

**RECORD AND RETURN TO:**

Michael J. Catalfimo, Esq.  
480 Broadway, Suite 250  
Saratoga Springs, New York 12866  
File No. 30367

**LAND-BANKED PARKING AGREEMENT**

**THIS AGREEMENT**, dated the 22nd 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").

**RECITALS:**

- A. Riverview (the "Owner") owns real property and improvements in the Village of Victory, Saratoga County, New York which is located at, and commonly known as, 42 Gates Avenue; is depicted as Section 170.3, Block 2, Lot 27.1 on the tax map of the Village of Victory; and is more particularly described on Exhibit "A" attached hereto (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 Zoning Law of the Village of Victory requires the construction of 327 parking stalls (the "Required Parking Stalls") for the uses of the Property currently proposed by the Developer (the "Parking Requirement").

- G. The Developer proposes to meet the Parking Requirement by initially constructing 301 parking stalls (depicted on the Site Plan as the "North Parking Lot") and land-banking the remaining 26 parking stalls (depicted on the Site Plan as the "South Parking Lot").
- H. The Planning Board has inspected the Property and is familiar with the nature of the Project site, the surrounding area and the proposed development.
- I. The Planning Board has requested, received and considered comments from the Village's Consulting Engineers, Longtin Engineering, PLLC (the "Consulting Engineers"), and the Village Attorney regarding the Developer's request to land-bank a portion of the Required Parking Stalls and has determined that it is appropriate to do so on the terms and conditions which are contained in this Agreement.
- J. The Parties enter into this Agreement to memorialize the agreement between them concerning the Planning Board's approval of land-banked parking for the Project.

**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. Owner, Company and Developer jointly and severally covenant to the Planning Board and the Village that:
  - (a) The area proposed on the Site Plan for land banking of parking spaces, *i.e.*, the South Parking Lot, shall be maintained at all times as an area which is suitable for parking at a future time and cannot be improved or used for any other purpose;
  - (b) The Planning Board shall have the right to terminate the land bank and require the Owner, its successors or assigns, at any time to construct all or a portion of the land banked parking facilities should the Planning Board determine, in its sole and absolute discretion, that the need for additional spaces has arisen. The Planning Board's determination may result from an increase in the intensity of an existing use of the Property; the occurrence of a new use of the Property resulting from the occupancy of a new business in the commercial portion of the Building; the receipt of complaints of inadequate parking on the Property from occupants of the Property, adjoining property owners or other members of the community; the observation by Planning Board members, the Village Code Enforcement Officer, or other officials of the Village that vehicles are regularly overflowing the parking stalls in the North Parking Lot; or the occurrence of other events or circumstances which, in the Planning Board's judgment, demonstrate the advisability of constructing additional parking stalls;



- (c) Upon a determination that some or all of the land-bank should be terminated, the Planning Board shall provide written notice (the “Notice to Construct”), by both regular mail and certified mail, return receipt requested, sent to the Company at the address provided at the beginning of this Agreement (and if the Company is not then shown as the owner of the Property on the Village’s property tax rolls, then to such person(s) or entity(ies) as is/are identified on the property tax rolls as the owner(s) of the Property, at the address for such owner(s) shown on said tax rolls), of its determination that the construction of some or all of the land-banked parking stalls is then necessary. Company, or if Company is not then the owner of the Property, the then-owner of the Property, shall then construct the required parking stalls within one hundred and eighty (180) days from the date of said notice; and
- (d) Should Company, or if Company is not the owner of the Property when the Notice to Construct is issued, the then-owner of the Property, fail or omit to construct the required parking stalls within one-hundred and eighty (180) days from the date of the Notice to Construct, the Village shall have the following rights and remedies, which are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise:
- (i) The Village’s Code Enforcement Officer may, pursuant to the direction of the Planning Board, revoke the certificate of occupancy for the Property; and/or
  - (ii) The Village may take appropriate action in a court of competent jurisdiction to compel the owner of the Property to comply with the Notice to Construct and to restrain the use of the Property until such compliance has occurred; and/or
  - (iii) The Village may enter upon the Property and construct the additional parking with its own forces, or with forces employed by the Village for such purpose, and all costs and expenses incurred by the Village in connection therewith (including, without limitation, reasonable attorneys’ fees) shall (a) be immediately reimbursed to the Village by the Company—and, if different, the owner of the Property—upon written demand therefor; and (b) be a lien upon the Property until repaid; and/or
  - (iv) The Village may withhold the issuance or grant of any other permits or approvals requested by the Company—and, if different, the owner of the Property—in connection with the ownership, use, occupancy or development of the Property until such time as the Notice to Construct has been complied with and the Village has been reimbursed for all costs and

expenses incurred by the Village (including, without limitation, reasonable attorneys' fees) in securing compliance with the provisions of this Agreement; and/or

- (v) The Village may exercise such other, further and different rights and remedies as may be available to it at law, or in equity.

