

STORM DRAINAGE EASEMENT AND RIGHT OF WAY

THIS STORM DRAINAGE EASEMENT AND RIGHT OF WAY (“Easement”) is made this _____ day of _____, 20____, by _____ (“Grantor”), and **MONTGOMERY COUNTY, MARYLAND**, a political subdivision of the State of Maryland (the “County”).

RECITALS:

A. Grantor is the fee simple owner of that certain real property located in _____, and more particularly described in **Exhibit “A”** attached hereto and incorporated herein by reference (the “Property”).

B. The Project is being developed in accordance with: _____ as any of them may be amended, modified, supplemented and/or expanded from time to time, with the requisite approvals from the Planning Board, are collectively, referred to as the “Project”.

C. Grantor is required to provide the County with an easement for the installation, construction, reconstruction, maintenance, repair, operation and inspection of a storm drain, over, across and under, that portion of the Property shown and identified on **Exhibit “B”** attached hereto and incorporated herein by reference (the “Storm Drainage Easement Area”).

NOW, THEREFORE, in consideration of the foregoing Recitals, each of which is incorporated herein and made a part of this Easement, and intending to be legally bound hereby, Grantor hereby grants, and the County accepts the following storm drainage easement and right of way upon the following terms:

1. **Storm Drainage Easement and Right of Way.** Grantor hereby grants to the County, its successors and assigns, a perpetual non-exclusive storm drainage easement and right-of-way, over, upon, across, under and through the Storm Drainage Easement Area (the “**Storm Drainage Easement Area**”), for the purposes of installing, constructing, reconstructing, maintaining, repairing, operating and inspecting the storm drain within the Storm Drainage Easement Area. Except for any improvements and related site work constructed pursuant to Grantor’s Project Approvals, Grantor shall not be permitted to erect nor permit to be erected any building or structure of any nature whatsoever within the Storm Drainage Easement Area, without the County’s written consent. In accordance with the Project Approvals, Grantor shall construct the storm drain (the “**Drainage Improvements**”) within the Storm Drainage Easement Area in accordance with the approved plans; provided that upon completion of the construction of the Drainage Improvements, the County shall thereafter be responsible for all ongoing maintenance and repair of the Drainage Improvements.

2. **Retained Rights.** The rights granted in this Easement to the County are non-exclusive and for the purposes stated in this Easement. The County acknowledges that the rights granted hereunder are limited, and Grantor retains its rights with respect to the Storm Drainage Easement Area, except as limited by this grant. The County acknowledges that fee title to the Storm Drainage Easement Area remains with the Grantor, and that this Easement confers on the

County no rights of ownership of the Storm Drainage Easement Area, except as provided under County law and otherwise provided herein.

3. Indemnification and Hold Harmless. Grantor agrees that should the County remove or damage property in any way during the installation, construction, reconstruction, maintenance, repair, operation, and inspection of the Drainage Improvements within the Storm Drain Easement Area, the County is not required to repair, restore or replace the property, and Grantor will save the County harmless for any damages that may occur to said Drainage Improvements, excluding any damages caused by the gross negligence or willful misconduct of the County, its agents, servants or employees. Additionally, Grantor does hereby release, discharge, hold harmless, and covenants not to sue the County and its agents, servants and employees, or any combination thereof (“Releasees”) with respect to all liability claims, demands, actions, suits, liability, loss or damage (collectively, “Claims”), whether alleged, adjudicated or otherwise, to persons or property, and any loss of access caused by the County, excluding any Claims caused by the gross negligence or willful misconduct of the County, its agents, servants or employees. Grantor further agrees that if, despite this release, waiver of liability, and assumption of risk, anyone, whether Grantor or any third-party, makes a claim against the County or its agents, servants or employees, or any combination thereof, alleging any such Claims, or loss of access from or closure of any property, Grantor does hereby indemnify and hold harmless the County and its agents, servants or employees, from any and all Claims (including attorneys’ fees), whether alleged, adjudicated or otherwise, which may incur as the result of any such Claim, excluding, however, any Claim caused by the gross negligence and/or willful misconduct of the County, its agents, servants or employees.

4. Run with the Land. All provisions of this Easement, including the benefits and the burdens, shall touch, concern and run with the Property and be binding and inure to the benefit of Grantor, the County and their respective successors, transferees and assigns.

5. No Waiver. No restriction, condition, obligation or provision of this Easement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

6. No Merger. Notwithstanding that the Storm Drainage Easement Area and the Property may now or hereafter be owned by the same individual or entity, the easements and rights herein granted and the covenants hereby imposed upon the Property shall not be deemed to be extinguished by merger or otherwise and the same shall be perpetual and shall not be extinguished or modified or amended, except by prior written consent of the then fee simple owner of all or a portion of the Property, the then fee simple owner of the Storm Drainage Easement Area, and the County by written instrument recorded among the land records of Montgomery County, Maryland (the “**Land Records**”).

7. Density. Notwithstanding anything in this Easement, Grantor and its designees, successors and assigns, shall retain the exclusive right to use of 1) the development density attributable to and arising from the Storm Drainage Easement Area that is subject to this Easement, and 2) the development capacity and related inchoate density arising from, or attributable to, the Storm Drainage Easement.

8. Entire Easement; Restricted Access to other Areas. Any uses or purposes of the Storm Drainage Easement Area shall be limited to those expressly granted in this Easement or under County law. Except as provided under County law, no rights are granted in this Storm Drainage Easement Area to enter on, or do anything above, inside or beneath any of the improvements or areas that are not within the Storm Drainage Easement Area, including but not limited to, the Project.

9. No Ownership: No Third-Party Beneficiaries. This Easement does not confer any rights of ownership or control except as provided under County law and otherwise stated in this Easement. There are no third-party beneficiaries to this Easement.

10. Severability. The terms and provisions of this Easement are severable and if any term or provision of this Easement is declared to be invalid or unenforceable, the remaining terms and provisions hereof shall remain in full force and effect.

11. Governing Law. This Easement shall be construed and enforced in accordance with the laws of the State of Maryland and shall be effective upon recordation among the aforesaid Land Records.

12. Amendments and Modifications. The provisions of this Easement may be abrogated, modified, rescinded or amended in whole or in part only with the prior written consent of the then record owner of the Storm Drainage Easement Area and County by written instrument duly recorded among the Land Records.

13. Incorporation by Reference. The recitals of this Easement and all Exhibits attached to this Easement are incorporated into this Easement and made a substantive part of this Easement.

14. Binding Authority. Grantor and County each represents and warrants to the other that this Easement has been duly authorized, executed and delivered by and on its behalf and constitutes such party's valid and binding agreement in accordance with its terms.

15. Successors and Assigns. This Easement shall be binding upon and inure to the benefit of Grantor and the County and their respective successors, transferees and assigns.

16. Counterparts; Electronic Signatures. This Easement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement. Delivery of a signed copy of this Easement by facsimile or e-mail or a copy of this Easement signed electronically (including, without limitation, by DocuSign) shall have the same legal effect as delivery of a signed original of this Easement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor and the County have caused this Easement to be executed as of the day and year first above written.

WITNESS:

GRANTOR:

By: _____

Name/Title

WITNESS:

COUNTY:

MONTGOMERY COUNTY,
MARYLAND

By: _____

Name: _____

Title: Director, Department of
Permitting Services

[ACKNOWLEDGMENTS ON THE FOLLOWING PAGE]

STATE OF _____ *
* to wit:
COUNTY OF _____ *

I HEREBY CERTIFY that on this ____ day of _____, 2022, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument as Director, Department of Permitting Services, and that he/she, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained, by signing the name of Montgomery County by himself/herself as the authorized representative.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

Notary Public

My Commission Expires: _____
[NOTARIAL SEAL]

STATE OF _____ *
* to wit:
COUNTY OF _____ *

I HEREBY CERTIFY that on this ____ day of _____ 2022, before me, a Notary Public in and for the State and County aforesaid, personally appeared Daniel C. Murphy, known to me (or satisfactorily proven) to be the Executive Vice President of Bozzuto Holdings II, LLC, a Maryland limited liability company, the Managing Member of BA Silver Spring Apartments, LLC, a Maryland limited liability company, the Co-Managing Member of SC/BA Silver Spring Apartments, LLC, a Maryland limited liability company, the Co-Managing Member of Silver Spring Apartments, LLC, a Maryland limited liability company, and that such person, being authorized to do so, executed the foregoing instrument on behalf of said company for the purposes stated therein.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

Notary Public

My Commission Expires: _____
[NOTARIAL SEAL]

Property Tax ID No. _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Property Tax I.D. No.

Property ID No. _____

EXHIBIT B
STORM DRAINAGE EASEMENT AREA

(To be attached.)