

TOWN OF PLEASANT VALLEY TOWN BOARD

TOWN BOARD RESOLUTION NO.: 142/2016

**RE: AUTHORIZING AMENDMENT TO FOX RUN/STEEPLECHASE ACRES LCC
SUBDIVISION ROAD IMPROVEMENT AGREEMENT**

WHEREAS, the Town of Pleasant Valley Planning Board granted final subdivision approval for the subdivision known as Fox Run Subdivision to Peter G. Capell on or about November 13, 2007; and

WHEREAS, said approval allows for the construction of a private roadway and a common driveway and the Town of Pleasant Valley Town Board authorized the construction of a private roadway pursuant by Town Law Section 280-a by an open development area by resolution on/about August 23, 2006; and

WHEREAS, in furtherance of the approvals Peter G. Capell executed a Road Improvement Agreement on March 11, 2008 , as amended on August 31, 2010; a Performance Bond on March 11, 2008, as amended on August 31,2010; and a Hold Harmless Agreement on June 19, 2008 (referred to as the “Agreements”); and

WHEREAS, the Road Improvement Agreement authorized the Agreements to be assigned by Capell to another party on consent of the Town Board, which consent would not be unreasonably withheld; and

WHEREAS, an assignment of the Road Bond Agreement, Performance Bond, and Hold Harmless Agreement was tendered by Peter G. Capell seeking to assign the aforementioned Agreements to Steeplechase Acres, LLC, a New York State limited liability Company, which was formed by Peter G. Capell and Kirchhoff Properties, LLC, to jointly undertake the development of the Fox Run Residential Subdivision; and

WHEREAS, the Town Board consented to the assignment by Resolution on or about February 2008; and

WHEREAS, as security for the Performance Bond, Steeplechase Acres, LLC, posted an Irrevocable Letter of Credit No. SB9127340001 issued by M&T Bank; and

WHEREAS, the Developer executed an amended Performance Bond dated September 12, 2012 and September 27, 2014 and a second amendment to the Road Improvement Agreement dated September 12, 2012 and a third amendment to the Road Improvement Agreement dated September 17, 2014 agreeing to complete the improvements by September 24, 2016; and

WHEREAS, notwithstanding the Agreements the developer did commence but did not complete construction as anticipated therein; and

WHEREAS, the developer has requested an extension from the Town to complete performance; now, therefore, be it

RESOLVED, that the Town Board hereby consents to the extension of the current Agreement with the developer to complete construction by September 24, 2018; and be it further

RESOLVED, that the Town Supervisor is authorized to execute the amended Road Improvement Agreement dated September 12, 2016.

MOTIONED BY: _____

SECONDED BY: _____

DATED: September 14, 2016

ROLL CALL:	<u>AYE</u>	<u>NAY</u>
Councilman Albrecht	_____	_____
Councilman Becker	_____	_____
Councilwoman Gross	_____	_____
Councilman Nicholson	_____	_____
Supervisor Figliozzi	_____	_____

**FOURTH AMENDMENT TO
ROAD IMPROVEMENT AGREEMENT
DATED: SEPTEMBER __, 2016**

THIS AGREEMENT, by and between Steeplechase Acres, LLC with offices located at 199 West Road, Pleasant Valley, NY 12601 (hereinafter called the “Developer”) and the Town of Pleasant Valley, a municipal corporation located in Dutchess County with offices at 1554 Main Street, Pleasant Valley New York 12538 (hereinafter called the “Town”)

WHEREAS, Peter G. Capell, Owner/Applicant, was a party to a Road Improvement Agreement dated April 7, 2008, which obligated the Developer to commence construction of the project within sixty (60) days of the date the Agreement was fully executed and to complete construction within two (2) years thereafter; and

WHEREAS, as required in conjunction with the execution of the Road Improvement Agreement the Developer executed a Performance Bond on March 11, 2008, which was updated in July 2009, which required the completion of the roads by September 24, 2010; and

WHEREAS, Peter G. Capell assigned the Road Improvement Agreement and Performance Bond to Steeplechase Acres, LLC. on the 26th day of November, 2008, which assignment was approved by Town Board Resolution dated October 8, 2008; and

WHEREAS, the Performance Bond as required by the Road Improvement Agreement is set to expire on or about September 24, 2016. The Letter of Credit issued by M&T Bank in the requisite amount of \$150,125.00 was extended and is set to expire on July 8, 2017; and

Now therefore in consideration of the mutual covenants expressed herein the parties agree as follows:

1. The Developer agrees that construction will be completed by September 24, 2018.
2. The Road Improvement Agreement dated April 7, 2008 as amended on August 31, 2010, September 12, 2012 and September 17, 2014, shall otherwise remain in full force and

effect.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement on the _____ day of September, 2016.

