

OPERATION, MAINTENANCE, AND REPORTING AGREEMENT

THIS AGREEMENT is effective this ____ day of _____, 2018, by and between the TOWN OF DRYDEN, a municipal corporation with offices at 93 East Main Street, Dryden, New York 143053 (the "Town"), and IVY RIDGE HOLDINGS LLC D/B/A MODERN LIVING RENTALS, A New York limited liability company, with offices at 200 E. Buffalo Street, Ithaca, New York 14850 (the "Owner").

WITNESSETH:

WHEREAS, the Owner received final site plan approval for Modern Living Rentals Town Homes (the "Approval") from the Town's Planning Board by resolution number 28 (2017) on tax parcels N/F 56.-2-5 & 56.-2-6 at (802, 804, 810 & 812 Dryden Road) in the Town of Dryden, Tompkins County, New York; and

WHEREAS, such Approval was granted conditionally upon the construction, maintenance and implementation of approved stormwater facilities and/or other stormwater management practices, submission of stormwater inspection reports, and an agreement with the Town regarding the same;

NOW, THEREFORE, in consideration of the granting of the Approval and in furtherance of the public purposes of providing adequate stormwater retention and maintenance, the parties agree as follows:

1. Construction of Facilities and Implementation of Practices.

(a) The Owner agrees to construct all of the stormwater management facilities, erosion and sedimentation control facilities and storm drainage facilities (collectively referred to as the "Facilities") shown on the final plans which are part of the Approval, copies of which are on file in the Town of Dryden offices. Without limiting the foregoing, the Owner agrees to construct, at its expense:

(i) The Bio-Retention Areas and Detention Pond, which shall be located substantially as shown on the Grading, Drainage & Erosion Control Plans (referred to in this Agreement as the "Drawings"); and

(ii) All other Facilities, including pipes, mains, drains, outlet and inlet structures, manholes, and all other drainage-related facilities and structures, whether above or below grade, which shall be located substantially as shown on the Drawings; and

(iii) Such future Facilities as may be required to be constructed by applicable laws, rules, or regulations.

(b) The Owner further agrees to implement, at its expense, all approved stormwater management practices ("Practices"), in addition to the Facilities, that are required as part of the Approval, and such future Practices as may be required by applicable laws, rules, or regulations.

(c) All of the Facilities and Practices in subparagraphs (a) and (b) above shall be constructed and implemented as shown on the Drawings, in accordance with good engineering practice and applicable New York State standards and specifications, and to the reasonable satisfaction of the Town Engineer.

2. Inspection, Maintenance and Repair of Facilities and Practices. The Owner agrees for itself, its legal representatives, successors and assigns and any other persons or entities who obtain title to or an interest in any portion of the properties on which any of the Facilities or Practices are located, such agreement being expressly intended to run with the land and be binding forever, to operate, maintain and repair the Facilities and Practices to insure that they continue to function for their intended purpose and as designed. In furtherance of such obligation, and without limiting the obligations set forth in the preceding sentence, the Owner agrees to follow the maintenance plan for regular and recurring inspections and maintenance of the Facilities and Practices which is part of the Approval and is set forth in the approved Site Development Plans as well as the Stormwater Pollution Prevention Plan, prepared by Marathon Engineering (Adam M. Fishel, PE, CPESC). In addition, the Owner shall perform such other inspections, maintenance and repair as may be reasonably required by the Town Engineer in order to assure the continued operation of the Facilities and Practices as intended and designed. The Owner, at its own expense, shall perform all of the foregoing inspections, maintenance and repair and any other inspections, maintenance and repair reasonably necessary to keep all Facilities and Practices functioning in a good and workmanlike manner.

3. Town Inspections, Repair and other Activities. The Owner shall grant to the Town the permanent easement and right-of-way which is attached to this Agreement as Exhibit A. The Owner agrees the Town may enter upon the property described in Exhibit A or any portion thereof for the purposes of observing and inspecting the Facilities and Practices at any time and from time to time as may be deemed appropriate, necessary or desirable by the Town, the Town Engineer, or other officers or employees of the Town, and to make repairs to and undertake other actions regarding the Facilities and Practices as set forth below. If maintenance deficiencies are found as a result of such inspections, the Town Engineer will notify the Owner in writing, and the Owner shall cause needed repairs to be made and/or needed maintenance performed within the number of days set forth in such notice. If the Owner fails to complete the repairs and/or maintenance to the satisfaction of the Town Engineer within the required period, the Town reserves the right (but does not have the obligation) to have the repairs made and/or maintenance performed and will charge the Owner for the cost of such repairs and maintenance. The Owner agrees to pay for such repairs and maintenance within 10 days after demand for same. Notwithstanding the foregoing, if an emergency exists requiring immediate action, the Owner hereby authorizes the Town, its officers, agents, contractors and employees, to enter upon the property and effect emergency repairs to and perform emergency maintenance on, and/or to alter, remove, replace, or change the size of, any portion of the Facilities or Practices in the event of a threat to the safety of the Facilities, Practices or properties adjacent to or downstream of any portion of the Facilities or Practices, with the cost of such activities to be reimbursed by the Owner to the Town within 10 days of demand for same. When any portion of any Facility or Practice is located off-site or on the property of a third party, the Owner, at its sole cost and expense, shall obtain easements and rights-of-way thereto acceptable to the Town.

