

## ENVIRONMENTAL IMPACT MITIGATION AGREEMENT (Water System)

**THIS AGREEMENT**, dated the 22<sup>nd</sup> day of December, 2020, is entered into by and between the **VILLAGE OF VICTORY**, a New York municipal corporation having offices and principal place of business at 23 Pine Street, Victory Mills, New York 12884 (the "Village"), the **PLANNING BOARD OF THE VILLAGE OF VICTORY**, a municipal board organized and existing under the laws of the State of New York, having offices and principal place of business at 23 Pine Street, Victory Mills, New York 12884 (the "Planning Board"), **REGAN DEVELOPMENT CORP.**, a New York Corporation having offices at 1055 Saw Mill Parkway, Ardsley, New York 10502 ("RDC"), **RIVERVIEW REALTY LLC**, a New York Limited Liability Company having offices and place of business at 90 State Street, Suite 700, Albany, New York 12207 ("Riverview") and **VICTORY MILLS LLC**, a New York limited liability company having offices and place of business at 1055 Saw Mill River Road, Suite 204, Ardsley, New York 10502 (the "Company").

### R E C I T A L S:

- A. Riverview (the "Owner") owns improved real property in the Village of Victory, Saratoga County, New York which is located at, and commonly known as, 42 Gates Avenue (the "Property").
- B. The Company desires to acquire the Property from Riverview and complete a renovation and adaptive reuse of the Property by converting an abandoned industrial building on the Property into 186 residential housing units plus commercial space (the "Project"); and has made an application, through its agent, RDC (the "Applicant" or "Developer"), to the Planning Board for site plan approval of the Project (the "Application").
- C. The Planning Board has been designated as Lead Agency for this Project, pursuant to the provisions of the New York State Environmental Quality Review Act ("SEQRA"), and has declared the Project to be a Type I action under SEQRA.
- D. The Developer has submitted a proposed site plan to the Planning Board for its review (the "Site Plan").
- E. The Site Plan depicts a four-story structure on the Property (the "Project Building") which the Developer proposes to renovate into residential housing units and commercial space.
- F. The Planning Board, in consultation with its consulting engineers, Longtin Engineering, PLLC (the "Consulting Engineers"), has determined that the water consumption demands the Project will place upon the Schuylerville/Victory Joint Water System (the "Water System") that services the Property may negatively impact the operational integrity of the Water System through (i) decreased water flow pressure to other properties now or hereafter connected to the Water System;

and (ii) increased risk of failure of an 8" water main along Pond Street and a 6" water main along Gates Avenue (the "Water System Impacts").

- G. The Developer has acknowledged, in presentations made to the Planning Board in support of the Application, that the Water System could be negatively impacted by the water consumption demands the Project will create and has stated its willingness to voluntarily implement mitigation of the Water System Impacts in the form of a "sum certain payment" to be used, in the discretion of the Village, to offset capital costs, capital repairs or improvements and/or debt service for capital improvements or repairs to the Water System (the "Proposed Mitigation").
- H. The Planning Board, in consultation with its Engineering Consultants and Village Attorney, has determined that the Proposed Mitigation is a suitable and appropriate method of mitigating and addressing the potential negative environmental impacts of the Project related to the Water System.
- I. The Parties enter into this Agreement to memorialize the agreement between them concerning the mitigation of the Water System Impacts.
- J. For clarity, this Agreement provides no guaranty, right or entitlement of any kind that the Planning Board or the Village (including any of its administrative agencies or other instrumentalities) will grant any or all required permits, certifications, consents, authorizations or other approvals of any kind that may be required for the Project (the "Village Approvals"). Any required Village Approvals shall be an entirely separate matter to be considered by the relevant authorities in full compliance with applicable laws and regulations. However, if the Project proceeds, it is the purpose of this Agreement to commit the Parties to and thereby assure implementation of the Water System mitigation framework memorialized in this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises, covenants, undertakings and agreements set forth herein, and other good and lawful consideration, the parties mutually agree as follows:

- 1. The Recitals set forth at the beginning of this Agreement are incorporated herein, and the parties hereto represent that they are true, accurate and correct.
- 2. Company and Developer jointly and severally covenant to the Planning Board and the Village that:
  - (a) Company shall make a voluntary mitigation payment to the Village in the sum of \$60,000.00 (the "Water System Mitigation Payment") to be utilized in the Village's discretion to offset capital costs, capital improvements and/or debt service for one or more capital repairs or improvements related to the Water System;



- (b) The Water System Mitigation Payment shall be made in U.S. Dollars paid by (i) official check issued by any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York, unendorsed and payable to the order of the Village of Victory, or (ii) by wire transfer as the Village may direct, or (iii) as the Village may otherwise direct upon not less than three (3) business days' notice (by telephone, email, facsimile transmission or otherwise) to Developer; or (iv) as otherwise agreed to in writing by the Mayor of the Village;
- (c) The Water System Mitigation Payment shall be made on the date the Company pays for a building permit for the Project, which application shall be accompanied by a certification in writing by the Village Clerk/Treasurer that the Water System Mitigation Payment has been received; and
- (d) Owner, Company and Developer shall not initiate or undertake, nor cause or permit to be initiated or undertaken, any construction work or activity on the Property unless and until the Village Clerk/Treasurer has certified in writing that the Water System Mitigation Payment has been received by the Village.