STEEPLECHASE ACRES, LLC

By: _____

TOWN OF PLEASANT VALLEY

By: _____
Mark Figliozi, Supervisor

State of New York)
)ss.:
County of Dutchess)

On the _____ day of _____ in the year **2016** before me, the undersigned, a Notary Public in and for said State, personally appeared _____ 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 Dutchess)

On the _____ day of _____ in the year **2016** before me, the undersigned, a Notary Public in and for said State, personally appeared **Mark Figliozi, Supervisor**, 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

**AMENDED
PERFORMANCE BOND**

Bond given by Steeplechase Acres, LLC with offices located at 199 West Road, Suite 101, Pleasant Valley, New York 12569 ("Obligor") to the Town of Pleasant Valley, a municipal corporation whose Town Hall is located at 1554 Main Street, Pleasant Valley, New York 12569 ("Obligee"), dated September ___, 2016.

KNOW ALL MEN BY THESE PRESENTS that the Obligor is held and firmly bound unto the Obligee in the sum of \$150,125.00 for the payment whereof to Obligee that said Obligor binds itself, its successors and assigns.

WHEREAS, Peter G. Cappell ("Cappell") made application to the Planning Board of the Town of Pleasant Valley for approval for a subdivision known as Fox Run subdivision (the "Subdivision"); and

WHEREAS, Cappell was granted final subdivision approval by the Planning Board of the Town of Pleasant Valley of the subdivision on November 13, 2007; and

WHEREAS, Cappell received consent of the Town of Pleasant Valley to assign the project to Steeplechase Acres, LLC; and

WHEREAS, pursuant to specifications approved by the Planning Board in connection with final subdivision approval, the Obligor must construct certain roads and public improvements per the approved specifications in connection with the development of the subdivision; and

WHEREAS, the Obligor's subdivision approval is subject to a condition that a Performance Bond or other security be given guaranteeing the construction and installation of the improvements as shown on the estimate prepared by Peter D. Setaro, P.E. of Morris Associates Engineering Consultants, PLLC in a letter to the Town of Pleasant Valley Planning Board, dated September 10, 2007, and as amended by the Town Attorney's letter dated

September 12, 2007, as confirmed by Gregory Bolner of Clark, Paterson and Lee, in a letter to the Town Board dated August 4, 2010 (collectively the “**Engineer’s Estimate**”); and

NOW, THEREFORE, the condition of this performance obligation is such that, if the Obligor shall well and truly make all of the aforesaid improvements in accordance with the rules and regulations of the Town of Pleasant Valley and the **Engineer's Estimate**, and the specifications set forth in connection with the Subdivision, and if said improvements are deemed complete by the Town of Pleasant Valley and are accepted by the Town of Pleasant Valley on or before September 24, 2018, then this obligation shall be null and void; otherwise, the obligation shall remain in full force and effect after said time.

The Obligor shall at all times provide the Obligee with such security or surety as the Obligee shall deem reasonably sufficient in accordance with applicable statute and/or ordinance. In compliance with the requirements of this Bond the Obligor has, as security for the proper and timely performance of the obligations herein, deposited with the Obligee an irrevocable letter of credit in the amount of \$150,125.00 for the benefit of the Town of Pleasant Valley and if the required improvements pursuant to the Town of Pleasant Valley Planning Board Resolution dated November 13, 2007, are left incomplete by the Obligor on or before September 24, 2018, the Obligee may draw the full amount of the account and hold the proceeds of it as security for the performance of the obligations secured by this Bond, and

In the event the Obligor fails to properly or timely make those improvements described herein or it otherwise fails to perform any obligation required herein, upon demand made by the Obligee, made in writing, with a copy to the Obligor at the address above, the Obligee shall have the right to draw upon said proceeds from time to time in such amount as may be required for it to complete improvements, and may thereafter complete the improvements, which completion the Obligor hereby authorizes, and which Obligee may, but shall not be required to undertake,

but limited to the sum of \$150,125.00.

The Obligor hereby agrees to both release and covenant not to sue the Town of Pleasant Valley with respect to any and all claims on behalf of itself, its successors or assigns, with respect to the enforceability of this performance obligation for any non-conformity with the procedural and substantive provisions of Town Law Section 277; furthermore, the Obligor agrees hereby to defend and indemnify the Town of Pleasant Valley with respect to any claims or defenses by any lending institution in connection with this project or by an institution providing collateral security to the Town of Pleasant Valley with respect to this performance obligation that the aforesaid provisions of Town Law Section 277 may not have been followed in connection with giving, acceptance and approval of this performance obligation with respect to the construction and installation of the road and public improvements in the development of the Subdivision.

Dated: September ____, 2016

Steeplechase Acres, LLC

BY: _____

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

On the ___ day of _____, 2016, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC