

Prepared By:  
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Peter M. Flannery, Esq.

**TEMPORARY CONSTRUCTION AND PERMANENT GUARDRAIL EASEMENT  
AGREEMENT**

THIS TEMPORARY CONSTRUCTION AND PERMANENT GUARDRAIL EASEMENT AGREEMENT (“Agreement”) made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, between \_\_\_\_\_, a \_\_\_\_\_, with an address at \_\_\_\_\_ (hereinafter, the “Grantor”), and RBG Hightstown, LLC (hereinafter, the “Grantee”), a \_\_\_\_\_ limited liability company, with an address at 150 East 52<sup>nd</sup> Street, 10<sup>th</sup> Floor, New York, NY 10002 (hereinafter, the “Grantee”).

WHEREAS, Grantor is the owner of certain lands located in the Borough of Hightstown, Mercer County, New Jersey, designated as Block 21, Lot 20 on the Borough of Hightstown tax maps (“Grantor’s Property”); and

WHEREAS, Grantor’s Property is the subject of a preliminary and final major site plan approval to construct a residential project (“Project”), as granted by the Borough of Hightstown Planning Board on \_\_\_\_\_, 2018, and as more specifically described in a resolution of memorialization adopted on \_\_\_\_\_, 2018 (“Resolution”); and

WHEREAS, in order to construct the Project approved by the Resolution, Grantee must obtain from Grantor easements for the installation, use and maintenance of certain guardrail and associated site improvements (the “Improvements”) on the Grantor’s Property; and

WHEREAS, Grantor desires to grant such easements to Grantee.

NOW, THEREFORE, Grantor and Grantee, in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. Recitals and Exhibits. The recitals set forth above and the exhibits attached hereto are hereby incorporated by reference in and made a part of this Agreement as if set forth in length herein.
2. Grant of Easements.

- a. Guardrail Easement. Grantor by these presents does hereby grant to Grantee, its successors and assigns, a perpetual, non-exclusive easement (“Guardrail Easement”) upon, over, in, under and across that portion of the Grantor’s Property more particularly described in Exhibit A, Legal Description for 5-foot-wide Guardrail Easement, attached hereto and made a part hereof (“Guardrail Easement Area”) for the purposes of installing, constructing, reconstructing, using, inspecting, maintaining, repairing and replacing the Improvements, including the right to enter and re-enter upon the Guardrail Easement Area from time to time, by its agents, servants, employees and contractors on foot and with vehicles and machinery, for the purpose of installing, constructing, reconstructing, inspecting, maintaining, repairing, and replacing the Improvements; all upon the condition that the Grantee will, at all times, after doing any work in connection with the installation, construction, reconstruction, inspection, maintenance, repair and replacement of the Improvements, restore the Guardrail Easement Area as nearly as practicable to the condition in which the same was found prior to such work being undertaken.
  
  - b. Temporary Construction Easement. Grantor by these presents does hereby grant to Grantee, its successors and assigns, a temporary, non-exclusive easement (“Temporary Construction Easement”) upon, over, in, under and across that portion of the Grantor’s Property more particularly described in Exhibit B, Legal Description for 10-foot-wide Temporary Construction Easement, attached hereto and made a part hereof (“Temporary Construction Easement Area”) for purposes of the initial installation and installation of the Improvements, and other construction purposes reasonably related to the initial construction of the Improvements, including the right to enter and re-enter upon the Temporary Construction Easement Area from time to time, by its agents, servants, employees and contractors on foot and with vehicles and machinery, for the purpose of installing and constructing the Improvements. Prior to the commencement of the Temporary Construction Easement, Grantee shall have access to Grantor’s Property during normal business hours to conduct studies, tests, examinations and surveys necessary to design and construct the Improvements. The Temporary Construction Easement shall commence on the effective date of this Agreement and shall automatically terminate and expire upon the date the construction of the Improvements is completed. Upon the termination and expiration of the Temporary Construction Easement, all of the rights and benefits of Grantee in, to and under this Agreement with respect to the Temporary Construction Easement shall automatically terminate and be of no further force and effect.
3. Reservation of Use. Grantor retains and reserves to itself, its successors and assigns, the right to use the Guardrail Easement Area and the Temporary Construction Easement Area (collectively, “Easement Areas”) for any purpose not inconsistent with the grant of the respective Guardrail Easement and Temporary Construction Easement (collectively, the “Easements”) so long as such use by Grantor does not damage or interfere with any Improvements within the Guardrail Easement Area. Any damage to or interference with the Improvements caused by the Grantor’s use of the Easement Areas shall be repaired

and/or replaced at the cost of Grantor. Notwithstanding this reservation of use, Grantor shall not erect or install any structure(s) upon or in the Guardrail Easement Area.

4. Indemnification. Grantee, by exercising any right or rights hereunder, agrees to indemnify and hold harmless the Grantor from and against all claims, actions, demands costs (including, but not limited to, court costs and reasonable attorney's fees) and liabilities based on property damage and/or personal injury, including, but not limited to, wrongful death, occasioned by the acts and/or omissions of the Grantee, its agents, contractors, subcontractors, servants, employees, officers, successors, or assigns arising out of an exercise of any right granted by this Agreement and/or the Easements.
  
5. Miscellaneous.
  - a. Singular, Plural and Gender. In this Agreement, all terms used in the singular shall be deemed to include the plural and vice versa, as the context requires. The masculine shall be deemed to include the feminine and the neuter as the context requires, and the feminine shall be deemed to include the masculine and the neuter as the context requires.
  
  - b. Construction. This Agreement shall not be construed in accordance with any law, custom, decision or canon providing for construction against the draftsman hereof, this Agreement having been negotiated equally by the parties hereto.
  
  - c. Severability. In the event that any one or more of the provisions of this Agreement shall be determined to be void or unenforceable by a court of competent jurisdiction, such determination will not render the remainder of this Agreement void or unenforceable, and accordingly the remaining provisions of this Agreement shall remain in full force and effect.
  
  - d. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey, except for those laws governing choice of law.
  
  - e. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.
  
  - f. Entire Agreement. This Agreement, its recitals and exhibits attached to this Agreement constitute the entire agreement between the parties hereto governing the Easements hereby granted hereby and supersede all prior negotiations, understandings, and agreements of any nature whatsoever with respect thereto. This Agreement may not be amended, modified or rescinded in any fashion except by a writing signed by the Grantor and the Grantee in recordable form.

- g. Captions. The captions included in this Agreement are for convenience only and in no way define, describe, amplify or limit the scope or intent of the terms of this Agreement.
  
- h. Successors and Assigns. This Agreement runs with the land and title to the Easement Areas and is binding upon and benefits the Grantor, the Grantee, and their successors and assigns. Whenever the terms “Grantor” and “Grantee” are used in this Agreement they are deemed to include the successors and assigns of the Grantor and the Grantee.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first above written.

Witnessed or Attested By:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

RBG Hightstown, LLC

\_\_\_\_\_

By: \_\_\_\_\_

[ACKNOWLEDGMENTS]

**EXHIBIT A**  
**GUARDRAIL EASEMENT AREA**

**EXHIBIT B**  
**TEMPORARY CONSTRUCTION EASEMENT AREA**

**RECORD AND RETURN TO:**

**Peter M. Flannery, Esq.  
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