

Montgomery County
Department of Environmental
Protection
255 Rockville Pike
Rockville, MD 20850

**MASTER DECLARATION
OF TERMS AND
CONDITIONS OF STORM
WATER MANAGEMENT
RIGHT OF ENTRY
AND MAINTENANCE
AGREEMENT**

THIS MASTER DECLARATION OF TERMS AND CONDITIONS OF STORMWATER MANAGEMENT RIGHT OF ENTRY AND MAINTENANCE AGREEMENT (the "Master Declaration of Terms and Conditions" or "Agreement") is made this 9th day of August, 2011 by and between the owner of the Property, its successors and assigns (the "Grantor") and **MONTGOMERY COUNTY, MARYLAND**, its successors and assigns (the "County"). The Grantor and the County are hereinafter referred to collectively as the "Parties".

R E C I T A L S:

WHEREAS, the Grantor is the fee simple owner of certain Property in Montgomery County, Maryland ("Property"); and

WHEREAS, one of the goals of the stormwater protections required under State and County law is to maintain after development, as nearly as possible, the pre-development runoff characteristics of properties, and to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding by implementing environmental site design to the maximum extent practicable and using appropriate structural best management practices only when necessary; and

WHEREAS, the Property is being developed and has, or will have, a stormwater management system (the "System"), as defined in County law, that is to be constructed, maintained and repaired substantially in accordance with certain plans approved in a sediment control permit; and

WHEREAS, County law provides for certain inspection, maintenance and repair responsibilities, including the requirement that prior to issuance of a sediment control permit, the Grantor must execute an easement and inspection and maintenance agreement that gives the County a perpetual right of access to the Property to inspect, modify, or maintain the System as needed to assure that the System remains in proper working condition; and

WHEREAS, the Grantor desires to provide this Right of Entry to the County over, through, and under the Property as provided herein; and

WHEREAS, the County desires to accept the grant of the Right of Entry subject to the provisions stated below; and

WHEREAS, the Parties desire to provide for the ongoing inspection and maintenance of the System in accordance with the terms of this Agreement; and

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 54725, p. 0379, MSA_CE63_54682. Date available 08/17/2017. Printed 08/22/2017. NO FEE

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WHEREAS, this Agreement sets forth the terms and conditions as a *Master Declaration of Terms and Conditions* by which the Grantor, in accordance with County law, in consideration of the issuance of a Sediment Control Permit to develop the Property, and upon recordation of a Stormwater Management Right of Entry that includes reference to this Agreement in the Land Records of Montgomery County, Maryland ("Effective Date"), Grantor, jointly and severally, and any successors and assigns of Grantor, grants a Right of Entry over the Property identified in the Declaration of Covenants, and fully acknowledges and agrees to be bound by the terms hereof as if this Agreement were separately executed; and


NOW, THEREFORE, in consideration of the foregoing Recitals, each of which is incorporated in and made a substantive part of this Agreement, and intending to be legally bound hereby, the Grantor hereby makes and the County accepts the following declaration of restrictive covenants and other rights upon the terms and conditions provided herein:

1. The recitals of this Agreement are incorporated into this Agreement and made a substantive part of this Agreement.
2. The Grantor hereby grants to the County a perpetual right of entry over, through, and under the Property for access to the System at all reasonable times to inspect, operate, monitor, install, construct, reconstruct, modify, maintain, clean, or repair any part of the System as needed to assure that the System remains in proper working condition under approved design, maintenance, and environmental standards, as shown on the approved Record Drawing Plan authorized by the Sediment Control Permit identified in a Declaration of Covenants.
3. The Grantor agrees that the Grantor will not obstruct or permit anyone else to obstruct the System during the term of this Right of Entry. The Grantor will not remove the System without the County's prior written consent. Furthermore, the Grantor will not construct any building, structure, obstruction or impediment of any kind in, over, through, or under the System, nor permit the construction of any building, structure, obstruction or impediment on the Property that would interfere with the proper and efficient operation of the System. Grantor further covenants that the Grantor will not perform or permit any activities that would interfere with the proper and efficient operation of the System without the County's prior written consent.
4. The County will at all times have a right of ingress and egress over, through, and under the Property and the right to enter the Property via any road or parking lot located within any common area owned by the Grantor to inspect, maintain, modify, repair, install, construct, reconstruct, alter, replace, operate, and monitor any best management practice within the System located on the Property.
5. The Grantor is responsible for maintaining the entire on-site stormwater management system and must, therefore, perform the inspection and maintenance needed to ensure that the System remains in proper working condition under County-approved design, maintenance, and environmental standards.
6. The County may routinely inspect the System to ensure that the System remains in proper working condition.

7. If, after reasonable notice by the County, the Grantor fails to maintain the System in accordance with this Right of Entry, the County may perform any maintenance needed to correct a condition that impacts the effectiveness of the System and collect any costs incurred as a result from the Grantor in the same manner as real property taxes are collected. In addition, the County may seek reimbursement under any other method legally available to collect debts owed to the County.
8. Except in the case of an emergency, the County will provide not less than seven (7) calendar days' prior notice to the Grantor before performing any inspection of the System or any other work authorized under this Right of Entry. The Grantor agrees that the failure to timely object after receiving notice from the County constitutes consent to inspection of the Property. If the Grantor objects then the County agrees, in the absence of an emergency, to obtain an administrative search warrant before entering the Property.
9. The County agrees to undertake all reasonable measures to return any area of disturbance resulting from work performed under this Right of Entry to its original condition whenever the County undertakes repairs and maintenance in accordance with this Agreement.
10. No covenant, term, or condition contained in this Right of Entry shall inure to the benefit of any party other than the Grantor and the County and their respective successors and assigns.
11. All of the covenants, terms, and conditions contained in this Right of Entry run with the land and shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns.
12. The Grantor represents and warrants that there are no prior encumbrances against the Property that would impair the enforceability of this Agreement.
13. The Grantor specially warrants the Right of Entry granted under this Agreement and agrees to execute, acknowledge, and deliver to or for the County such further instruments and take such further actions as may be reasonably required to carry out and effectuate the intent and purpose of this Right of Entry, or to confirm or perfect any right created hereunder.
14. In the event of any breach, or threatened breach, of this Agreement by either party hereto, the non-defaulting party shall have the right to any remedy available at law or in equity, including but not limited to, injunctive relief and specific performance.
15. This Agreement and the Stormwater Management Right of Entry that refers to this Agreement constitute the entire agreement between the Parties and may not be modified, amended, or terminated except by an instrument in writing signed by both of the Parties or their successors and assigns.
16. This Agreement and the Stormwater Management Right of Entry that refers to this Agreement shall be governed and construed in accordance with the laws of the State of Maryland and the laws of Montgomery County, Maryland.

- 17. Any forbearance by either the County or the Grantor in exercising any right or remedy afforded under this Agreement or by law shall not be a waiver or preclude the exercising of any such right or remedy.
- 18. Invalidation of any one of these terms or provisions by any Court shall in no way affect any other provisions, which shall remain in full force and effect.
- 19. The original deed of conveyance from the Grantor, its assigns or successors, and all subsequent transfers, assignments, and deeds of conveyance out by subsequent sellers of the lots designated within the Property, shall contain conspicuous language specifically reciting that each lot is subject to a Stormwater Management Right of Entry, this Agreement, and the requirements of Chapter 19 of the Montgomery County Code, 2004, as amended, and referencing the date of recordation of this Agreement and the Stormwater Management Right of Entry that refers to this Agreement among the land records of Montgomery County, Maryland, including the Liber and Folio references. Notice must also be included in any contract of sale for a lot that fully and completely discloses the stormwater management system or practices required for the lot. All subsequent sellers of a lot must likewise provide such notice in contracts of sale.

MONTGOMERY COUNTY, MARYLAND


 Diane Schwartz Jones
 Director, Department of Permitting Services

(Jurats follow)

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STATE OF MARYLAND
COUNT OF MONTGOMERY

I hereby certify that on this 9th day of AUGUST, 2017, before the subscriber, a Notary Public in and for the State of Maryland, and the County of Montgomery, personally appeared Diane Schwartz Jones, Director of the Montgomery County Department of Permitting Services, who acknowledge that she, having been properly authorized, executed the foregoing instrument, voluntarily and for the purposes therein contained. In testimony, I have set my and notarial seal.

IN TESTIMONY WHEREOF, I have affixed my hand and official seal.

Alexis Rountree
NOTARY PUBLIC

My Commission Expires 01-07-2018

Certificate

I hereby certify that I am an attorney duly admitted to practice before the Court of Appeals of Maryland and that the within instrument was prepared under my supervision.

Charles J. Fudenberg
ASSOCIATE COUNTY ATTORNEY

AFTER RECORDATION, PLEASE RETURN TO:

Charles L. Frederick
Associate County Attorney
101 Monroe Street, Third Floor
Rockville, Maryland 20850

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Master Declaration of Terms and Conditions
of Stormwater Management Right of Entry
and Maintenance Agreement