

**PURCHASE AND SALE AGREEMENT
(Kent MB-1000 Easements)**

PURCHASE AND SALE AGREEMENT dated as of the _____ day of _____, 2024, between **E.B.S.E. LLC**, a limited liability company organized under the laws of the State of New York, with an address for the conduct of business at 1699 Route 6, Suite 1, Carmel, New York 10512 (“Owner”) and the **EAST OF HUDSON WATERSHED CORPORATION**, a not-for-profit local development corporation having its principal office at 2 Route 164, Patterson, New York 12563 (“EOHWC”).

W I T N E S S E T H :

WHEREAS, the Owner is the owner of certain parcels of real property in the Town of Kent (the “Town”) known as Tax Grid Nos. 22-2-16, 22.42-1-20, and 22.58-2-58 and more particularly described at **Schedule A** (collectively the “Property”); and

WHEREAS, EOHWC is assisting its member municipalities, of which the Town of Kent is one, in complying with the New York State Department of Environmental Conservation (NYSDEC) Municipal Separate Storm Sewer Systems Permit effective May 1, 2010 (MS4 Permit) by the design and installation of stormwater retrofit projects approved by NYSDEC; and

WHEREAS, Owner desires to cooperate with the effort to reduce stormwater runoff carrying potential contamination into surface waters of the State and thereby to assist the Municipality in complying with the MS4 Permit by cooperating in the installation of a stormwater retrofit project generally described at **Schedule C** attached hereto and depicted at **Schedule B** attached hereto, pursuant to an Easement and Installation Agreement for Stormwater Retrofit Project, Kent MB-1000, as more particularly described herein (“Installation Agreement”); and

WHEREAS, EOHWC has determined that it is necessary and in the best interests of the EOHWC to purchase the real property interests in the Property provided for herein at a price reasonably determined to represent fair market value, subject to the terms and conditions set forth herein;

WHEREAS, the Owner desires to voluntarily convey to the EOHWC a permanent drainage easement as more particularly described herein (“Drainage Easement”) over, under, through and across a portion of the Property for the purpose of constructing, installing and maintaining a storm drainage system in connection with the stabilization and rerouting of multiple municipal outfalls and the installation of stormwater treatment devices within the right-of-way of Longfellow Drive, in the Town of Kent, together with all appurtenant and supporting apparatus, structures and markers, under and above ground, as the EOHWC may deem necessary.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

ARTICLE I
TERMS OF SALE OF PROPERTY AND ACCEPTABLE TITLE

SECTION 1.01. Conveyance of Easement Interests. Owner shall sell and the EOHWC shall purchase, at the price and upon the terms and conditions set forth in this agreement, a Drainage Easement and Installation Agreement with respect to the Property (collectively the "Easement Interests"), which include:

- (A) the Installation Agreement in the form attached at **Schedule C** hereto, over the Property located in the Town of Kent, Putnam County and described in **Schedule A** attached hereto and made part hereof; and
- (B) the Drainage Easement in the form attached at **Schedule D** hereto, over a portion of the Property located in the Town of Kent, Putnam County and described in **Schedule A** attached hereto and made part hereof;

SECTION 1.02. Acceptable Title. Subject to the conditions set forth herein, Owner shall convey marketable title to the Easement Interests as the EOHWC's title company shall be willing to approve and insure without material exception or extraordinary premium in accordance with its standard form of title policy approved by the New York State Insurance Department, subject only to the matters set forth in **Schedule E** attached hereto (the "Permitted Exceptions"), provided

- (A) the same have not been violated by any existing buildings and improvements or use or occupancy of the Property, or
- (B) the same would not prohibit the use of the Property for the purposes intended by the EOHWC, namely for a stormwater retrofit project; or
- (C) the same would not render title unmarketable or uninsurable without material exceptions or extraordinary premium by a member of the New York Board of Title Underwriters; or
- (D) the same do not result in a diminution of land area from that described in the Agreement; or
- (E) the same do not result in a diminution of the useable area of the Property or threaten the continued existence or use of any structures located on the Property; or
- (F) the same do not contain any outstanding options or repurchase rights; or
- (G) the same do not require any affirmative acts or monetary payments on the part of the owner of the subject Property.

