which will be imposed on the road parcels in connection with the current tax roll in effect as of the date of this Agreement. The Developer shall deliver a copy of the final judgment in the bar claim action upon its receipt and thereupon or upon such earlier date as the Town obtains a copy of the final judgment, the deed and related instruments shall be released from escrow and may be recorded by the Town. Delivery of the deed and related instruments for the East Meadow Wind Lane Road Parcels

section to the Town Clerk in form acceptable to the Town's attorney will be required to be completed before any Certificates of Occupancy are issued for the dwelling units in Building 11.

9. The Developer will be allowed to finish or construct the units identified above simultaneously with the punch list work identified by the Town. Specifically, work on Building 12 and the incomplete unit in Building 13 can be undertaken concurrently with work on West Meadow Wind Lane; work on Building 11 can be undertaken concurrently with work on East Meadow Wind Lane; and work on Building 10 can be undertaken concurrently with site work on Orleans Road. The Developer shall be responsible for and shall immediately undertake the repair of any damage to East Meadow Wind Lane, West Meadow Wind Lane and any other proposed or accepted public improvements at the Project caused by its operations.
10. Issuance of any Certificates of Occupancy by the Town of Newburgh Code Compliance Department shall be dependent on the conditions stated above and compliance with NYS Building Code and the approved building plans as determined by inspections by the Town of Newburgh's Building Inspectors. The Town agrees that its Code Compliance Department will perform inspections of construction work at the Buildings in accordance with the Department's customary scheduling practices.
11. This Agreement shall be binding upon and inure to benefit of, the parties' successors and assigns.
12. This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, that may have related in any way to the subject matter hereof. Any modification or change to this Developer's Agreement or any waiver of the terms hereof must be made in writing signed by all parties.
13. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.
14. The Developer hereby agrees that its work on East Meadow Wind Lane and West Meadow Wind Lane shall be free of defect and damage for a period of one (1) year following the date of their dedication and that it shall promptly undertake the repair or replacement of any defect or damage to its work of which it receives notice during said period and any damage to the Project roadways caused by Developer's operations, excluding defect or damage due to work of the Prior Developers. The Developer shall additionally be responsible for and undertake the replacement of any landscaping it installs at Orleans Road which is damaged or fails to survive during the two (2) year period following its installation and for the repair of any

Attn: Mark C. Taylor
P.O. Box 2280
Newburgh, New York 12550

b. To the Developer: Meadow Winds One, LLC
Attn: Ray Yannone
2899 Route 9W
New Windsor, New York 12553

with copy to: Saffioti & Anderson
Attn: Joseph M. Saffioti, Esq.
5031 Route 300
Newburgh, New York 12550

20. This agreement is in addition to and not in limitation of any other rights and remedies the Town may have by virtue of any other instrument, by law or otherwise. This Agreement is executed in, and shall be construed in accordance with the laws of the State of New York.

21. This Agreement and its amendments may be executed in multiple counterparts, with each counterpart to be deemed an original, but all multiple copies together constituting one and the same instrument.

22. The invalidity or unenforceability of any provision(s) of this Agreement will not affect the validity or enforceability of any other provision(s).

23. The Town has authorized the Supervisor's execution of this Agreement by resolution at a regular meeting held on _____, 2012.

24. The parties hereto shall be deemed to have executed this Agreement upon the date and year set forth above.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first