4. Contest of Bills. In the event the Town makes repairs or undertakes emergency activities as described in paragraph 3 above and issues a demand for reimbursement, and the Owner disputes either the need for the repairs/activities or the cost of the repairs/activities, the Owner, in lieu of paying the amount demanded shall, within 10 days of receipt of the demand, deliver to the Town Clerk at the Town offices a Notice of Contest stating that the need for the repairs/activities, or cost, or both, is in dispute and concisely stating the basis for the dispute. Failure to serve such a Notice of Contest shall be deemed a waiver of any claim or defense that the amount demanded is not justified. If the Notice of Contest is timely filed, the Town shall, within forty-five days of the filing, arrange for a hearing before the Town Board which, based upon any relevant materials presented by the Town Engineer and the Owner, shall issue a resolution determining the dispute within 10 days after the hearing. Such resolution shall be filed with the Town Clerk, who shall arrange for delivery of a copy of the resolution to the Owner, within five days after such filing, at the address for such Owner set forth at the outset of this Agreement or at such other address as the Owner may designate in writing to the Town Clerk and Town Engineer. If the Owner disagrees with the resolution, it may bring a proceeding pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York, provided such proceeding is commenced within 30 days of the filing with the Town Clerk of the decision of the Town Board. The Owner agrees to the shortened statute of limitations of 30 days within which it must assert its claims in any Article 78 proceeding. Failure to timely institute such a proceeding shall be deemed an agreement with the decision of the Board.

5. Addition to Taxes. In the event the Town makes repairs or undertakes emergency activities as described in paragraph 3 above and the Owner fails to reimburse the Town for the cost of said repairs/activities within 10 days after the demand for same, or, if contested by the proceedings set forth above, fails to so reimburse within 30 days of the filing of the final decision on the contest determining the amount due to the Town, then such unpaid costs, expenses and interest at the per annum rate of 9% incurred from the date of repair/activity shall constitute a lien upon the land on which the Facilities or Practices are located. The Town may bring a legal action or proceeding to collect such costs, expenses, interest, and recoverable attorney's fees, or to foreclose such lien. As an alternative to the maintenance of any such action, the Town may file a certificate with the Tompkins County Department of Assessment stating the costs and expenses incurred and interest accruing as aforesaid, together with a statement identifying the property and Owner so that the Tompkins County Department of Assessment shall in the preparation of the next assessment roll assess such unpaid costs, expenses and interest upon such property. Such amount shall be included as a special ad valorem levy (administered as a move tax) against such property, shall constitute a lien, and shall be collected and enforced in the same manner, by the same proceedings, at the same time, and under the same penalties as are provided by law for collection and enforcement of real property taxes in the Town of Dryden. The Owner agrees that the assessment of such costs, expenses and interest shall be effective even if the property would otherwise be exempt from real estate taxation. In any action or proceeding brought hereunder, the prevailing party shall be entitled to recovery from the other party of its reasonable costs in prosecuting or defending any action, including reasonable attorneys' fees. The prevailing party shall be determined by the court determining the matter. "Prevailing party" shall mean a party which is awarded all or substantially all of the relief demanded by such party.

6. Inspection Reports. The Owner shall submit an annual stormwater inspection report to the Town Stormwater Management Officer on or before the first day of October of each year,

with the first report being submitted the first October following the issuance of the Building Permit. Notwithstanding the foregoing, Owner shall submit stormwater inspection reports on a more frequent basis or on a different timetable where required by the Approval or by law, rule or regulation. Such reports shall, at a minimum, include the location of the property, Owner's contact information, a summary of completed inspections and results of such inspections, and a summary of any maintenance activities or corrective actions undertaken. Reports shall be signed by the Owner or other legally responsible party, and shall attest to the accuracy of the information provided in the report. Failure to submit the reports, or the submission of inaccurate reports, shall constitute a condition of non-compliance with the Site Plan Approval and be subject to enforcement as outlined below.

