

**DECLARATION OF EASEMENT FOR INSPECTION, MAINTENANCE,
REPAIR AND PROTECTION OF RETAINING WALL**

THIS DECLARATION OF EASEMENT FOR INSPECTION, MAINTENANCE, REPAIR AND PROTECTION OF RETAINING WALL(S) (this “Declaration of Easement”) is made and entered into this _____ day of _____, 20[] by and between _____ [PROPERTY OWNER] a limited liability company (the “Owner”) and the [HOA], a Maryland nonstock corporation (the “Association”).

WITNESSETH:

WHEREAS, Owner is the owner of property, hereinafter referred to as the “Subject Property”, described as follows:

LEGAL DESCRIPTION

the Subject Property having an address [_____], Maryland, and a Tax ID No. of [_____];

WHEREAS, the Owner desires to improve the Subject Property with [insert subdivision name, lot and block numbers] with construction of retaining walls as reflected on permit _____;

WHEREAS, prior to the recording hereto, the Association was established pursuant to Section 11B-101 *et seq.* of the Real Property Article of the Annotated Code of Maryland by the recording of that certain Declaration of Covenants, Conditions, Restrictions and Reservation of Easements recorded among the Land Records of Prince George’s County, Maryland (the “Land Records”) on DATE, at Book [_____], Page [_____] (as amended, the “Declaration”);

WHEREAS, pursuant to the Declaration, the Association is responsible for the operation and maintenance of certain common areas and community facilities on that certain real property described on Exhibit “A” to the Declaration (such property subject to the Declaration shall hereinafter be referred to as the “HOA Property”). The Association is also responsible for the operation and maintenance of retaining walls located on private lots or parcels in this subdivision, as further described below.

WHEREAS, the Subject Property is within the HOA Property and/or on private lots or parcels described as _____ (insert subdivision name, lot, block, parcel, record plat reference and Liber/folio of each lot or parcel), and subject to the Declaration.

WHEREAS, the Declaration provides that the Association shall have an easement to enter any portion of the Subject Property for the performance of its duties (including, without limitation,

maintenance of a retaining wall located on the HOA Property and/or on private lots or parcels) thereunder, including, without limitation, fenced, or other similar areas of the HOA Property;

WHEREAS, prior to said construction, developing or redeveloping on or of the Subject Property, the Owner is required by Subtitle 32 of the Prince George's County, Maryland Code to provide for certain retaining wall(s) and other improvements relating to retaining wall(s);

WHEREAS, in order to obtain such permits and approvals for the development of the Subject Property and the HOA Property from Prince George's County, Maryland (the "County"), Owner is required to grant to the Association certain rights and easements relating to certain retaining wall(s) and other improvements relating to retaining wall(s) on and/or in the vicinity of the Subject Property;

WHEREAS, the Association desires and Owner agrees to grant to the Association a perpetual, non-exclusive easement along, over, under, and through the Subject Property for the purposes of inspecting, and, in accordance with this Declaration of Easement, conducting any repairs, maintenance or reconstruction to such retaining wall(s), geogrid, tie-backs, and/or other improvements relating to retaining wall(s) located on or in the vicinity of the Subject Property; and

WHEREAS, Owner and the Association agree that the Association shall have and enjoy certain rights and easements with respect to the Subject Property, supplementing any easement rights in connection with the maintenance of any community facilities in the Declaration, in accordance with the terms and conditions of this Declaration of Easement. The Association shall have the obligation to repair, maintain and reconstruct retaining walls on the properties described herein.

NOW, THEREFORE, in compliance with the requirements of Subtitle 32 of the Prince George's County, Maryland Code, and in consideration of the issuance by the County of any required permitting related to the Subject Property and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner does grant, covenant, and agree as follows:

1. The Retaining Wall System. Owner shall construct or permit to be constructed retaining wall(s) system containing retaining wall(s), geogrid(s), tie-backs, and/or other similar improvements (the "System") as depicted on Exhibit A, and shall further permit and not interfere with the necessary and desirable maintenance of said System, including replacement or reconstruction, in necessary, to ensure that the System is and remains in proper working condition in accordance with the approved Retaining Wall Location Plan, approved design standards, applicable laws, rules and regulations. A depiction of the System is attached hereto as Exhibit "A" and incorporated herein. In order to ensure that the Association can adequately maintain the System, Owner grants and Association accepts from Owner a certain retaining wall easement over such portion of the Subject Property in which the retaining wall easement area (the "Retaining Wall Easement Area") is within the Subject Property. All Retaining Wall Easement Areas within the HOA Property are described and depicted in the Retaining Wall Easement Description and Plans attached hereto as Exhibit "B".

2. Owner's Non-Disturbance of System. Owner, solely in its capacity as owner of the Subject Property, shall not, without the prior written consent of the Association, which may be given or withheld in the Association's sole discretion, perform nor permit the: (i) removal or alteration of the System, including, without limitation, any portion of the System located within the area of reinforced earth, structural backfill, and footing of the retaining wall on the Subject Property. The County prohibits the following alterations within the area of the retaining wall easement:

- (i) the erection or installation of any structure, building or other improvements, with the exception of certain minor structures listed herein
- (ii) the excavation or filling of land, and
- (iii) the installation of trees;
- (iv) The construction of buried utilities
- (v) The construction of stormwater management devices and storm drain pipes

The County allows the following minor structures within the area of the retaining wall easement, with the provision that the property owner remove and replace these elements if required for retaining wall maintenance or reconstruction: sheds, fences (if fence posts are located a minimum of 3 feet from face of wall), patios, pergolas, benches, sidewalks, trails, and signage

This Section shall not be construed to require Owner's permission for the Association to take any of the referenced actions in connection with the operation and maintenance of the System or to abridge, limit, or restrict any of the rights granted to the Association by this Declaration of Easement or the HOA Declaration.

3. Association Right of Entry for Inspection and Maintenance. That the Association, its successors and assigns, shall, after first providing reasonable prior notice to Owner, at all times have a right of entry, ingress and egress along, over, under, through the Subject Property to and from the System and/or the Retaining Wall Easement Area for the purpose of conducting inspections, repairing, performing maintenance of, reconstructing, replacing, and engaging in other similar activities that the Association deems necessary or desirable, of the System or any component thereof. To the extent practical, said ingress and egress will be made generally across the Subject Property from any adjacent public road or right-of-way, or along such other lines, to any portion of the System, including, without limitation, any portion of the System located within the Retaining Wall Easement Area over the Subject Property. In the event of an emergency, determined by the HOA in its sole discretion, such right of entry to conduct such inspections or maintenance shall be immediate and the HOA may but shall not be required to give reasonable prior notice to owner. Under no circumstances shall any work authorized by this Section 3 be construed to authorize the Association to materially disturb or remove any lateral or subjacent support of any dwelling unit located within the Subject Property.

4. Association Easement Rights. The Association shall have a perpetual, non-exclusive easement along, over, under, and through the Subject Property, including, without limitation, the Retaining Wall Easement Area, for the purposes of exercising any rights, powers, or duties

Version Date: October 19, 2021

granted to the Association by this Declaration of Easement. The exercise of any rights, powers, or duties granted to the Association by this Declaration of Easement shall be in addition to any such easement rights granted to the Association in the Declaration. If the Association does disturb, interfere with, undermine, damage, alter, modify, or remove all or any portion of the Subject Property or improvements located thereon, the Association shall promptly repair and/or restore the Subject Property or such improvements thereon at no cost to Owner.

5. Effectiveness; Modification and Waiver. This Declaration of Easement shall be effective upon recording in the Land Records by Owner, which shall occur within thirty (30) days of the execution of this Declaration of Easement by Owner and the Association, and shall not be modified, amended or supplemented in any way, and no provision hereof shall be deemed to have been waived, and no consent hereunder shall be deemed to have been given except if in writing, signed by Owner and the Association and recorded among the Land Records.

6. Binding Effect; Successors and Assigns. The provisions of this Declaration of Easement shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of all persons who shall succeed to any interest in all or any portion of Subject Property or until such time as all any such easement shall terminate by the agreement of the parties hereto.

7. Severability. Every provision of this Declaration of Easement is hereby declared to be independent of, and separable from, every other provision of this Declaration of Easement, and if any such provision shall at any time be held to be invalid or unenforceable, such invalid or unenforceable provisions shall be considered not to be a part of this Declaration of Easement and such holding shall be without effect upon the validity or enforceability of any other provision of this Declaration of Easement.

8. Governing Law. This Declaration of Easement shall be governed by, construed and enforced according to the laws of the State of Maryland (without regard to its choice of law provisions).

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Owner has executed this Declaration of Easements as of
this _____ day of _____, 202____.

OWNER:

By: _____

Name: _____

Title: _____

(Instruction: If retaining wall involves several properties owned by multiple owners, then separate easements are required for each owner.)

ASSOCIATION:

By: _____

Name: _____

Title: _____ **President** _____

STATE OF _____

COUNTY OF _____; to wit,

I HEREBY CERTIFY that on this ____ day of _____, 2020, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared _____, as the _____ of OWNER, and acknowledged that he executed the foregoing Declaration for the purposes therein contained as his duly authorized act and deed on behalf of said limited liability company.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission expires: _____

[NOTARIAL SEAL]

STATE OF _____

COUNTY OF _____; to wit,

On this ____ day of _____, 2020, before me, _____, the undersigned office, personally appeared _____ known to me to be President of [HOA] INC., a Maryland nonstock corporation, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public
Print Name: _____

My Commission Expires: _____

[NOTARIAL SEAL]

ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing document was prepared by or under the supervision of the undersigned, an attorney duly licensed to practice before the Court of Appeals of Maryland.

Return to:

Exhibit "A"
System Description

Exhibit "B"
Easement Description and Plans

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