ARTICLE II
PURCHASE PRICE; ACCEPTABLE FUNDS

SECTION 2.01. Purchase Price. The purchase price to be paid by EOHWC for the Easement Interests shall be 165,000, payable at Closing in accordance with Section 2.0. .

SECTION 2.02. Acceptable Funds. All monies payable under this agreement, unless otherwise specified in this agreement, shall be paid by:

- (A) certified checks or bank check drawn on any bank, savings bank, trust company; or savings and loan association having a banking office in the State of New York, payable to the order of Owner, or its designee;
- (B) uncertified checks of EOHWC up to the aggregate amount of One Thousand Dollars (\$1,000.00);
- (C) cash, but not in excess of \$1000.00;
- (D) in federal funds payable to the order of the Owner.

ARTICLE III THE CLOSING

SECTION 3.01. Closing Date and Place. Except as otherwise provided in this agreement, the closing of title pursuant to this agreement (the "Closing") shall take place at the offices of EOHWC, 2 Route 164, Patterson, New York 12563, or at such other location as may be agreed to by the parties. Unless otherwise agreed by the parties, the date of the Closing shall occur 10 business days following satisfaction of all conditions set forth at Article VI hereof, or such earlier date as may be established by not less than 10 business days' notice from EOHWC to Owner (the actual date of the Closing being herein referred to as the "Closing Date").

ARTICLE IV REPRESENTATIONS

SECTION 4.01. Owner's Representations. Owner makes the following representations and warranties to the EOHWC as of the date hereof and as of the date of Closing, in conjunction with the conveyances provided for herein:

- (A) Owner is the sole owner of the Property and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this agreement, subject to Permitted Encumbrances, and all parties necessary to execute the conveyance and deliver the Easement Interests to EOHWC hereunder in accordance with this Agreement are parties to this Agreement.
- (B) Owner is not a "foreign person," as that term is defined for purposes of the Foreign Investment in Real Property Tax Act, Internal Revenue Code ("IRC") Section 1445, as amended, and the regulations promulgated thereunder (collectively "FIRPTA).
- (C) Owner has not received any notices of violations of law or municipal ordinances, orders, or requirements noted in or issued by any governmental department having authority as to lands, housing, buildings, fire, health, environmental and labor conditions affecting the Property, and that there are no such uncured notices, as of the date hereof; nor does Owner have actual knowledge of any facts which, if known by any such authority, would cause a violation to be placed thereon; and Owner further agrees that they will comply with all notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued as of the date of transfer of title by any governmental department having authority as to lands, housing, buildings, fire, health, environmental and labor conditions affecting the Property, and that the Property will be conveyed free of them at Closing. Owner upon request shall furnish EOHWC with any authorizations necessary

to make the searches that could disclose these matters.

(D) Owner has no knowledge of the pendency or threat of any condemnation proceedings, or consensual proceedings in lieu of formal condemnation proceedings, that would affect the Property.

(E) There are no liens or encumbrances with respect to the Property except as described at **Schedule E**.

(F) Owner has no knowledge of any ordinance or resolution authorizing improvements, the cost of which might be assessed against the owner of the Property, and, to the best of Owner's knowledge, information and belief, no such ordinance or resolution is pending or contemplated.

(G) Owner has no knowledge of the existence, actual or alleged, of any underground fuel tanks or barrels or of any hazardous substances, hazardous waste, radon, toxic chemicals or asbestos on the Property (herein collectively called "Hazardous Substances"). This representation shall survive Closing.

(H) The Property is not affected by any exemptions or abatements of taxes other than possible STAR exemption, except as disclosed in writing to EOHWC.

(I) The sale or conveyance of the Property contemplated herein is not subject to approval by any Court having jurisdiction over the Property, including but not limited to a Bankruptcy Court.

(J) Owner is not aware of any easements or covenants of the Property other than as set forth at **Schedule E**.

(K) Owner has no actual or constructive knowledge or notice of any impending mechanic's liens against the Property.

(L) EOHWC is the only party with whom Owner has presently contracted to convey any portion of the Property or any interest therein Owner has not entered into, nor to their knowledge does there exist, any license, lease, option, right of first refusal or other Agreement affecting the Property or title thereto.

(M) Owners have been known by no other name for the past ten years.

SECTION 4.02. Environmental Representation. Owner represents that it has no knowledge of the existence (actual or alleged) beneath the Property of any fuel tanks or barrels and has no knowledge of any environmentally hazardous or toxic substances or materials whatsoever on or under the Property. The Owner shall defend, indemnify and hold harmless the EOHWC from any and all claims, liabilities, damages or judgments whatsoever which may arise due to any such conditions, including without limitation the presence of and leakage from any buried fuel tanks.

SECTION 4.03. Waste Contamination. Owner affirmatively represents that to the best of Owner's knowledge, Owner, during the ownership of the undersigned, has caused no hazardous waste or toxic substance contamination of the Property (as defined in § 27-0901 and/or § 7 1- 2702 of the New York State Environmental Conservation Law or Federal, state or local rule or regulation), and is not aware of any active violations of any such laws, rules or regulations, nor of any ongoing remediation efforts, and is not aware of such contamination caused by any other party, other than that which may be documented by the reports if any, supplied by Owner to EOHWC.

SECTION 4.04. Owner represents and warrants that all of the representations and warranties set forth in this Agreement shall be true and correct at Closing. The representations in Article IV shall survive Closing. Owner acknowledges that each of the foregoing representations and warranties is

material to EOHWC in its decision to purchase the Easement Interests. Owner has the absolute right to assign its rights or obligations under this Agreement in the manner permitted by the Permanent Drainage Easement, subsequent to closing, without the prior written consent of EOHWC, provided that Owner remains responsible for misrepresentations made by the Owner.

**ARTICLE V
CONDITION OF PROPERTY, DAMAGE,
DESTRUCTION OR CONDEMNATION**

SECTION 5.01. Uniform Vendor and Purchaser Risk Act. The provisions of Section 5-1311, entitled "Uniform Vendor and Purchaser Risk Act" of the New York General Obligations Law shall apply to the sales and purchases provided for in this agreement, provided that if all or a material part of the Property is destroyed without fault of the Owner, the EOHWC shall have the option to terminate this Agreement.

SECTION 5.02. Condemnation. In the event of the taking of all or any part of the Property by eminent domain proceedings, or the commencement of such proceedings prior to Closing, EOHWC shall have the right, at its election, to terminate this Contract by written notice to Owner. If EOHWC does not so terminate the Contract, then EOHWC may, at its election, either (a) proceed to close with the purchase price reduced by the pro-rated award or other proceeds received or to be received by Owner as a result of such proceedings, taking into account the proportionate value of the Property, or (b) proceed to close with an assignment by Owner of all Owner's right, title, and interest in and to any and all such awards and proceeds. Owner shall notify EOHWC in writing of any eminent domain proceedings affecting the Property within five (5) days after Owner learns of such proceedings.

**ARTICLE VI
CONDITIONS TO CLOSING**

SECTION 6.01. Conditions to Closing. This agreement and the EOHWC's obligation to purchase the Easement Interests are subject to and conditioned upon the fulfillment of the following conditions precedent:

- (A) The accuracy, as of the date of Closing, of the representations and warranties of Owner made in this Agreement. . For clarification purposes, Owner shall be responsible for the cost of Insite, as Project Engineer, for preparing biddable plans and specifications for the Retrofit Project. All other costs, if any, in conjunction with the biddable plans and specifications shall be borne by EOHWC;
- (B) The delivery by Owner to EOHWC of a certification stating that Owner is not a foreign person, which certification shall be in the form then required by FIRPTA. If Owner fails to deliver the aforesaid certification or if the EOHWC is not entitled under FIRPTA to rely on such certification, the EOHWC shall deduct and withhold from the purchase price a sum equal to 10% thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service;
- (C) The delivery by Owner to EOHWC of a duly executed Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate, local transfer tax return, and real property transfer tax report (in the forms prescribed by law) together with payment by Owner

of the transfer tax in the amount required;

(D) At the time of Closing, the Property being in the same physical condition as at the time of signing of this Agreement, reasonable wear and tear excepted, and a final inspection may be made by EOHWC prior to Closing on reasonable notice to Owner;

(E) The delivery of the Property vacant and free of leases, tenancies, licenses or other occupancies; and

(F) The delivery by the parties of any other affidavits required as a condition of recording the instruments of conveyance required for the Easement Interests.

SECTION 6.02. Additional Contingencies. This Agreement and the Owner's obligation to sell and the EOHWC's obligation to buy the Property shall be subject to the following conditions:

(A) Owner shall procure and pay the cost of the Project Engineer (Insite Engineering, Surveying & Landscape Architecture P.C. "Insite Engineering") for the purpose of preparing biddable plans and specifications for the Retrofit Project meeting all applicable requirements for funding under the EOHWC's NYCDEP Funding Agreement, the EOHWC Procurement Policy, and meeting applicable requirements for all permits required in order to construct the Retrofit Project. The Owner shall authorize the Project Engineer to perform such services for the benefit of both the Owner and the EOHWC as if the Project Engineer were engaged by EOWHC, and the Project Engineer shall abide by and be subject to all technical requirements applicable to EOHWC's consultants under the NYCDEP Funding Agreement.

(B) Owner shall pay the costs of the boundary survey prepared by Insite Engineering meeting the conditions at Article X including a metes and bounds description consistent with the survey and satisfactory to Title, and including the map and description of the Easement Area.. The surveyed boundaries, any condition of such approvals, and all other terms and conditions of the Retrofit Project shall be subject to approval of EOHWC, which shall not be unreasonably withheld..

(C) EOHWC has approved a resolution providing for the purchase of the property as an eligible cost under NYCDEP Funding Agreement subject to the conditions set forth herein. EOHWC's SEQRA Environmental Review resulted in a negative determination.

(D) The Stormwater Retrofit Phasing Plan dated July 27, 2023 and revised on August 7, 2023 and August 18, 2023 and September 20, 2023 has been submitted for approval to NYCDEP and NYS DEC and approved as of the date hereof, subject to further approval of any modifications which may be required in connection with the Town of Kent permits and approvals. Owner authorizes EOHWC to apply for all such additional approvals and Owner agrees that it shall use its best efforts to promptly cooperate with EOHWC to consummate municipal, state and funding agency approval Including Town of Kent Planning Board.

(E) The Owner hereby grants the EOHWC the authority during the term of this Agreement, or any extension thereof, until the time of Closing of title, to make such applications with respect to the Property as may be necessary for the use intended by the EOHWC or for funding to complete the purchase of the Easement Interests. In addition, the Owner hereby agrees that they will cooperate when reasonably requested by the EOHWC in connection with any application contemplated herein.

(F) The EOHWC or Owner may terminate this Agreement in the event of failure to meet such conditions within 180 days of the effective date of this Agreement. This time period shall be extended for an additional 180 days in two ninety (90) day extension periods if all applications have been submitted and are diligently being sought. In the event an

Article 78 proceeding has been commenced as to any such approval, said transaction shall not take place unless and until a final non-appealable Order and Judgment has been entered dismissing any such Article 78 proceeding. In the event that prior to Closing a final non-appealable Order and Judgment is entered vacating the approval granted, this Agreement shall be void with neither party having any further claim against the other.

SECTION 6.03. Property Investigations and Environmental Survey.

(A) Owner grants to the EOHWC, and its employees and “Consultants” as defined below, the right to enter the Property or any portion thereof at any time upon notice to Owner for the purpose of conducting such additional soil, geological and engineering investigations (“Property Investigation”) or environmental survey (“Environmental Survey”) as the EOHWC may desire or as may be required by any public agency or department which must approve any aspect of the acquisition and development of the Retrofit Project. All such testing except for a Phase I conducted by Owner’s consultant, survey and specifications prepared by Owner’s consultant, shall be at EOHWC’s sole cost and expense, provided that nothing shall make EOHWC responsible for any pre-existing condition at the Property. Such ability to conduct this property investigation shall not of itself be deemed to be a due diligence condition or grounds for cancelling this Contract by EOHWC.-

(B) Owner shall be notified in advance of said investigation and Owner shall have the right to be present during any such investigation or survey. The EOHWC shall deliver to Owner certificates of general liability insurance and worker's compensation insurance with respect to employees, representatives, or agents of the EOHWC and its Consultants prior to entering the property for any such purpose. The EOHWC agrees to provide Owner with a copy of any final report received by the EOHWC as a result of such Property Investigation or Environmental Survey. No such investigation shall be made which causes damage or change to the physical condition of the property unless (i) all such investigations are carried out in accordance with applicable OSHA and other state and federal requirements for such investigations and (ii) within a reasonable time following such investigation the EOHWC shall cause the property to be restored substantially to its condition prior to such investigation. EOHWC and its consultants shall indemnify and defend Owner against any costs, claims and expenses, including reasonable attorneys' fees, arising out of any claims made in connection with any investigation provided, however, that Town and its consultants shall not indemnify Owner for any claims, actions or other proceedings caused by or arising out of the negligence or willful misconduct of Owner, its employees or agents.

(C) For purposes of Section 6.03 and Section 6.04, “Consultants” shall mean such professional engineers or other consultants duly qualified to conduct such investigations, possessing all required licenses and certificates required for such investigations, and with qualifications reasonably acceptable to the Owner.

SECTION 6.04. Inspections. In addition to any other rights provided in this Agreement, the EOHWC and its employees, agents and Consultants shall have the right to make inspections of the Property at any reasonable time up to the time set for the transfer of title to such Property, and particularly within forty-eight (48) hours of the date set for Closing of transfer of title.

**ARTICLE VII
COVENANTS**

SECTION 7.01. Encumbrances. The Owner represents and warrants that as of the date hereof and as of the Closing date, there are no tenancies or other agreements granting third parties use, occupancy or control over the Property, and there are no encumbrances except as shall have been disclosed to EOHWC's attorney prior to execution of this Agreement. The Owner shall not encumber the Property or enter into any lease or other occupancy agreement therefor, without the prior written consent of EOHWC. If there is an existing mortgage or any liens on the Property, said mortgage or lien shall be released to the satisfaction of the EOHWC and title company at the time of Closing or prior thereto. Owner shall not permit any unpaid taxes, liens or judgments to be filed against the Property. Owner shall notify EOHWC within ten business days in the event of any action, notice or demand by the holder of any lien or interest which may affect Owner's possession of or title to the Property. Upon any such event, unless Owner provides reasonable assurance to EOHWC that Owner will be able to convey title to the Property in accordance with the terms of this Agreement, EOHWC may terminate this Agreement if Owner is unable to cure such defects in title within a period of 90 days after notice. This representation and warranty shall survive the Closing.

SECTION 7.02. Insurance. The Owner shall maintain in full force and effect until the Closing all insurance policies currently maintained by the Owner with respect to the Property.

SECTION 7.03. Land Use. During the pendency of this Agreement, Owner shall not undertake any action, including maintenance, of the Property in a manner that impacts or has the potential to impact the Easement Interests or EOHWC's Intended Purposes, including without limitation (a) cut, trim, remove or otherwise disturb any existing trees or understory vegetation, except in instances where vegetation is dead, diseased, fallen, or damaged by a force majeure and clearly endangers life, limb, or property, or materially impedes access to the property, in which case any associated vegetation disturbance shall be held to the minimum extend practicable; (b) excavate, remove or disturb any soil, stone, gravel, minerals, hydrocarbons, or other natural resource on the Property, whether surface or subsurface; (c) engage in logging, soil mining, or any other activity on the Property causing despoliation and/or waste or other material interference with EOHWC's Intended Purposes; (d) construct or place any improvements on the Property without EOHWC's prior written consent, or (e) conduct any activities from the effective date of this Agreement and during the term of this Agreement to the Closing to change the present use of the Property or to interfere with, obstruct, or hinder the EOHWC's rights pursuant to this Agreement.

