

**COMMUNITY BENEFITS AGREEMENT
FOR BARRETT HILL**

This Community Benefits Agreement (this “Agreement”) is made and entered into as of _____, 2016 (the “Effective Date”) between Barrett Hill Associates, LLC, a New York Limited Liability Company (“Barrett Hill”) with an office c/o Covington Development, LLC, 322 Clock Tower Commons, Brewster, New York 10509 and the Town of Southeast, a New York municipal corporation with its offices at 1360 Route 22, Brewster, New York 10509 (the “Town”). The Town and Barrett Hill are sometimes each referred to as a “Party”, and collectively as the “Parties”.

WITNESSETH:

WHEREAS, Barrett Hill is the owner of property known as Mount Ebo Lot 6 and bearing Tax Assessment map designation 46-5-2 (the “Property”); and

WHEREAS, the Property is currently unimproved and Barrett Hill has the following approvals:

The approvals granted for the 2006 site plan, entitled _____, dated _____, last revised _____, prepared by _____, remain valid today and due to the similarities of many elements of the current proposed plan (such as keeping the proposed disturbance and impervious surface within the limits of the approved plan), most will be applicable to the current proposed plan. The approvals/referrals granted to the Barrett Hill Senior Housing project in 2006, and their status as relates to the 2006 site plan, are as follows:

Town of Southeast Town Board

- Special Permit Approval, granted 8/31/06 (remains valid)

Town of Southeast Planning Board

- Site Plan Approval, granted 10/23/06 (remains valid)

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Town of Southeast Architectural Review Board

- Recommendations on Architectural Design, 4/18/06 (positive referral made to Town Board)

Putnam County Department of Planning

- GML §239-m Review (positive referral made from Department of Planning)

Putnam County Department of Health

- Approval of Wastewater Collection System, granted 10/4/06 (remains valid)
- Approval of Water Main Extension, granted 10/4/06 (remains valid)

Putnam County Department of Highways & Facilities

- Approval of Traffic Signal (construction is completed)

New York City Department of Environmental Protection

- Approval of SWPPP, granted 10/10/06 (remains valid)

New York State Department of Environmental Conservation

- Approval for Coverage under SPDES General Permit, granted 5/9/07 (remains valid)
- 5-Acre waiver, granted 6/1/07 (remains valid)

New York State Department of Health

- Approval of Plans for Public Water Supply Improvement, granted 10/5/06 (remains valid)
- Approval of Backflow Prevention Device, granted 10/4/06 (remains valid)

WHEREAS, on _____, 2016, the Town Board amended the Town's zoning map for the Barrett Hill Property to designate the property in the Multifamily Work Force Housing District; and

WHEREAS, to benefit the Town and its residents, Barrett Hill has voluntarily offered to make, and the Town Board has agreed to accept, certain community benefits.

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration received, Barrett Hill and the Town agree as follows:

Barrett Hill shall provide priority in initial marketing of 50 units (30% of the total rental units), designated as "Priority Units," and a 99 year guarantee of affordability (to the extent of 34% of the Priority Units – 17 units) for the following categories of individuals, in no particular order of priority and as further defined herein:

- i. Veterans living in the Putnam County;
- ii. Full-time employees of the Town of Southeast;
- iii. Full-time employees of school districts serving the Town of Southeast;
- iv. Unpaid active volunteer members of the Town's Fire Department; and
- v. Putnam County first responders (law enforcement, fire fighters and EMS workers).
- vi. Persons with Disabilities.
- vii. Persons aged 55 years and older.

Specifically, the dwelling units included as part of the multi-unit multi-family housing development shall be subject to the following special marketing and occupancy restrictions:

1) Thirty percent (30%) of the dwelling units shall be marketed to, in no particular order of priority, persons with disabilities, veterans living in Putnam County, qualified active volunteer members of the Town's Fire Department, Putnam County First Responders, full time employees of school districts serving the Town of Southeast, and full time employees of the Town of Southeast, all as further defined herein. There will be a reservation period of six (6) months from the time of substantial completion for each phase of construction, for marketing of residential units to the above referenced groups.

