

DECLARATION OF COVENANTS AND MAINTENANCE
AGREEMENT FOR RETAINING WALLS

This DECLARATION OF COVENANTS AND MAINTENANCE AGREEMENT FOR RETAINING WALLS (the "Declaration"), is made this _____ day of _____, 20____, by and between _____ and (the "Declarant") and the County Commissioners of Charles County, Maryland, a body corporate and politic, ("County").

WHEREAS, the Declarant owns property identified as Tax Map _____, Grid, _____, Parcel _____, Lot, _____, Section _____, acquired by a Deed recorded among the Land Records of Charles County, Maryland at Liber _____, Folio _____, and as described on Plats recorded among the Land Records of Charles County, Maryland at Plat Book _____, Page _____, located in the _____ Election District of Charles County, Maryland (the Property).

WHEREAS, as part of the Project, the Declarant will develop, construct and dedicate the public rights of way known as " _____ " as shown on the Plats of Subdivision, attached hereto, and made a part hereof, and as described on Plat(s) recorded among the Land Records of Charles County, Maryland at Plat Book _____, Page _____, (collectively, the "Street"); and

WHEREAS, in connection with the plans for the public infrastructure of the Project, the Street will be dedicated as public rights of way and will be conveyed to the County Commissioners of Charles County, Maryland (the "County"); and

WHEREAS, the zoning and subdivision laws and ordinances of the County do not ordinarily allow retaining walls within County owned and maintained roadways; and

WHEREAS, the Declarant has requested that the County allow a Retaining Wall to be constructed between _____ on the right side of _____, and the County has agreed to grant permission for the Retaining Wall construction provided that the Declarant execute and record this Declaration to assure the perpetual maintenance of the Retaining Wall by the homeowners association for the Subdivision, and this Declaration shall establish covenants for such maintenance, as further set forth herein below.

NOW THEREFORE, in consideration of the foregoing, the Declarant intending to establish and further a scheme of development which shall enhance the attractiveness and value of the Project, and further intending that this Declaration shall run with and bind the Property as further provided below, the Declarant does hereby declare, assent, decree and covenant as follows:

In connection with the Project, the Declarant has prepared, executed, acknowledged and delivered a certain Declaration of Covenants, Conditions, Easements and Restrictions for the _____ Homeowners Association, Inc. dated _____, (the "HOA Declaration"), which establishes the homeowner's association to which residential lots within the Property and Project are subject (the "Association"). Accordingly, the Declarant covenants and agrees as follows:

This Declaration shall be read and interpreted in concert with the HOA Declaration of Covenants and shall be considered a part of the HOA Declaration of Covenants. This Declaration is intended to be incorporated by reference into the HOA Declaration of Covenants.

Where this Declaration may be inconsistent with the terms of the HOA Declaration of Covenants, this Declaration shall control.

This Declaration is intended to bind and run with the Property, and all parties having any right, title or interest therein.

The infrastructure plans of the Project include a Retaining Wall which will be located within the Street. In connection with the Retaining Wall, the Declarant hereby covenants and agrees as follows:

The Declarant shall develop and construct the Retaining Wall strictly in accordance with the plans and specifications approved by the County, and strictly in accordance with all applicable laws, regulations and ordinances.

The County shall own the street as public rights of way, however, the Association shall own the Retaining Wall. The County shall have no obligation of maintenance and/or repair of the Retaining Wall.

The Association shall operate, maintain, repair and/or replace, the Retaining Wall, which shall be maintained in good order and repair at all times at the sole cost of the Association. At all times, the County shall have the sole right to determine the standard of maintenance, including, but not limited to, actions required by the Association to "maintain the Retaining Wall in good order and repair". The Association's obligations for maintenance of the Retaining Wall shall include, but shall not be limited to, the obligation and responsibility for: (i) repair of damage to the wall; (ii) repair of wall failures; and (iii) related landscape maintenance and repair. Notwithstanding anything to the contrary set forth herein, the standard of maintenance and repair of the Retaining Wall shall at all times ensure its structural integrity. Although the County shall not be obligated to maintain, and/or repair the Retaining Wall, if the County undertakes any such work, the Association shall reimburse the County for the reasonable costs thereof within thirty (30) days following the date that the County presents an invoice to the Association for such costs.

Although the Retaining Wall is not located on property owned by the Association, the Association shall have the obligation and responsibility for construction, maintenance, repair and replacement thereof, in the same manner as if the Retaining Wall was within "Common Area" as set forth in the HOA Declaration. Without limitation to the foregoing, the Retaining Wall shall be included within the areas of the Project which shall be maintained, repaired, and/or improved at the common expense of lot Owners within the Project, known as a "Common Area".

If the Association should fail to undertake its obligations under this Declaration, the County shall have the right, but not the obligation, to perform those obligations and to recover the cost thereof from the Association. In addition, the County shall have the right to assess the costs thereof against the residential Lots within the Project in the same manner as the County is

permitted to assess the maintenance costs of private stormwater management and/or drainage areas under the applicable Charles County laws, regulations and/or ordinances.

It is acknowledged that the Retaining Wall is located within the public right of way area of the Streets, which are or shall be owned by the County. All work by the Association within the public right of way area shall be performed in accordance with the Standards and Specifications Manual of the County, the Standard Details Manual of the County, and County Ordinances. The Association shall notify the Department of Public Works, Facilities and Roads of the County, at least forty-eight (48) hours prior to undertaking work within the public right of way area. By the signature of the President of the County Commissioners of Charles County, Maryland below, the County hereby grants permission to the Association to perform the maintenance and repair obligations set forth herein for the Retaining Wall. Notwithstanding the foregoing, the grant of such permission and authorization by the County in this Declaration shall at all times be subject to the strict terms of this Declaration and to all applicable laws, regulations and ordinances as the same may now or hereafter exist.

This Declaration shall be recorded among the aforesaid Land Records at the expense of the Declarant. This Declaration shall run with and bind the land, residential lots, common areas and other areas and parcels located within the Property and/or Project, now or hereafter, in perpetuity, and all persons having any right, title or interest therein. The Declarant grants to the County, the right and authority, without the need for the consent or signature by any other party, to amend and modify this Declaration as and when the County may deem appropriate to undertake the intent of this Declaration. The Declarant shall grant to the County, such other and further assurances hereof as the County may require from time to time.

This Declaration shall be governed and construed in all respects, in accordance with the laws of the State of Maryland. This Declaration may be enforced in the same manner as the HOA Declaration. In addition, any party found to be in default under this Declaration shall be subject to all rights and remedies, at law, or in equity, brought by any party enforcing this Declaration, including, but not limited to, any Lot Owner within the Project, the Declarant and/or the County. This Declaration shall be liberally construed to carry out the enforcement of the intent hereof.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, we have hereunto set our hands and seals.

DECLARANT:

By: _____(SEAL)

Name: _____

Title: _____

STATE OF _____, COUNTY OF _____, TO WIT:

On this _____ day of _____, 20_____, before me, the undersigned, a Notary Public of the State aforesaid, personally appeared _____, as _____, on behalf of _____ known to me or satisfactorily proven to be the person whose name is subscribed to within the instrument and acknowledges that he/she executed the foregoing document for the purposes and in the stated capacity therein contained.

WITNESS my hand and official seal.

Notary Public
My Commission Expires: _____

Additional signatures on the following page

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Approved for Acceptance:

Approved as to Legal Sufficiency:

Director
Planning and Growth Management

County Attorney

ATTEST:

COUNTY COMMISSIONERS OF
CHARLES COUNTY, MARYLAND

_____(SEAL)
President

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK