

WETLAND MITIGATION PLANTINGS MAINTENANCE AGREEMENT

THIS WETLAND MITIGATION PLANTINGS MAINTENANCE AGREEMENT (this "Agreement") is made and entered into the ___ day of _____, 2016, by and between ARTIS SENIOR LIVING HOLDINGS OF BRIARCLIFF MANOR, LLC, a Delaware limited liability company, having an address at 1651 Old Meadow Road, Suite 100, McLean, Virginia 22102 ("Artis"), and TOWN OF OSSINING, a New York municipal corporation, having an office at 16 Croton Avenue, Ossining, New York 10562 (the "Town").

WITNESSETH

WHEREAS, Artis is the owner of certain real property in the Town described in Exhibit A attached hereto and identified as Section 90.15, Block 1, Lot 45 on the Town of Ossining Tax Map (the "Property"); and

WHEREAS, Artis intends to develop the Property as a sixty-four (64) bed memory care assisted living facility, with related amenities and infrastructure (the "Project"); and

WHEREAS, on September 21, 2016, the Planning Board of the Town of Ossining (the "Planning Board") adopted a resolution pursuant to which the Planning Board adopted an Amended Negative Declaration of Environmental Significance with respect to the Project; and

WHEREAS, on _____, 2016, the Planning Board adopted a resolution titled ["_____"], pursuant to which the Planning Board granted site plan approval of the Project (the "Site Plan Approval"), and a resolution titled ["_____"], pursuant to which the Planning Board wetland permit approval for the Project (the "Wetland Permit," and collectively with the Site Plan Approval, the "Approvals"); and

WHEREAS, as part of the Approvals, the Planning Board required the preparation and implementation of a wetland impacts mitigation plan, as shown and described on that certain plan numbered Sheet 6 of 11, titled "Wetland Mitigation Plan Artis Senior Living," prepared by Kellard Sessions Consulting, dated August 1, 2015, last revised October 24, 2016 (the "Mitigation Plan"), a copy of which is on file in the office of the Planning Board; and

WHEREAS, the Mitigation Plan requires, among other things, the planting in the wetland buffer area on the Property (as delineated on the Mitigation Plan) (the "Wetland Buffer Area") of certain specified perennial plants, shrubs and trees (collectively, the "Wetland Mitigation Plantings"); and

WHEREAS, as part of the Approvals, the Planning Board required the preparation implementation of a Wetland Buffer Monitoring and Maintenance Plan, prepared by Kellard Sessions Consulting, and dated October 24, 2016 (the "Monitoring Plan"), for the monitoring and

maintenance of the measures required the Mitigation Plan, including the maintenance of the Wetland Mitigation Plantings; and

WHEREAS, Artis acknowledges that survival of the Wetland Mitigation Plantings in perpetuity is an essential component of the Mitigation Plan.

NOW THEREFORE, Artis and the Town hereby agree as follows:

1. Artis shall implement and perform the Mitigation Plan and Monitoring Plan in accordance with the terms, provisions and conditions thereof.
2. From and after the date which is the later of the dates on which (a) the Monitoring Plan expires, or (b) Artis completes the implementation of any final remedial measures required by the Town Environmental Consultant pursuant to the Monitoring Plan (such date, the "Monitoring Completion Date"), Artis shall in perpetuity maintain the Wetland Mitigation Plantings in healthy and good condition. For purposes of this Agreement: (i) the Wetland Mitigation Plantings shall be deemed to be in "healthy and good condition" if as of June 1 of each year following the Monitoring Completion Date at least eighty-five percent (85%) of the required Wetland Mitigation Plantings shown on the Mitigation Plan (as the same may be amended from time to time by the Planning Board or any successor board, agency or department of the Town having jurisdiction, are alive and thriving; and (ii) "thriving" means having sufficient vigor to reasonably assure survival until the next succeeding June 1, as determined by a licensed landscape architect or qualified horticultural professional engaged by Artis.
3. The Town acknowledges and agrees that the essential purpose of the Mitigation Plantings is to maintain and/or improve the functional values of the Wetland Buffer Area as described in the memoranda to the Planning Board prepared with respect to the Project by Stephen W. Coleman, and dated July, 2015, April 19, 2016, and September 7, 2016, and that the only aesthetic objective is to emulate a natural setting. The Town further acknowledges and agrees that the species and cultivars selected as Wetland Mitigation Plantings are intended to serve that purpose, and are not selected based on aesthetic considerations. Accordingly, the Town agrees that notwithstanding any provision of the Approvals, Mitigation Plan, or Monitoring Plan, Artis shall not be obligated to replace any thriving Wetland Mitigation Plantings for any reason including, without limitation, because such Wetland Mitigation Plantings have become "unsightly," or "overgrown," or for any other reason of appearance or aesthetics.
4. Artis hereby grants a perpetual non-exclusive easement to the Town, its officers, employees and contractors, to enter the Property at reasonable times and in a reasonable manner, upon not less than three (3) business days' notice, for the purposes of inspecting the Wetland Mitigation Plantings.