2) 17 of the Priority Units ("Affordable Priority Units") shall be subject to a 99 year restriction limiting the sale or rental price of such Affordable Priority Units, initially and upon re-rental or resale. With respect to rental units, such Affordable Priority Units shall be

rented to Qualifying Affordable Households at rates equal to 30% of 80% of the Putnam County Household Income, as published by the United States Census Bureau from time to time or as adjusted consistent with increases in the CPI during interim periods. With respect to sale units, such Affordable Priority Units shall be sold to Qualifying Affordable Households at sales prices equal to 90% of the prices set forth in the Sales Offering Plan or Memorandum, (for the first six months of sales or marketing) or 90% of the sales price of similar housing units in the multi-unit multi-family housing development in the 6 months preceding the date of contract of sale, adjusted for unit size.

3) For purposes of Section 2, Qualifying Affordable Households shall mean households where at least one member meets the following requirements:

a) Persons with disabilities. Person with a disability, physical disability and/or developmental disability is a person as determined by the Developmental Disabilities Regional Office (DDRO) of the NYS Office for People with Developmental Disabilities (OPWDD) and/or the State Health Department and/or Putnam County Health Department;

b) Veterans living in Putnam County. A Veteran is defined as someone who has served in the US armed forces (Army, Navy, Air Force, Marines, Coast Guard), been on active duty for 180 days or longer, and been honorably discharged.

c) Active volunteer members of the Town's Fire Department;

d) Putnam County first responders (law enforcement, fire fighters, and EMS workers);

e) Full-time employees of school districts serving the Town of Southeast; and

- f) Full-time employees of the Town of Southeast.
- g) Persons aged 55 years and older.

4) For purposes of Section 3, Qualifying Affordable Households shall also mean households which meet the requirements set forth in Section 2 above and where total household income is equal to or less than 80% of Putnam County Household Income as published by the United States Census Bureau from time to time or as adjusted consistent with increases in the CPI during interim periods.

All Qualified Affordable Households, applying for housing under this subsection, shall be approved by an independent, third party entity¹, engaged and paid for by the property owner. Such third-party entity shall have experience in reviewing and approving income qualified housing applications in the region and such entity's retention shall be subject to approval by the Town of Southeast Town Board.

5) Barrett Hill's obligations hereunder are conditioned upon (i) receipt by Barrett Hill of site plan approval from the Planning Board for the project proposal, and (ii) all other required Town and other governmental approvals and permits, all of which are reasonably acceptable to Barrett Hill; and (iii) receipt by Barrett Hill of the first building permit.

6) Barrett Hill agrees for itself and its successors and assigns, including (as hereinafter defined) Transferees, that it negotiated this Agreement for its benefit and the benefit of its successors and assigns, and that it freely and willingly agrees to its provisions

¹ Third party entity may be a new commission representing the various groups to be served.

for its benefit and the benefit of its successors and assigns. It is therefore expressly agreed that Barrett Hill, for itself, and its successors and assigns, including Transferees, forever waive any and all causes of action whatsoever in any jurisdiction at law or in equity challenging the legality and enforceability of this Agreement.

7) This Agreement may be assigned by Barrett Hill with the consent or approval of the Town to any transferee (a “**Transferee**”) of Barrett Hill’s right, title and interest in and to the Property, which consent shall not be unreasonably withheld. Notwithstanding anything in this Agreement to the contrary, the parties agree that: (i) if there is a transfer, then the Transferee shall be deemed automatically, and without the need for any further document or instrument, to succeed to the rights of, and be bound by the obligations imposed upon, Barrett Hill under this Agreement, with the same force and effect as if the Transferee, and not Barrett Hill, had been an original party to his Agreement; and (ii) from and after the effective date of any transfer except to an affiliate, Barrett Hill shall be released from any and all, and shall have no further or additional, obligations and/or liability under this Agreement. Barrett Hill shall give written notice to the Town of any transfer at least thirty (30) days prior to the date such transfer becomes effective.

8) All covenants, stipulations, promises, agreements and obligations of the Town contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreement and obligations of the Town and not of any officer, agent, servant, or employee of the Town in his or her individual capacity. It is expressly understood that this Agreement is a “corporate” obligation, and that no personal liability whatsoever shall attach to, or is or

shall be incurred by, any such officer, agent, servant, or employee of the Town or any person so executing this Agreement, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom. Any and all such personal liability of, and any and all such rights and claims against, every such officer, agent, servant, or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

9) All covenants, stipulations, promises, agreements and obligations of Barrett Hill contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of Barrett Hill and not of any partner, member, shareholder, director, officer, agent, servant, or employee of Barrett Hill in his or its individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, or otherwise based or in respect of thereof, shall be had against any past, present or future partner, member, shareholder, director, officer, agent, servant, or employee of Barrett Hill, or of any partner or member or shareholder of Barrett Hill, or any successor thereto, or any person executing this Agreement on behalf of Barrett Hill. It is expressly understood that this Agreement is an obligation of Barrett Hill and not of any unit owner or any other person or entity, and that no personal liability whatever shall attach to, or is or shall be incurred by, any partner, member, shareholder, director, officer, agent, servant, or employee of Barrett Hill, or any partner or member or shareholder of Barrett Hill, or any successor thereto, or any person so executing this Agreement, under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom are,

to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

10) The Town represents and warrants to Barrett Hill that as of the date of this Agreement:

(a) The Town is a duly organized, validly existing New York municipal corporation; and

(b) The Town has the requisite power and authority to execute, deliver and perform this Agreement and consummate the transactions herein described; the Town has taken all necessary actions to authorize this Agreement, and no further action is necessary to make this Agreement and the terms and provisions hereof bindings and enforceable against the Town; and the person who has executed this Agreement on behalf of the Town has the authority to do so.

11) Barrett Hill represents and warrants to the Town that as of the date of this Agreement:

(a) Barrett Hill is a Limited Liability Company duly organized and in good standing under the laws of the State of New York, and is duly authorized to do business in the State of New York; and

(b) Barrett Hill has the requisite power and authority to execute, deliver and perform this Agreement and consummate the transactions herein described; Barrett Hill has taken all necessary actions to authorize this Agreement, and no further action is

necessary to make this Agreement and the terms and provisions hereof binding and enforceable against Barrett Hill; and the person who has executed this Agreement on behalf of Barrett Hill has the authority to do so.

12) All notices, demands and requests that may be given or that are required to be given by either Party to the other Party under this Agreement must be in writing. Notices given by a Party's attorney on behalf of such Party shall be deemed given by such Party. All notices, demands, request or other communications required or permitted to be given hereunder must be sent by (i) personal delivery, or (ii) Federal Express or a similar nationally recognized overnight courier service, or (iii) via email transmission. Notices delivered by personal delivery shall be deemed to have been given upon tender to a natural person at the address shown. Notices delivered by email transmission shall be deemed to have been given on the day transmitted in accordance herewith, provided that a duplicate copy of such notice is sent via one of the other means of transmittal permitted hereby. Notices delivered by overnight courier shall be deemed to have been given the next day after delivery to such overnight commercial courier. All copies of notices sent to the attorney's listed in this Section 12 as receiving copies shall be given in the same manner as the original notice that was sent but shall not be a prerequisite to the effectiveness of any notice. Notwithstanding the foregoing, whenever under this Agreement a notice is either received on a day that is not a business day or is required to be delivered on or before a specific day that is not a business day, the day of receipt or required delivery shall automatically be extended to the next business day.