ARTICLE VIII CLOSING OBLIGATIONS

SECTION 8.01. Owner's Closing Obligations. At the Closing, Owner shall deliver the following to the EOHWC:

- (A) A drainage easement with respect to the Property described at **Schedule A** in the form attached at **Schedule C**, properly executed and in proper form for recording so as to convey the title to the Easement Interests required by this agreement.
- (B) A non-foreign affidavit, properly executed and in recordable form, containing such information as shall be required by FIRPTA;
- (C) A check payable to the order of the appropriate state, city or county officer in the amount of any applicable transfer tax payable by reason of the delivery or recording of the Drainage Easement and Installation Agreement. Owner shall be responsible for

providing any required tax return duly executed and sworn to. EOHWCs agree to duly complete the tax return and to cause the check(s) and the tax return to be delivered to the appropriate officer promptly after Closing;

(D) All information necessary to enable Owner's attorney to file Form 1099-S "Proceeds from Real Estate Transactions" or then-current form in compliance with applicable regulations of the Internal Revenue Service and an undertaking to timely file such return;

(E) Owner agrees to provide, in form fit for acceptance by the appropriate recording officer, the New York State Real Estate Transfer Tax Return, and, if applicable, local transfer tax return and real property transfer report (in the forms prescribed by law) along with a check in the amount required for the recording or filing of same and, if applicable, New York Form IT-2663;

(F) Such affidavits as the EOHWC's title company shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to Owner's name;

(G) Subject to Permitted Exceptions, rights of access and entry to the Property provided for in the Drainage Easement and Installation Agreement in the condition required by this Agreement;

(H) Any other documents required by this agreement to be delivered by Owner.

SECTION 8.02. EOHWC's Closing Obligations. At the Closing, EOHWC shall:

(A) Deliver to the Owner the balance of the Purchase Price payable at the Closing;

(B) Cause the Drainage Easement and Installation Agreement to be promptly recorded, duly complete all required real property transfer tax returns and cause all such returns and checks in payment of such taxes to be delivered to the appropriate officers promptly after the Closing.

**ARTICLE IX
APPORTIONMENTS**

SECTION 9.01 Apportionments at Closing shall be as follows:

(A) No taxes, water rates or sewer rents shall be apportioned or adjusted as of the date of delivery of the Drainage Easement and Installation Agreement and Owner shall remain responsible for all such amounts and any other assessments affecting the Property after Closing. This section shall survive Closing.

(B) If at the date of Closing the Property is affected by an assessment which is or may become payable in annual installments, and the first installment is then a lien, or has been paid, then for the purposes of this Agreement all the unpaid installments shall be considered due and shall be paid by Owner at or prior to Closing;

(C) No water or other utility charges shall be allocated to the EOHWC, it being agreed that the Property are vacant; and Any errors or omissions in computing apportionments or other adjustments at Closing Date shall be corrected within a reasonable time following Closing. This paragraph shall survive the Closing.

ARTICLE X
OBJECTION TO TITLE, FAILURE TO PERFORM

SECTION 10.01. Liens and Encumbrances. Owner is not aware of any liens or encumbrances existing except Permitted Exceptions.

SECTION 10.02. Title and Survey.

(A) The EOHWC shall order an examination of title in respect of the Property from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company promptly after the execution of this agreement. The EOHWC shall cause a copy of the title report and of any additions thereto to be delivered to the attorney(s) for Owner promptly after receipt thereof.

(B) Owner shall order a boundary survey for benefit of EOHWC including identification of easements known to Owner or identified in the title report, and such survey shall be promptly provided to EOHWC for examination. Prior to Closing such survey shall be certified to Owner, EOHWC, EOHWC's title company, NYCDEP, and the Town of Kent. All costs incurred as a result of conducting the survey shall be borne entirely by the Owner.

SECTION 10.03. Default.

(A) In the event of a default on the part of the EOHWC in the performance of this Agreement and the EOHWC fails to cure the default within twenty (20) business days from the date EOHWC receives written notice of the default from the Owner (or within such additional time as may reasonably be required provided such cure is pursued with due diligence), then Owner shall have the right to cancel this Agreement.

