

## **TEMPORARY CONSTRUCTION AND GRADING EASEMENT**

**THIS TEMPORARY CONSTRUCTION AND GRADING EASEMENT** is made and entered into as of the 3rd day of June, 2022 (the “Effective Date”) by and between **BAYSIDE CONSTRUCTION, LLC**, a New York limited liability company having an address of 1451 47th Street, Brooklyn, NY 11219 (the “Grantor”) and **BAYSIDE MARLBORO LLC**, a New York limited liability company, having a mailing address of c/o AE Baxter LLC, 278 Mill Street, Poughkeepsie, New York 12601 (the “Grantee”).

### **RECITALS:**

**WHEREAS**, Grantor is the owner of the real property located in the Town of Marlborough, County of Ulster, State of New York known on the tax maps as SBL: 109.1-4-29.2 and SBL: 109.1-4-29.3 (the “Grantor’s Property”);

**WHEREAS**, Grantee is the fee owner of the real property located in the Town of Marlborough, County of Ulster, State of New York located at SBL: 109.1-4-29.1 and SBL: 109.1-4-29.4 (the “Grantee’s Property”) having acquired same from Grantor on June 3, 2022;

**WHEREAS**, the Grantor obtained a unified site plan approval for both the Grantor’s Property and the Grantee’s Property (collectively the “Properties”) for commercial and residential development, as set forth in the Site Plan prepared by Maser Consulting, P.A., dated September 22, 2017 (the “Site Plan”), and approved and adopted by the Town of Marlborough, on May 7, 2018, a copy of the Site Plan is incorporated herein by reference;

**WHEREAS**, the Site Plan assumed the development of both the Properties simultaneously and therefore did not require that the Properties exchange construction, grading and permanent easements that are necessary for the construction and continued operation of each respective Property. However, the Grantee intends to complete the development on the Grantee’s Property prior to the Grantor’s development of the Grantor’s Property;

**WHEREAS**, in order for the Grantee to finalize the Site Plan and obtain any and all necessary approvals and Certificates of Occupancy from the municipality, , the Grantor and Grantee will need to undertake certain construction and grading on Grantor’s Property and utilize Grantor’s Property for staging of its work. The parties agree that the Grantee shall have access to the Grantor’s Property to complete the necessary site work, grading, installation of the stormwater management facilities, installation of utilities and a roadway on the Grantee’s Property, and for the construction staging necessary to complete the work as set forth on the Site Plan; and

**WHEREAS**, in order to facilitate Grantee’s construction, Grantor hereby grants to the Grantee a temporary, nonexclusive easement on and over Grantee’s Property.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Grantor, for themselves and for their successors and assigns, hereby grants and conveys, and Grantee for itself and its successors and assigns hereby accepts, a temporary, non-exclusive easement over, in, along, across, through and upon the Grantor's Property solely for the use and access of the Grantee to perform the construction staging, site grading, excavating, stabilizing, and installation of stormwater management facilities and utilities, all in accordance with the Site Plan, including the right of access and right to maintain existing slopes and grade or regrade, remove vegetation and brush, reseed, revegetate, or employ any other such stabilization and protection methods as may be required to effectuate the intent and purpose of the Site Plan and to maintain, repair, reconstruct, replace and inspect the same as the Grantee, and/or its successors, may deem necessary or desirable consistent with the approved Site Plan.

2. The Temporary Construction and Grading Easement shall last for a term commencing on the Effective Date and expiring upon the date that Grantee's construction is completed, and a final Certificate of Occupancy is issued by the municipality, or three (3) years from the date hereof, whichever shall occur first. Upon the expiration of the term of the Temporary Construction and Grading Easement, all of the rights and benefits of Grantee in, to and under this agreement with respect to the Temporary Construction and Grading Easement shall automatically terminate and be of no further force and effect, except that there shall continue to be an easement for the benefit of the Grantee to maintain the means of access, grading and utilities for the continued operation of the Grantee's Property, which is a right but not an obligation of the Grantee.

3. The Grantee shall not remove any improvements or trees taller than twelve (12) feet on the Grantor's Property, as of the Effective Date, without prior approval of the Grantor, unless such is required by the Site Plan.

4. All right, title and interest in and to the Grantor's Property granted under this Agreement which may be used and enjoyed without interfering with the rights conveyed to Grantee under this Agreement are reserved to Grantor. The parties to this Agreement acknowledge and agree that the easement conferred by this Agreement is intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors and assigns. This Agreement may be recorded in the Office of the Ulster County Clerk.