The addresses and emails for property notice under this Agreement are as follows:

IF TO BARRETT HILL:

Barrett Hill LLC
c/o Covington Development LLC
322 Clock Tower Commons
Brewster, New York 10509
Phone: (914)
Email:

AND TO:

Keane & Beane, P.C.
Attn: Richard L. O'Rourke
445 Hamilton Avenue
Suite 1500
White Plains, New York 10601
Phone (914) 946-4777
Email: rorourke@kblaw.com

IF TO THE TOWN:

Town Supervisor
Town of Southeast
3760 Route 22
Brewster, New York 10509
Email: _____

WITH A COPY TO:

Town Attorney
Town of Southeast
3760 Route 22
Brewster, New York 10509
Email: _____

Either Party may from time to time by written notice to the other Party, designate a different address for notices within the United States of America.

13) This Agreement shall bind and inure to the benefit of the Parties and their respective successors and/or assigns.

14) Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement or any approval or consent by the Town in connection with this Agreement shall prevent or restrict the exercise and/or performance by the Town of any regulatory, policing or permitting functions or obligations, except as otherwise provided herein.

15) It is understood and agreed that no agreement of partnership is intended hereby and nothing herein shall be deemed or construed to make the Town the partner of Barrett Hill or any Party the agent of any other so as to authorize or empower any Party to bind any other to financial or other obligations to third parties, or constitute or give rise to any joint venture.

16) The Parties do not intend to confer any rights and/or benefit under this Agreement on any person and/or entity other than the Parties hereto. Nothing in this Agreement is intended to, nor shall it, create any rights in favor of, or benefit, the general public or any persons and/or entities other than the Town and Barrett Hill, and their respective successors and/or assigns, and Transferees and no persons and/or entities other than the Town and Barrett Hill and their successors and/or assigns and Transferees, shall have a right to enforce this Agreement.

17) This Agreement shall be governed by and interpreted in accordance with the laws and regulations of the State of New York. All claims, actions, proceedings and lawsuits brought in connection with, arising out of, related to, or seeking enforcement of this

Agreement shall be brought in the Supreme Court of the State of New York, Westchester County.

18) No waiver of any breach of any agreement or provisions herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of time for performance of any other obligations or acts.

19) The Parties to this Agreement specifically reserve any and all rights and remedies they may have if the other Party materially defaults in any of its obligations under this Agreement, including but not limited to injunctive relief and other equitable remedies.

20) This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior understandings and writings with respect thereto. This Agreement may not be modified, changed, supplemented, or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the Party to be charged. If any provision, sentence, term, clause or word of this Agreement shall be determined by any court or competent jurisdiction to be invalid or unenforceable, such determination shall not invalidate or render unenforceable any other provision, sentence, term, clause or word herein, and this Agreement shall be enforced, to the maximum extent possible by law, with reference to the original intention of the parties hereto, from a reading of the entire Agreement, including any such provision, sentence, term, clause or word held to be invalid.

21) Each Party agrees to within ten (10) days following written notice by the other party, execute, acknowledge and deliver to the requesting Party a statement in writing certifying that this Agreement, as may be amended, is still in full force and effect and stating whether or not to the actual knowledge of the signer of such certificate, without any duty of inquiry or due diligence but based upon actual notice only, the other Party is in default in performance of any covenant, agreement, or condition contained in this Agreement, and, if so, specifying each such default of which the signer may have actual knowledge, it being intended that any such statement delivered pursuant to this section may be relied upon by any prospective mortgagee or assignee of any mortgage in respect of the requesting Party's interest in all or any part of the Property.

22) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same agreement. However, this Agreement shall not be effective unless and until all counterpart signatures have been obtained. Counterparts executed and transmitted via facsimile or pdf/email transmission shall be deemed fully effective upon receipt as if the originals of such documents had been transmitted and delivered.

23) TO THE EXTENT PERMITTED BY LAW, EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS

AGREEMENT, AND THE RELATIONSHIP OF THE TOWN AND BARRETT HILL
HEREUNDER.

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

BARRETT HILL LLC

By: _____
Name:
Title:

TOWN OF SOUTHEAST

By: _____
Name: Tony Hay
Title: Supervisor