3. Owner, Company and Developer acknowledge and agree that their compliance with this Environmental Impact Mitigation Agreement is a condition of the Planning Board's approval of the Site Plan and a condition precedent to the Village's issuance of a building permit for the Project.

4. Owner, Company and Developer jointly and severally represent and warrant that:

- (a) They each have the requisite power and authority to enter into this Agreement and to perform the Agreement according to its terms, and that the person signing this Agreement on its behalf has authority to do so; and
- (b) The statements herein are true, complete and accurate to the best of the Developer's knowledge, and to the best of the Company's knowledge and the Owner's knowledge.

5. The Village and Planning Board jointly and severally represent and warrant that:

- (a) They each have the requisite power and authority to enter into this Agreement and to perform the Agreement according to its terms, and that the person signing this Agreement on its behalf has authority to do so; and
- (b) The statements herein are true, complete and accurate to the best of the Village's knowledge, and to the best of the Planning Board's knowledge.

6. This Agreement (together with the documents referred to in it) constitutes the entire agreement between the parties related to the subject matter hereof. Neither party shall be entitled

to any benefits other than those specified herein. No oral statements or prior written material not specifically incorporated herein shall be of any force or effect, and no changes in or additions to this Agreement shall be recognized unless incorporated herein by amendment as provided herein, such amendment to become effective on the date stipulated in such amendment. Each party specifically acknowledges that in entering into and executing this Agreement, it has relied solely upon the representations and agreements herein contained, and upon no others.

7. If any provision of this Agreement or the application of any provision hereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby unless the invalid provision substantially impairs the benefits of the remaining portions of this Agreement.

8. This Agreement may be amended or modified only by written agreement of the parties hereto, executed with the same formality as this Agreement.

9. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors or assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

10. This Agreement shall be governed by and construed in accordance with the internal substantive laws, and not the choice of law rules, of the state of New York. Any actions or judicial proceedings involving this Agreement may be brought only in the New York State Supreme Court, County of Saratoga.

11. No assignment of this Agreement or the rights and obligations hereunder shall be valid without the specific written consent of each of the parties hereto.

12. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

13. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given upon delivery, if delivered in person, or on the third business day after mailing, if mailed by certified mail, return receipt requested: (a) to the Village at: Mayor, Village of Victory, P.O. Box 305, Victory Mills, New York 12884 (with a copy to the Village Attorney, Michael J. Catalfimo, Esq., at 480 Broadway, Suite 250, Saratoga Springs, New York 12866); (b) to the Planning Board at: Chairman, Village of Victory Planning Board, P.O. Box 305, Victory Mills, New York 12884 (with a copy to the Village Attorney, Michael J. Catalfimo, Esq., at 480 Broadway, Suite 250, Saratoga Springs, New York 12866); (c) to Developer at: Larry Regan, President, Regan Development Corp., 1055 Saw Mill Parkway, Ardsley, New York 10502; (d) to Owner at: Uri Kaufman, Manager, Riverview Realty LLC, 90 State Street, Suite 700, Albany, New York 12207; and (e) to Company at: Victory Mills LLC



(Attn. Larry Regan), 1055 Saw Mill Parkway, Suite 204, Ardsley, New York 10502 (with a copy to Christopher J. Babcock, Esq., 54 State Street, 5<sup>th</sup> Floor, Albany, New York 12207).

14. No delay or omission on the part of any party in exercising any right hereunder shall operate as a waiver of such right or any other right, and a waiver on any occasion shall not be construed as a bar to or waiver of any right on any future occasion.

15. Each of the parties to this Agreement acknowledges that it has had the opportunity to participate in the drafting of this Agreement and to receive the benefit and input of counsel in connection therewith. Accordingly, any rule or construction, interpretation or otherwise to the effect that ambiguities contained in the Agreement shall be resolved against the drafting party shall not be invoked or relied upon in connection with the interpretation of this Agreement.

16. Each of the parties hereto shall use its best efforts to take or cause to be taken, and to cooperate with the other party hereto, to the extent necessary, with respect to all actions, and to do, or cause to be done, consistent with applicable law, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement.

17. If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' and accountants' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled at law or in equity.


18. This Agreement shall take effect after signature by the parties and upon the adoption of the Planning Board's SEQRA and Conditional Site Plan Approval Resolutions for the Project.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS

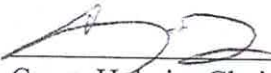
**SIGNATURE PAGE TO ENVIRONMENTAL IMPACT MITIGATION AGREEMENT  
(Water System)**

**IN WITNESS WHEREOF**, the undersigned, intending to be legally bound, have executed this agreement on the dates appearing below their signatures.

VILLAGE OF VICTORY

By:   
Patrick Dewey, Mayor  
Dated: 12/23, 2020

VILLAGE OF VICTORY  
PLANNING BOARD

By:   
Corey Helwig, Chairman  
Dated: 12/22, 2020

REGAN DEVELOPMENT CORP.

By: \_\_\_\_\_  
Larry Regan, President  
Dated: \_\_\_\_\_, 20\_\_

RIVERVIEW REALTY LLC

By: \_\_\_\_\_  
Uri Kaufman, Manager  
Dated: \_\_\_\_\_, 20\_\_

VICTORY MILLS LLC

By: Victory Mills Manager LLC, its  
Managing Member

By: Victory Mills Associates LLC,  
its Manager

By: \_\_\_\_\_  
Larry Regan, Authorized Signatory  
Dated: \_\_\_\_\_, 20\_\_