3. Owner, Company and Developer severally acknowledge and agree that compliance with this Land-Banked Parking Agreement is a condition of the Planning Board's approval of the Site Plan and the Village's issuance of a certificate of occupancy for the Property.

4. Nothing in this Agreement shall prevent the Developer or the Company converting some or all of the land banked area to active parking prior to the issuance of a Notice To Construct.

5. 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 Owner'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. The obligations undertaken by the Owner herein shall be covenants running with the land and shall be binding upon the Owner and any subsequent owner of the Property.

8. 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.

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

10. 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.

11. 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.

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. 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.

14. 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.

15. 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.

16. 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.


17. 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 LAND-BANKED PARKING AGREEMENT

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\_\_

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

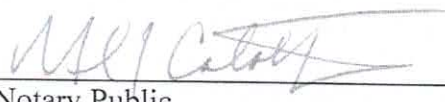
On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared **PATRICK DEWEY**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument 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

MICHAEL J. CATALFIMO  
Notary Public, State of New York  
No. 02CA4857472  
Qualified in Saratoga County  
Commission Expires March 31, 2023

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

On this 22<sup>nd</sup> day of December, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared **COREY HELWIG**, personally 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

MICHAEL J. CATALFIMO  
Notary Public, State of New York  
No. 02CA4857472  
Qualified in Saratoga County  
Commission Expires March 31, 2023



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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared **LARRY REGAN**, personally 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                            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared **URI KAUFMAN**, personally 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

## EXHIBIT A

Property

# All New York Title Agency, Inc.

Title Number: **ANY2019-4126C**

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## SCHEDULE A DESCRIPTION

ALL that certain plot, piece or parcel of land, situate, lying and being in the Village of Victory, Town and County of Saratoga and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the southeasterly side of Gates Avenue, said point being distant 106.51 feet northeasterly from the corner formed by the intersection of said southeasterly side of Gates Avenue and the northeasterly side of Pine Street;

RUNNING THENCE South 42 degrees 32' 00" East 63.83 feet to an iron rod;  
THENCE South 49 degrees 51' 00" West 106.70 feet to a point on the northeasterly side of Pine Street;

THENCE along said northeasterly side of Pine Street, South 42 degrees 27' 00" East 26.02 feet;

THENCE along the division line between the premises described herein and land now or formerly of Victory Mills Hydro Company, Inc. the following ten (10) courses and distances:

North 49 degrees 51' 00" East 128.95 feet,  
North 89 degrees 52' 00" East 11.62 feet to an iron rod found,  
North 47 degrees 41' 00" 195.19 feet to an iron rod found,  
North 89 degrees 17' 15" East 104.61 feet to an iron rod found,  
South 42 degrees 05' 00" East 75.18 feet,  
North 47 degrees 26' 00" East 69.01 feet,  
South 43 degrees 02' 00" East 64.48 feet,  
North 58 degrees 07' 00" East 82.30 feet to an iron rod found,  
North 42 degrees 02' 00" East 106.10 feet to an iron rod found,  
South 61 degrees 28' 00" East 40.77 feet to an iron rod found;

THENCE along a line running parallel to and northwest of the northwesterly edge of the tailrace the following seven (7) courses and distances:

North 24 degrees 35' 47" East 95.63 feet,  
North 29 degrees 06' 10" 89.33 feet,  
North 37 degrees 48' 53" East 236.87 feet,  
North 12 degrees 09' 03" East 37.11 feet,  
North 02 degrees 27' 50" West 57.08 feet,  
North 38 degrees 32' 48" West 40.66 feet, and  
North 18 degrees 35' 30" East 32.17 feet to the westerly edge of the high water mark of Fish Creek;

THENCE along said high water mark of Fish Creek to the division line between the premises described herein and the lands now or formerly of Jo Anne Harrington;



# All New York Title Agency, Inc.

Title Number: **ANY2019-4126C**

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THENCE along said division line North 42 degrees 28' 00" West 108.00 feet to the division line between the premises described herein and land now or formerly of Steven Conklin;

THENCE along said division line and continuing along the division lines between the premises described herein and lands now or formerly of Wilame V. Piteri, lands now or formerly of Travis Haskell, and lands now or formerly of Arthur F. Thivierge the following six (6) courses and distances:

South 47 degrees 32' 00" West 292.50 feet to an iron rod found,  
North 42 degrees 28' 00" West 18.60 feet,  
South 47 degrees 32' 00" West 47.50 feet to an iron rod found,  
North 42 degrees 28' 00" West 26.23 feet,  
South 47 degrees 11' 00" West 105.00 feet, and  
North 51 degrees 06' 00" west 66.58 feet to a point along the southeasterly side of Gates Avenue, an iron rod being found at said point;

THENCE along said southeasterly side of Gates Avenue South 47 degrees 32' 00" West 737.50 feet to a point being distant 106.51 feet northeasterly from the corner formed by the intersection of said southeasterly side of Gates Avenue and the northeasterly side of Pine Street, said point also being the point or place of BEGINNING.

**NOTE:** Legal description to be reviewed upon receipt of an updated ALTA survey.