5. Grantee shall maintain customary commercial liability insurance, naming the Grantor as an additional insured cover the Grantor's Property. Grantee shall indemnify, defend, save and hold harmless the Grantor, its successors, assigns, officers, agents and members, from any and all liability, loss or damage, that Grantor, its successors, assigns, officers, agents and members, may suffer as a result of any and all actions, claims, damages, costs and expenses on account of, or in any way arising (excluding gross negligence or willful misconduct of the Grantor) out of or from the use by or on behalf of the Grantee or its guests, invitees, employees or agents of the Easement Area, including but not limited to indemnification from any and all losses, claims, actions or judgments for damages or injuries to person or property arising out of or from the use of the aforesaid Easement Area by or on behalf of the Grantee, its contracts, guests, invitees, employees or agents. This indemnity shall survive the termination of this Agreement.

6. Each individual signing on behalf of a party to this Agreement states that he or she is the duly authorized representative of the signing party and that his or her signature on this Agreement has been duly authorized by, and creates the binding and enforceable obligation of, the party on whose behalf the representative is signing.

7. Any notice permitted or required by this Agreement shall be deemed received, if delivered, when actually received, or, if mailed, on the third day after mailing by registered or certified mail, postage prepaid, to the party's address set forth below their respective signatures to this Agreement, or to such other address designated in writing to the other parties.

8. Each of the signatories to this Agreement agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intent purpose of this agreement.

9. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable the remainder of this Declaration shall not be affected thereby and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

10. The Agreement shall be governed by the laws of the State of New York.

11. The recitals set forth above are hereby incorporated by this reference.

*[Remainder of Page Intentionally Blank, Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Grantor:  
BAYSIDE CONSTRUCTION, LLC

By: \_\_\_\_\_  
Asher Sussman, Member

STATE OF NEW YORK      )  
                                  )ss:  
COUNTY OF \_\_\_\_\_      )

Grantee:  
BAYSIDE MARLBORO LLC

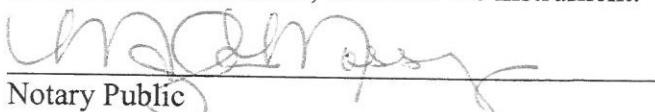
By:   
Name: Eric Baxter  
Title: manager

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2022, before me, the undersigned, a Notary Public in and for the State, personally appeared, Asher Sussman personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacities, and that by his/her/their signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

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

STATE OF NEW YORK      )  
                                  )ss:  
COUNTY OF Dutchess )

On the 3<sup>rd</sup> day of June in the year 2022, before me, the undersigned, a Notary Public in and for the State, personally appeared, Eric Baxter personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacities, and that by his/her/their signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

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

MEGHAN BETH MOSSEY  
Notary Public, State of New York  
No. 02MO6237281  
Qualified in Dutchess County  
Commission Expires March 21, 2023

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Grantor:

BAYSIDE CONSTRUCTION, LLC

By: asher

Asher Sussman, Member

STATE OF NEW YORK )  
 )  
COUNTY OF Kings )  
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).ss:  
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Grantee:

BAYSIDE MARLBORO LLC

By: asher

Name: ASHER SUSSMAN

Title: Member

AF

On the 31 day of May in the year 2022, before me, the undersigned, a Notary Public in and for the State, personally appeared, Asher Sussman personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacities, and that by his/her/their signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

ABR  
Notary Public

ABRAHAM GOLDBERGER  
Notary Public, State of New York  
No. 01GO6276100  
Qualified in Kings County  
Commission Expires 02/11/2025

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

On the 31 day of May in the year 2022, before me, the undersigned, a Notary Public in and for the State, personally appeared, Asher Sussman personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacities, and that by his/her/their signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

ABR  
Notary Public

ABRAHAM GOLDBERGER  
Notary Public, State of New York  
No. 01GO6276100  
Qualified in Kings County  
Commission Expires 02/11/2025

[Signature Page to Temporary Construction Easement] Qualified in Kings County  
Commission Expires 02/11/2025

## FURTHER ASSURANCES AGREEMENT

THIS AGREEMENT MADE this 3<sup>rd</sup> day of June, 2022, by and between

BAYSIDE CONSTRUCTION, LLC, a New York limited liability company, with a mailing address of 1451 47<sup>th</sup> Street, Brooklyn, New York 11219 (“Seller”) and

BAYSIDE MARLBORO LLC, a New York limited liability company, having a mailing address of c/o AE Baxter LLC, 278 Mill Street, Poughkeepsie, New York 12601 (“Purchaser”). Seller and Purchaser collectively referred to herein as the “Parties”.