5. If ever the Town determines that Artis has failed to maintain the Wetland Mitigation Plantings in healthy and good condition, and the Town has provided Artis with written notice of such failure and a reasonable opportunity to remedy the failure (which shall be a period of not less than 30 days), the Town is authorized to enter the Property to undertake such planting as reasonably necessary to restore the Wetland Mitigation Plantings to healthy and good condition. In the event the Town, pursuant to this Agreement, performs any such work and incurs costs for labor, use of equipment, supplies, or materials, Artis shall reimburse the Town within thirty (30) days of receipt of written demand specifying in reasonable detail the actual costs incurred. If the Town is not reimbursed within said thirty (30) day period, the Town is authorized to affix the unreimbursed costs as a lien against the Property. Any work undertaken by the Town shall be performed in a good and workmanlike manner using best management practices, and the Town shall at its expense repair any damage to the Property or caused by the Town's activities.
6. This Agreement shall not confer or impose upon the Town any duty or obligation to maintain, or restore the Wetland Mitigation Plantings.
7. Artis shall not authorize, undertake, or permit any material alteration of the Wetland Mitigation Plantings except in accordance with written approval of the Planning Board or any successor board, agency or department of the Town having jurisdiction.
8. All notices required under this Agreement will be in writing and will be served by personal delivery, or by prepaid express mail (next day) via a nationally known courier service, or by certified mail, addressed to the respective parties at their addresses set forth below. Any such notice will be deemed to be given and effective: (i) if personally delivered, then on the date of such delivery; (ii) if sent via express mail (next day) then one (1) business day after the date such notice is sent; or (iii) if sent by registered or certified mail, then three (3) business days following the date such notice is deposited in the United States mail addressed as aforesaid. For purposes of this Agreement, "business day" shall be deemed to mean a day of the week other than a Saturday or Sunday or other holiday recognized by banking institutions of the State of New York. Copies of all notices shall be sent to the following:

Town:

Supervisor
Town of Ossining
16 Croton Avenue
Ossining, New York 10562

Artis:

Artis Senior Living Holdings of Briarcliff Manor, LLC
Attn: General Counsel

1651 Old Meadow Road, Suite 100
McLean, Virginia 22102

With a copy to:

Artis Senior Living Operator of Briarcliff Manor, LLC
c/o Artis Senior Living Management, LLC
680 American Ave, Suite 101
King of Prussia, PA 19406

9. All of the terms and provisions of this Agreement will be binding upon and inure to the benefit of and be enforceable by the heirs, legal representatives, successors and permitted assigns of the parties hereto, and shall run with the land.
10. There are and were no verbal or written representations, warranties, understandings, stipulations, agreements, or promises pertaining to the subject matter of this Agreement made by the parties or any agent, employee, or other representative of the parties or by any broker or any other person representing or purporting to represent the parties, not incorporated in writing in this Agreement, and neither this Agreement nor any of the terms, provisions, conditions, representations, or covenants contained in this Agreement can be modified, changed, terminated, amended, superseded, waived, or extended except by an appropriately written instrument specifically referencing this provision duly executed by the parties.
11. This Agreement may be executed in counterparts, each of which will be an original, and a digital copy showing execution shall be given the same force and effect of an original.
12. This Agreement will be construed and enforced in accordance with the laws of the State of New York, without giving effect to any conflict of laws or choice of law rules to the contrary.
13. This Agreement is for the sole benefit of Artis and the Town and their respective legal representatives, successors, heirs and permitted assigns, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement.
14. Artis shall disclose this Agreement to any successor or assign.

[SIGNATURES AND ACKNOWLEDGMENTS BEGIN ON NEXT PAGE.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly signed and made effective as of the day and year first above written.

ARTIS:

ARTIS SENIOR LIVING HOLDINGS OF BRIARCLIFF MANOR, LLC,
a Delaware limited liability company

By: Artis Senior Living, LLC,
a Delaware limited liability company,
its Manager

By: _____
Name:
Title:

COMMONWEALTH OF VIRGINIA)
COUNTY OF FAIRFAX)

The foregoing instrument was acknowledged before me this _____ day of _____,
2016, by _____ as the
_____ of Artis Senior Living, LLC, a Delaware limited liability
company, which limited liability company is the Manager of Artis Senior Living Holdings of
Briarcliff Manor, LLC, a Delaware limited liability company, on behalf of the company.

NOTARY PUBLIC in and for the above
stated jurisdiction

(NOTARY SEAL)

My commission expires:
My registration no.:

TOWN:

TOWN OF OSSINING

By: _____

Name:

Title: Supervisor

STATE OF NEW YORK)

ss:

COUNTY OF WESTCHESTER)

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 he 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