(B) If for any reason whatsoever, other than default by Owner, the Owner shall be unable to convey title to the Property in accordance with the terms of this Agreement, whether by reason of liens, encumbrances or other objections to title, then the sole obligation and liability of the Owner to EOHWC shall be to refund to EOHWC any down payment made, and the costs incurred by EOHWC for title examination, survey work and due diligence, and upon the making of such payments, this Agreement shall be deemed cancelled and shall wholly cease and terminate and neither party shall have any further claim against the other by reason of this Agreement, except that the obligations under Section 11.11 (No Broker) shall survive the termination of this Agreement;

(C) In the event of a default by the Owner, EOHWC shall have the right to enforce this Agreement at law or in equity (including the right of specific performance), or cancellation of this Agreement. In the event of a default by EOHWC, the Owner shall have the right to seek enforcement of this Agreement in law or equity.

(D) If this agreement is cancelled pursuant to its terms, other than as a result of the Owner's or EOHWC's default, this agreement shall terminate and come to an end, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise.

ARTICLE XI
MISCELLANEOUS PROVISIONS

SECTION 11.01. Entire Agreement. This agreement embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior

agreements, understandings, representations and statements, oral or written, are merged into this agreement. Neither this agreement nor any provision hereof may be waived, modified, or amended, except by an instrument signed by the parties, and then only to the extent set forth in such instrument.

SECTION 11.02. When Binding. This Contract will be binding when subscribed to by all parties and the executed Contract and the deposit required hereunder has been delivered to Owner or its Counsel, and a fully executed original Contract has been returned to EOHWC.

SECTION 11.03. No Waiver. No waiver by either party hereto of any failure or refusal by the other party hereto to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal by such party to so comply.

SECTION 11.04. Governing Law; Venue. This agreement shall be governed by, and construed in accordance with, the laws of the State of New York. Venue for any action or proceeding shall be in a federal or New York State court with jurisdiction in the County of Putnam.

SECTION 11.05. Memorandum. Either party shall have the right to record a memorandum of this agreement, and both parties agree to execute a memorandum in recordable form by the parties approved by both parties and annexed to this Contract.

SECTION 11.06. Captions. The captions in this agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this agreement or any of the provisions hereof.

SECTION 11.07. Assignment. Except as provided herein, neither party shall assign any of its rights or obligations under this Agreement, without the written consent of the other party which consent may -- be unreasonably withheld in its discretion. In the event of such an assignment, the assignee must agree to assume responsibility for all of the assignors' obligations pursuant to the terms of this Agreement. This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, distributees, executors, administrators, or successors and permitted assigns.

SECTION 11.08. Interpretation. As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require. The parties hereby agree that this Agreement has resulted from negotiations between counsel for all parties and that the same have been drafted by counsel for both the Owner and the EOHWC, and, accordingly, any ambiguities contained in the Agreement shall not be interpreted in favor of or against either party.

SECTION 11.09. Severability. In the event that any of the provisions, or portions, or applications thereof, of this agreement are held to be unenforceable or invalid by any court of competent jurisdiction, Owner and EOHWC shall negotiate an equitable adjustment in the provisions of this agreement with a view toward effecting the purpose of this agreement, and the validity and enforceability of the remaining provisions or portions or applications thereof shall not be affected thereby.

SECTION 11.10. Notices. All notices under this agreement shall be in writing and shall be delivered

personally, sent by recognized national courier service, email with non-automated written confirmation of receipt, or shall be sent by certified mail, or any other method of delivery where receipt is acknowledged in writing by the receiving party or its attorney; addressed to the addresses first above written or at such addresses as either party may hereafter designate to the other in writing. A copy of any notice to EOHWC shall be provided to EOHWC's attorney identified on the execution page hereof. A copy of any notice to Owner shall be provided to Owner's attorney identified on the execution page hereof. Any notice or other communication from one party to the other under this Contract shall be in writing and shall be either personally delivered or sent by e-mail and by overnight delivery, addressed to the attorneys for Owner and EOHWC as follows:

Owner: E.B.S.E. LC
 1699 Route 6, Suite 1
 Carmel, New York 10512

With a Copy to Owner's Attorneys:
 Warren S. Replansky, P.C.
 P.O. Box 838, 60 East Market Street
 Rhinebeck, New York 12572
 845-876-7979
 warren@wreplanskylaw.com

Thomas J. Jacobellis, Esq.
 3 Starr Ridge Road, Suite 202
 Brewster, New York 10509
 845-225-2121
 tomjaco@comcast.net

EOHWC
 East of Hudson Watershed Corporation
 2 Route 164
 Patterson, New York 12563

With a Copy to EOHWC's Attorneys:
 Christine M. Chale, Esq.
 Rodenhausen Chale & Polidoro LLP
 55 Chestnut Street
 Rhinebeck, New York 12572
 845-516-4323
 cchale@rodenhausenchale.com

SECTION 11.11. No Broker. Each party represents and warrants to the other that it has not dealt with any broker in connection with this sale. Owner and EOHWC shall indemnify and defend each other against any costs, claims and expenses, including reasonable attorneys' fees, arising out of the breach on their respective parts of any representation or agreement contained in this paragraph. The provisions of this paragraph shall survive Closing or, if Closing does not occur, the termination of this agreement.

SECTION 11.12. Purchaser's Lien. All monies paid on account of this Agreement, including EOHWC's diligence, are hereby made liens on the Property. The liens shall not continue after judicial determination of default by EOHWC.

SECTION 11.13. Counterparts. This Contract may be executed in multiple counterparts, each of which shall be considered an original document and all of which when taken together, shall constitute a single instrument.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

E.B.S.E. LLC (OWNER)

By: _____
Name: _____
Title: Managing Member

EAST OF HUDSON WATERSHED CORPORATION (EOHWC):

By: _____
Richard Williams, President

ATTACHMENTS:

- SCHEDULE A Property
- SCHEDULE B Map of Retrofit Project Area
- SCHEDULE C Form of Installation Agreement
- SCHEDULE D Form of Drainage Easement
- SCHEDULE E Permitted Encumbrances

Owner’s Attorney:

Warren S. Replansky, P.C.
P.O. Box 838
60 East Market Street
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warren@wreplansky.com

Phone: 845.876.7979
Fax: 845.516.4802

EOHWC’s Attorney:

Christine M. Chale, Esq.
Rodenhausen Chale & Polidoro LLP
55 Chestnut Street
Rhinebeck, NY 12572
cchale@rodenhausenchale.com

Phone: 845.516.4323
Fax: 845.516.4528

SCHEDULE A

DESCRIPTION OF THE PROPERTY

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Kent, County of Putnam and State of New York bounded and described as follows:

[survey description]

Being and including all that certain property as shown in a Deed from Lou Pozza and Anthony Perna dated October 17, 2022 and recorded in the Dutchess County Clerk's office on October 27, 2022 in Liber 2295 of Deeds at Page 206, Instrument No. 9452-2022.

SCHEDULE B

MAP OF THE RETROFIT PROJECT AREA

SCHEDULE C

FORM OF EASEMENT AND INSTALLATION AGREEMENT FOR RETROFIT PROJECT
(Kent MB-1000)

SCHEDULE D

FORM OF PERMANENT DRAINAGE EASEMENT

SCHEDULE E

PERMITTED ENCUMBRANCES

1. Zoning and subdivision laws and regulations, and landmark, historic or wetlands designation;
2. Consents for the erection of any structures on, under or above any streets on which the Property abut;
3. Encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway;
4. Real estate taxes that are a lien, but are not yet due and payable;
5. Rights of utility companies to lay, maintain, install and repair pipes, lines, poles, conduits, cable boxes and related equipment on, over and under the Property.
6. Utility company agreement(s) in Liber 159 cp 308, Liber 216 cp 252, Liber 257 cp 452 and Liber 408 cp 73.
8. Notes and easements as shown on Filed Map No. 2286.
9. Subject to the natural flow of the brook through or along the premises.
10. Mining and mineral rights in heirs of Philipse.