WHEREAS, Seller is the owner of a four contiguous parcel of real property located in the Town of Marlboro, County of Ulster, State of New York, located at SBL: 109.1-4-29.1, 109.1-4-29.2, 109.1-4-29.3, and 109.1-4-29.4, (collectively, the “Property”); and

WHEREAS, the Property is the subject of an approved multi-use development project, as set forth on the Site Plan prepared by Maser Consulting, P.A., dated September 22, 2017, and accepted and approved by a resolution by the Town of Marlborough Planning Board, on May 7, 2018, which contemplates (1) the development of 104 residential apartments on the Lot 29.1; (2) the construction of a road with common utilities on or about the Lot 29.4; the (3) commercial development on Lot 29.2; and (4) ancillary construction and grading on Lot 29.3 (hereinafter the “Site Plan”). A copy of the Site Plan, dated September 22, 2017, is incorporated herein by reference; and

WHEREAS, simultaneously with the execution of this Agreement, Purchaser shall take title to two of the parcels of the Property, specifically, SBL: 109.1-4-29.1 and 109.1-4-29.4 (“Purchaser’s Property”); and

WHEREAS, the Seller shall retain title to the two remaining parcels, specifically, Lots 29.2 and 29.3 (“Seller’s Property”); and

WHEREAS, the municipality requires certain performance bonds to be posted by the Parties for the work to be completed on their respective post-closing parcels as a requirement of Site Plan Approval (the “Bonds”); and

WHEREAS, the Bonds are currently posted by the Seller’s insurance company in the name of the Seller, and Seller agrees to pay the current cost of renewing the Bonds; and

WHEREAS, it is the intention of the Parties to request that the Town of Marlborough Planning Board bifurcate the Bonds so that there is a separate bond for the Seller’s Property and that of the Purchaser’s Property; and

WHEREAS, the Purchaser shall have the option to substitute the Bonds at any time prior, or subsequent, to the bifurcation of the Bonds and in such event any reimbursement that would be due for termination of the current Bonds, such shall be remitted to the Purchaser; and

THEREFORE, in consideration of good and valuable consideration, receipt for which is herein acknowledged, the Parties hereto agree as follows:

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1. The Seller agrees to pay for all costs to extend the current Bonds. The Parties agree that they will cooperate in requesting that the Town of Marlborough Planning Board bifurcate the Bonds so that there will be separate bond covering the Seller’s Property and that of the Purchaser’s Property, with each party being responsible for the payment of their own bond.

2. The Seller hereby assigns any and all reimbursement that it may receive or is entitled to, as a result of the termination of the existing Bonds, whether the replacement occur prior to, or subsequent to, the bifurcation of the Bonds and will execute any documents as may be necessary for the Seller's insurance company to accept such assignment and pay to the Purchaser any such reimbursement.

3. Each party shall be responsible for their own fees and costs associated with its obligations hereunder.

4. The recitals set forth above are hereby incorporated by this reference. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

*[The remainder of this page is intentionally blank. Signature Page to Follow.]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BAYSIDE CONSTRUCTION, LLC  
LLC

By: \_\_\_\_\_  
Asher Sussman, Member

BAYSIDE MARLBORO

By:   
Name: Eric Baxter  
Title: Manager

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BAYSIDE CONSTRUCTION, LLC

By:   
Asher Sussman, Member

BAYSIDE MARLBORO LLC

By:   
Name:   
Title:  

*[Signature Page to Further Assurances Agreement]*

## RECIPROCAL EASEMENT AGREEMENT

THIS AGREEMENT MADE this 3<sup>rd</sup> day of June, 2022, by and between BAYSIDE CONSTRUCTION, LLC, a New York limited liability company, with a mailing address of 1451 47<sup>th</sup> Street, Brooklyn, New York 11219 (“BC”) and BAYSIDE MARLBORO LLC, a New York limited liability company, having a mailing address of c/o AE Baxter LLC, 278 Mill Street, Poughkeepsie, New York 12601 (“BM”). BC and BM collectively referred to herein as the “Parties”.

WHEREAS, BC is the owner of four contiguous parcels of real property located in the Town of Marlboro, County of Ulster, State of New York, located at SBL: 109.1-4-29.1, 109.1-4-29.2, 109.1-4-29.3, and 109.1-4-29.4, (collectively, the “Property”); and

WHEREAS, the Property is the subject of an approved multi-use development project, as set forth on the Site Plan prepared by Maser Consulting, P.A., dated September 22, 2017, and accepted and approved by a resolution by the Town of Marlborough Planning Board, on May 7, 2018, which contemplates (1) the development of 104 residential apartments on the Lot 29.1; (2) the construction of a road with common utilities on or about the Lot 29.4; the (3) commercial development on Lot 29.2; and (4) ancillary construction and grading on Lot 29.3 (hereinafter the “Site Plan”). A copy of the Site Plan, dated September 22, 2017, is incorporated herein by reference; and

WHEREAS, simultaneously with the execution of this Agreement, BM shall take title to two of the parcels of the Property, specifically, SBL: 109.1-4-29.1 and 109.1-4-29.4 (“BM’s Property”); and