7. Alterations and Discontinuation of Facilities and Practices. The Owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the Facilities or Practices except in accordance with written approval of the Town and pursuant to any applicable requirements for modification of site plan approvals.

8. Additional Requirements. The Owner shall comply with all Town of Dryden stormwater operation, maintenance or reporting local laws, ordinances and regulations as they now exist or are hereafter added or amended. The parties agree to amend this Agreement as necessary to incorporate the requirements of any new or amended laws, ordinances or regulations.

9. Recording. This Agreement shall be recorded in the office of the Tompkins County Clerk and when recorded shall be referenced to the deeds for tax parcels N/F 56.-2-5 and 56.-2-6. The costs of recording and referencing to affected deeds and parcels of land shall be the responsibility of the Owner.

10. Binding Effect and Enforcement.

(a) The Owner, its legal representatives, successors and assigns, and any other persons or entities who obtain title to or an interest in any portion of the properties on which any of the Facilities or Practices are located shall be bound by the terms of this Agreement. The Owner shall execute whatever documents are necessary to make this Agreement binding on any persons or entities who obtain title to, or an interest in, any portion of the properties on which any of the Facilities or Practices are located.

(b) Failure to comply with any of the requirements of this Agreement shall, without limiting the remedies otherwise available to the Town, constitute a condition of non-compliance with the Site Plan Approval, shall be deemed a violation of the Town's Zoning or Subdivision Law, and shall be subject to enforcement as outlined in Section 1800-1804 of the Town of Dryden Law and/or Article XV of the Town Subdivision Law.

11. Representation as to Authority. Each of the persons executing this Agreement on behalf of the parties represents that he or she has full authority to execute the same on behalf of his or her party, and that by his or her execution, the party for which he or she is executing this Agreement is fully bound by its terms.

12. Limitation upon Town Liability and Indemnity. The Town shall not be liable or responsible for any injury to persons or damage to property due to the Town's actions, or failures to act, under or pursuant to this Agreement, unless it is proven to a reasonable degree of certainty that such injury or damage was caused by a reckless or intentional wrongful act of the Town or, where the Owner is not in breach of this Agreement and no emergency situation exists, by the Town's negligence. The Owner agrees to indemnify and hold harmless the Town and its elected officials, employees, agents, subcontractors and consultants for all damages, losses and claims that arise out of the Owner's and/or Town's actions or failures to act under or pursuant to this Agreement, except this indemnification shall not extend to the proportion of damages, losses and claims caused by a reckless or intentional wrongful act of the Town or, where Owner is not in breach of this Agreement and no emergency situation exists, by the Town's negligence. Such indemnity shall include the costs of defending any action, including reasonable attorney fees, expert fees, and other litigation costs.

13. Waivers. Where the Town Board finds that, due to the special circumstances of a particular case, a waiver of certain requirements in this Agreement is justified, a waiver may be granted. In all cases, no waiver shall be granted unless the Town Board finds and records in its minutes that: (1) granting the waiver would be in keeping with the intent and spirit of this Agreement, and is in the best interests of the community; (2) there is no adverse effect upon the character, appearance, or welfare of the neighborhood and any watercourses, watersheds, or surface waters; (3) there are special circumstances involved in the particular case; (4) denying the waiver would result in undue hardship, provided that such hardship has not been self-imposed; and (5) the waiver is the minimum necessary degree of variation from the requirements of this Agreement.

14. Assignment. The Town may assign this Agreement and any of its rights, duties and obligations to any successor entity or governmental institution, or to any one or more drainage or other districts hereafter created by the Town.

15. Severability. In the event that any portion of this Agreement is declared invalid by a court of competent jurisdiction, the validity of the remaining portions shall not be affected by such declaration of invalidity.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE TO FOLLOW.]

[SIGNATURE PAGE TO OPERATION, MAINTENANCE, AND REPORTING AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first above written.

TOWN OF DRYDEN

Date

By: _____
Jason Leifer, Supervisor

IVY RIDGE HOLDINGS LLC

Date

By: _____
Charlie O'Connor, Member

[ACKNOWLEDGEMENT PAGE TO OPERATION, MAINTENANCE, AND REPORTING AGREEMENT]

STATE OF NEW YORK :
COUNTY OF TOMPKINS : ss.:

On the _____ day of _____ in the year 2018 before me, the undersigned, personally appeared Jason Leifer 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 :
COUNTY OF TOMPKINS : ss.:

On the _____ day of _____ in the year 2018 before me, the undersigned, personally appeared Charlie O'Connor 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