# SANITARY SEWER ACCESS AND MAINTENANCE EASEMENT AGREEMENT

**THIS SANITARY SEWER ACCESS AND MAINTENANCE EASEMENT AGREEMENT** (this "**Agreement**") is made and entered into as of the ____ day of October, 2016, by and between SAW MILL LOFTS, LLC, a New York limited liability company with an office c/o Ginsburg Development Companies, LLC at 100 Summit Lake Drive, Valhalla, New York 10595 (the "**Grantor**"), and the VILLAGE OF HASTINGS-ON-HUDSON, a New York municipal corporation having its principal place of business at 7 Maple Avenue, Hastings-on-Hudson, New York 10706 (the "**Village**"). Grantor and the Village are sometimes referred to herein individually as a "**Party**" and, collectively, as the "**Parties**".

## RECITALS

**WHEREAS,** Grantor is the owner of the property (collectively, the "**Property**") shown and designated as "Lot 1" ("**Lot 1**") "Lot 2" ("**Lot 2**"), and "Lot 3" ("**Lot 3**" and, collectively with Lot 1 and Lot 2, the "**Lots**") and "Open Space (To Be Dedicated)" on that certain map (the "**Subdivision Map**") entitled "Subdivision Map of the Lofts at Saw Mill River" filed with the Westchester County Clerk's Office (the "**Clerk's Office**") on February 6, 2015 as Map No. 28843; and

**WHEREAS,** Grantor has heretofore and on or about October 12, 2013 received Concept Plan Approval from the Village Board of Trustees and on or about April 22, 2014 received site plan approval from the Planning Board of the Village for the construction of a residential development on the Property consisting of, among other improvements, 66 residential units in 3 buildings known as the Lofts at Saw Mill River (collectively, the "**Project**"); and

**WHEREAS**, the approvals of the Westchester County Department of Health (the "**Health Department**") and the Westchester County Department of Environmental Facilities (the "**DEF**") with respect to the Project require that the sanitary sewer mains and appurtenances connecting directly to the Westchester County Trunk Sewer, including the connections to the said County Trunk Sewer and any piping and manholes in connection therewith, shown on the Subdivision Map as "8" DIP Sanitary Main" within the "Proposed 20' Wide Sanitary Sewer Easement" on Lot 1 and 2 (collectively, the "**Connecting Sewer Mains**") be owned by and maintained by the Village; and

**WHEREAS**, the Connecting Sewer Mains must be dedicated to the Village according to Health Department requirements; and

**WHEREAS**, it is anticipated that the DEF will require that the Connecting Sewer Mains that will serve Lot 3, shown on the Subdivision Map as "8" DIP Sanitary Main" within the "Proposed 20' Wide Sanitary Sewer Easement" on Lot 3, will also need to be dedicated to the Village.

**NOW, THEREFORE,** in consideration of the sum of Ten and 00/100 Dollars ($10.00) paid by the Village to Grantor and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows

1. Grantor shall construct the Connecting Sewer Mains in accordance with the plans approved by the Village and the Health Department and DEF.

2. Upon final approval by the Village and the Health Department of the construction of the Connecting Sewer Mains, Grantor shall dedicate the Connecting Sewer Mains to the Village and the Village shall accept such dedication.

3. The Connecting Sewer Mains shall be maintained and repaired by, and at the cost of, the Village.

4. The owner of each of the Lots, or their respective successors and assigns, shall be responsible for the maintenance and repair of any sewer service lines and appurtenances that connect the building on such Lot to the Connecting Sewer Mains.

5. Grantor hereby grants the Village a perpetual nonexclusive easement (the "**Access and Maintenance Easement**") in, on, under, through and across the areas indicated on the Subdivision Map as "Proposed 20" Wide Sanitary Sewer Easement" (the "**Easement Area**") and to enter upon the driveways of the Property and such other parts of the Property as may be reasonably necessary to gain access to maintain and repair the Connection Sewer Mains.

6. Any use of the Access and Maintenance Easement by the Village shall be done at reasonable times following reasonable written notice to Grantor or its successors and assigns, except in the case of an emergency, in which event the Village shall provide such notice as may be practical, if at all, given the circumstances. Any use of the Access and Maintenance Easement also shall be done with as little inconvenience to the residents and guests of the Project as is reasonably possible.

7. Grantor shall not place any structures on top of the Easement Area.

8. The Village shall expeditiously replace and restore at its cost as best as reasonably possible any part of the Project affected by any entry upon the Property in connection herewith by or on behalf of the Village and/or the exercise of any right or performance of any obligation hereunder by or on behalf of the Village to as near the same condition as existed before such entry and the exercise of such right or performance of such obligation, except that the Village shall not be responsible for restoration of any structures, paving or landscaping (other than lawn) within the Easement Area.

9. All easements, rights and obligations set forth in this Agreement shall run with the land and bind and inure to the benefit of the respective successors, heirs, executors, administrators, personal representatives and assigns of the Parties. For

purposes hereof, the terms "Grantor" and "Village" shall include each of such Party's successors and assigns.

10. The Village, to the extent permitted by law, hereby agrees to indemnify, defend and hold harmless Grantor, its successors and assigns, any affiliate thereof and any officer, director, shareholder, member, manager, principal, employee, agent and representative of the foregoing from and against any and all claims, damages, causes of action, judgments and awards, liability, lawsuits, costs and expenses of whatsoever nature, including, without limitation, reasonable attorneys' fees, costs and disbursements (each a "**Claim**") that may arise as a result of or in relation to any entry upon the Property and/or the exercise of any rights in connection herewith or the performance of any obligation hereunder by or on behalf of the Village. The foregoing obligation to indemnify, defend and hold harmless shall not apply to any Claim to the extent caused by the negligence of Grantor or its successors and assigns, or to the extent same relates to the existence of any Structure within the Easement Area prohibited as set forth above or any paving or landscaping (other than lawn) within the Easement Area.

11. The Parties shall have the right to enforce this Agreement by any proceeding at law or in equity against any person or persons violating or attempting to violate this Agreement, to restrain any violation, to require specific performance and/or to recover damages, and to recover any legal fees incurred by the prevailing party in connection with such proceeding. Failure by either Party to enforce any provision herein contained shall not be deemed a waiver of the right to do so thereafter.

12. This Agreement may not be modified or amended unless by written instrument signed by the Parties.

13. The Access and Maintenance Easement granted herein shall be nonexclusive, and Grantor, at its sole discretion, may use or permit other parties to use the Property or any part thereof for any purpose that does not prevent the exercise of the rights granted to the Village herein.

14. All notices given or required to be given hereunder shall be in writing, and shall be deemed to be duly given only if personally delivered with written receipt, sent by registered or certified mail, return receipt requested and deposited, postage prepaid, in a post office branch or box regularly maintained, or if sent by a reputable national overnight service (for next business day delivery), addressed to either Party at its respective address specified above. Any such notice shall be sent to such other address as either Party may designate in accordance with this paragraph. Any such notice shall be deemed effective on the earlier of (a) receipt (with acknowledgment), or (b) the third business day after mailing, or (c) the next business day after delivery to such overnight service. Notwithstanding the foregoing to the contrary, any notice of change of address shall be effective only upon actual receipt.

15. This Agreement contains the entire agreement between the Parties relating to the subject matter hereof. Any oral or other written understandings,

agreements and negotiations between the Parties with respect to the subject matter hereof shall be of no force and effect.

16. No waiver by either Party of any failure or refusal by the other Party to comply with its respective obligations under this Agreement shall be valid unless in writing and signed by the Party to be charged and no such waiver shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

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

18. Grantor shall record this Agreement at its own cost and expense in the Clerk's Office.

[SIGNATURES AND ACKNOWLEDGEMENTS ON FOLLOWING PAGES]

**IN WITNESS WHEREOF,** the Parties, intending to be legally bound, have duly executed this Agreement as of the date written above.

GRANTOR:

Saw Mill Lofts, LLC
By:

_____
Name: Douglas Ramsay
Title: Authorized Signatory

VILLAGE:

Village of Hastings-on-Hudson
By:

_____
Name:
Title

STATE OF NEW YORK )
) ss.:
COUNTY OF WESTCHESTER )

On the ___ day of October in the year 2016 before me, the undersigned, personally appeared DOUGLAS RAMSAY personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

STATE OF NEW YORK )
) ss.:
COUNTY OF WESTCHESTER )

On the ___ day of October in the year 2016 before me, the undersigned, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public