

DECLARATION OF COVENANTS AND EASEMENT
(Alley Closing)

THIS DECLARATION OF COVENANTS AND EASEMENT (“Declaration”) is made this _____ day of _____, (Insert year) by (Insert the owner of adjacent property) (hereinafter referred to as the “Declarant”), (Insert the name of owner’s agency) (hereinafter referred to as the “Designated Developer”), or the successors, affiliates and assigns of the Declarant, for the benefit of the DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY a municipal corporation (hereinafter referred to as “DCWASA”).

RECITALS:

WHEREAS, Declarant is the record owner of certain real property in the District of Columbia known as Lots (Insert lot number here) in Square (Insert square number here) more particularly described in Exhibit A; and

WHEREAS, pursuant to Section 7-421, D.C. Code (1981), as amended, an application known as S.O. (Insert S.O. file number) was filed on (Insert filing date), on behalf of the Declarant with the Office of the Surveyor of the District of Columbia to close portions of an alley system in Square (Insert square numbers); and

WHEREAS, the Council of the District of Columbia found that said portions of the public alley system in Square (Insert square numbers) were unnecessary for alley purposes and changes in the alley system of Square (Insert square number) were enacted

by the Council of the District of Columbia pursuant of D.C. Bill 13-797 (D.C. Act 13-532); and

WHEREAS, the Declarant desires to ratify and affirm the application and the terms and conditions imposed on the application as its own act and deed; and

WHEREAS, on (Insert date of agreement), the Declarant executed an Interim Agreement with the Designated Developer, to purchase and develop the property more particularly described in Exhibit A, (hereinafter referred to as the “Property”); and

WHEREAS, the Council of the District of Columbia requires as a condition to approval of D.C. Bill 13-797 (D.C. Act 13-532) that the Declarant, by covenant, agrees to certain conditions required by the Department of Public Works, Design, Engineering and Construction Administration (hereinafter referred to as “DPW”) in its memoranda to the Surveyor and as agreed to by the Designated Developer by letter from its counsel to DPW dated (insert date of letter) (Exhibit B); and

WHEREAS, one of DPW’s conditions requires that Declarant enter into a covenant which incorporates a twenty (20)-foot wide easement for access purposes on Lot (Insert lot number) Square (Insert space number) as shown and described in Exhibit C attached hereto (hereinafter referred to as the “Easement Area”); and

WHEREAS, the Declaration of Covenants and Easement must be executed and recorded prior to the consummation of the sale of the Property by (Insert owner designation) to the Designated Developer; and

WHEREAS, the Designated Developer has made certain commitments to the District As part of the alley closing proceeding which include the maintenance of the Easement Area which shall be carried out after it assumes ownership of the Property; and

WHEREAS, the maintenance obligations placed upon Declarant as set forth in this Declaration, particularly at paragraphs 4, 5, 6, 7, 8, 9 and 12 herein, shall not be enforceable upon Declarant as set forth in this Declaration but rather shall be enforceable upon the Designated Developer or its successors, affiliates or assigns, and shall not become effective until such time as construction upon the Easement Area is completed.

NOW, THEREFORE, in consideration of the foregoing recitals, all of which are hereby incorporated herein, and for other good valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto and in consideration of the closing of a certain public alleys pursuant to S.O. (Insert so file number) and D.C. Bill 13-797 (D.C. Act 13-532), the Declarant for itself, its heirs, successors and assigns, subject only to the easements, covenants, conditions and restrictions of record and to the terms and conditions of this Declaration, does hereby declare that the premises shall be held, transferred, sold and conveyed subject to the following restrictions:

1. All recitations set forth above are hereby incorporated as covenants as if fully set forth herein.

2. The Declarant hereby grants the District a perpetual surface easement, extending to a height of 16.0 feet above finished grade, over that portion of Lot (Insert lot number) in Square (Insert space number), as described with more particularly in Exhibit C attached hereto and incorporated by reference herein in establish a 20-foot wide easement for alley purposes which shall run (Insert location of easement in square)

The District specially recognized that the Declarant shall have the right to locate a portion of a building within the Easement Area above the 16.0-foot height level and may and construct below grade improvements and as necessary to excavate from time to time for the purpose of maintaining such improvements or to construct new improvements underneath the Easement Area. After initial construction of the Declarant's property, Designated Developer shall maintain, at its expense, the Easement Area after construction.

3. The Easement Area is created for alley purposes and shall be for the benefit of the public to an extent similar to the rights and authority exercised by the District on alleys under its jurisdiction. The applicable regulations of the District as enforced by the District shall apply to the surface use made of the Easement Area in the same manner and subject to the same authority as though the Easement Area were a public alley. Until such time as construction of the Easement Area is begun, the District shall be granted an

alley being closed, said easement subject to closure for repair and construction. The District shall be responsible for maintenance of existing public alley.

4. The Designated Developer shall make a refundable deposit of (Insert amount) with the Treasurer of the District of Columbia to cover the possible cost to the District in connection with removing the alley entrance from the alley to be closed and restoring curb and gutter, sidewalk and for constructing alley entrance for which it shall obtain a public space permit and said work shall be done at Designated Developer's expense. The Designated Developer shall also deposit with the District, prior to recordation of the alley closing plat, the actual cost of removal of (insert any surface structures such as lights).

5. The Designated Developer shall relocated the existing (Insert type of water and/or sewer pipes) from the alley to be closed to a location acceptable to the D.C. WASA prior to the commencement of construction of the Property. During the period of time between the closing of said alley and such time as the sewer is relocated and approved, the District shall have a right of entry to the existing (sewer or watermain) for maintenance and inspection.

6. The Designated Developer, as part of its construction on the Property, shall provide the District overland drainage to public space, as required by DPW.

7. The Easement Area shall be paved to District of Columbia standards but with a different color in order to differentiate the Easement Area from the public alley. The Easement Area will be maintained by the Designated Developer; however, the District shall be responsible for snow and ice removal.

8. The Designated Developer shall provide lighting for the Easement Area.

9. The Designated Developer shall bear the costs of removing existing parking, regulatory signs, and posts within the alley to be closed that are the property of the District and return them to the Bureau or Traffic Services.

10. The Designated Developer shall not construct any structure or modify the grade on the area of the Easement Area after completion of construction of the building on the Property in any way without the prior written approval of the District of Columbia. The Designated Developer shall not be entitled to compensation from the District of Columbia, its officer agents or employees, in the event that any structures which are constructed on or in the Easement Area are damaged or have to be removed so long as such damage was not caused by the District.

11. The D.C. WASA, its officers, agents or employees, are not liable for any property damage or personal injury that occurs in or on the Easement Area unless such personal injury or property damage is solely attributable to the District of Columbia and

does not relate to the easement activities of the District of Columbia.

12. The Designated Developer shall be responsible for maintaining the Easement Area in good repair at all times and shall pay all expenses incurred in constructing, repairing, or maintaining the Easement Area.

13. The Declarant, by entering this Covenant, does not relinquish any rights that it otherwise would have to secure permits for utilization of private space on private property including, but not limited to, permits for temporary alley closings and vault permits.

14. The District has the right to specifically enforce the covenants contained in this Declaration.

15. The covenants contained herein are and shall be construed as real covenants and shall run with the land, and shall bind the parties hereto, their successors, heirs, executors, court-appointed administrators and assigns. Without in any manner limiting the foregoing, this paragraph specifically applies to the obligations set forth in paragraphs 4, 5, 6, 7, 8, 9, 12 and 21 herein.

16. The written consent of the District shall be required prior to the extinguishment of any part of the covenants, in a document recorded at the Office of the D.C. Recorder of Deeds and recorded at no expense to the District.

17. The Declarant shall, at its sole expense, properly record this Declaration with the Recorder of Deeds for the District of Columbia, and shall furnish to the D.C. Surveyor the Corporation Counsel of the District of Columbia and the Water and Sewer Authority and the District of Columbia Department of Public Works, a copy of this Declaration certified by said Recorder of Deeds as a true copy of the recorded instrument, along with an original Certificate of Title. It is further understood that this Declaration shall not be fully effective until the Declarant shall have furnished the aforesaid documents and secured final acceptance of this Declaration by the Office of Corporation Counsel for the District of Columbia.

18. In the event that the Certificate of Title does not indicate that (1) either Declarant or its successors and assigns is the owner in fee simple of the property that is the subject matter of this Covenant and is in peaceful occupation thereof; (2) there no pending or actions that affect title to the property; (3) parties to any and all deeds that affecting this property are parties to this Covenant; and that (4) there are no other interests or claims affecting title to this property, then this Covenant shall be voidable.

19. This Declaration shall be fully effective upon recordation of the official alley closing plat with the Office of the Surveyor.

20. The Designated Developer or its successors, affiliates or assigns shall indemnify and save harmless the D.C WASA and all of this officers, agents and

employees against any and all claims or liabilities arising from, based on, or as a result of any act, omission or default of the Designed Developer, its employees, agents or contractors in the performance of, or in connection with design, construction, repair, maintenance, condition or use of the Easement Area.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, on the day and year first hereinabove written, (Insert owner's company name) has caused these presents to be signed with its corporate name by (Insert owner's representative), its contracting officer, attested by (Insert witness name) and its corporate seal hereunto affixed and does hereby constitute and appoint (Insert owner's representative) its true and lawful attorney-in-fact for it and in its name to appear before any officer authorized by law to take and certify acknowledgments and deliver these presents as its act and deed.

ATTEST:

(Insert name of owner)

Secretary

By: _____

Name: _____

Its: _____

State of _____

City/County _____

(SEAL)

I, _____, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that personally appeared before me and, being personally well known to me (or satisfactorily proven) as the person named as contracting officer of (Insert company name of owner) in said Declaration aforesaid and acknowledged said Declaration in said capacity and by virtue of the authority in him vested, acknowledged the same to be the act and deed of (Insert company name of owner) and that he delivered the same as such.

GIVEN under my hand and seal this _____ day of _____, 2001.

Notary Public

My Commission Expires: _____

IN WITNESS WHEREOF, on the day and year first hereinabove written, (Insert name or company), has caused these presents to be signed with its corporate name by _____, its _____, attended by _____, its Secretary and its corporate seal hereunto affixed and does hereby constitute and appoint _____ its true and lawful attorney-in-fact for it and in its name to appear before any officer authorized by law to take and certify acknowledgments and deliver these presents as its act and deed.

ATTEST:

(Insert company name)

Secretary of the General Partner

By: _____

Name: _____

Its: _____

(SEAL)

State of _____)

City/County of _____)

I, _____, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____ personally appeared before me and, being personally well known to me (or satisfactorily proven) as the person named as _____ of in said Declaration aforesaid, and by virtue of the authority in him/her vested, acknowledged the same to be the act and deed of (Insert company name), and that he delivered the same as such.

GIVEN under my hand and seal this _____ day of _____, 2001.

My commission expires: _____

APPROVED FOR LEGAL SUFFICIENCY:

Assistant Corporation Counsel, D.C.

Date: _____

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