WHEREAS, BC shall retain title to the two remaining parcels, specifically, Lots 29.2 and 29.3 (“BC’s Property”); and

WHEREAS, BM shall cause certain work to be performed on BC's Property, as more fully set forth in the Temporary Construction and Grading Easement, dated June 3, 2022, which requires its access to same; and

WHEREAS, the parties acknowledge that certain temporary and permanent access, drainage, and utility easements are contemplated by the Site Plan and are integral to the use and the operation of each of the Parties respective Property's; and

WHEREAS, the exact identification and location of said easements cannot be determined at this juncture; and

WHEREAS, it is further contemplated by the Parties, that it may be necessary to give and/or accept easements from the municipality or other controlling government entity to complete the Site Plan; and

THEREFORE, in consideration of good and valuable consideration, receipt for which is herein acknowledged, the Parties hereto agree as follows:

1. The Parties for themselves, and their successors and assigns, hereby grant and convey and each party for itself and successors and assigns hereby accept, any and all easements for access, drainage, utilities and any other and further easements that are commercially reasonable and/or necessary for the use and operation of each Party's Property, as more fully set forth on the Site Plan, including but not limited to an access easement from BC's Property to any future town road. Any easement granted on BC's Property relating to any improvement required by BM, including but not limited to any retention ponds/storm water management control shall provide that the cost to maintain the same shall be borne by BM. If and when the BC Property receives a temporary certificate of occupancy from the municipality, the maintenance costs with the retention

pond shall be split, with BC contributing ten (10%) percent and BM contributing ninety (90%) percent.

2. The Parties further agree to cooperate, using commercially reasonable efforts, with each other in the identification and location of each and every such easement when practicable and to execute and deliver to each other any such easements as may be necessary to effectuate the purpose and intent of this agreement. Such easements shall provide for customary insurance and indemnification provisions.

3. In the event it is necessary to give or accept any easements from the local municipality, or any other governmental entity, in order to obtain any approvals or Certificates of Occupancy, or for any future dedication of the proposed town road on Lot 29.4, then each of the Parties agrees to cooperate, using commercially reasonable efforts, with any such dedication.

4. The Parties agree that neither party shall be liable to the other for any fees associated with the dedication or acceptance of any aforementioned easement, and they shall each be responsible for their own attorney's fees and costs associated with the same. The Party benefiting from any contemplated easement shall have the easement prepared and shall pay all filing fees associated with the same. In the event the municipality or any other government entity is benefiting from the easement, the Party declaring the easement shall be responsible for all fees and costs associated with the preparation and filing of such easement.

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5. The recitals set forth above are hereby incorporated by this reference.

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

*[The remainder of this page is intentionally blank. Signature Page to Follow.]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BAYSIDE CONSTRUCTION, LLC

By: Asher Sussman  
Asher Sussman, Member

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

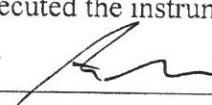
~~BAYSIDE MARLBORO LLC~~

By: Asher Sussman  
Name: Asher Sussman  
Title: Member

(ACF)

On the 31 day of May in the year 2022, before me, the undersigned, a Notary Public in and for the State, personally appeared, Asher Sussman personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacities, and that by his/her/their signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

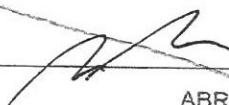
Notary Public

  
ABRAHAM GOLDBERGER  
Notary Public, State of New York  
No. 01GO6276100  
Qualified in Kings County  
Commission Expires 02/11/2025

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

On the 31 day of May in the year 2022, before me, the undersigned, a Notary Public in and for the State, personally appeared, Asher Sussman personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacities, and that by his/her/their signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

  
ABRAHAM GOLDBERGER  
Notary Public, State of New York  
No. 01GO6276100  
Qualified in Kings County  
Commission Expires 02/11/2025

[Signature Page to Reciprocal Easement]

(ACF)

**IN WITNESS WHEREOF**, this Agreement has been executed by the parties hereto and is effective as of the day and year first above written.

Bayside Construction, LLC, BC

By: \_\_\_\_\_  
Asher Sussman, Member

Bayside Marlboro, LLC

By: \_\_\_\_\_  
Eric Baxter, Authorized Signatory

ACKNOWLEDGMENT

STATE OF NEW YORK

ss.:  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2022 before me, the undersigned a Notary Public in and for said State, personally appeared ASHER SUSSMAN, 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 acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

STATE OF NEW YORK

ss.:  
COUNTY OF DUTCHESS

On 6/3, 2022 before me, the undersigned a Notary Public in and for said State, personally appeared ERIC BAXTER 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 acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

MEGHAN BETH MOSSEY  
Notary Public, State of New York  
No. 02MO6237281  
Qualified in Dutchess County  
Commission Expires March 21, 20\_\_\_\_