

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

Commercial Division
Real Estate Transactions Section



**Procedure for obtaining a legal sufficiency review of the Declaration
of Covenants from the Office of the Attorney General (OAG)**

DDOE must:

1. Provide name and e-mail address of technical reviewer, so that OAG may discuss technical issues. If necessary, OAG will provide a PDF of the signed Declaration of Covenants to the DDOE reviewer.
2. Provide attached template of the Declaration of Covenants to the owner/developer.

Review Engineer:

E-mail address:

Owner/developer must:

1. Draft the Declaration of Covenants.
2. Subordinate all prior liens to the Declaration.
3. Produce evidence of title and all liens on the property (i.e. copy of deed and full title search).
4. Provide a site plan (Exhibit B).
5. Provide a maintenance schedule of all stormwater best management practices (BMPs), stormwater infrastructure, and land covers for District approval pursuant to 21 DCMR §519 (Exhibit C).
6. Submit all of the above to:
Office of the Attorney General for the District of Columbia
Real Estate Transactions Section, Commercial Division
441 4th Street, NW, Suite 1010 South
Washington, DC 20001
7. Return OAG approved and signed original to DDOE for technical sufficiency review and approval.
8. Provide copy of recorded Declaration of Covenants to DDOE.

Contact Person:

Jay Surabian

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Real Estate Transactions Section
D.C. Office of the Attorney General
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Washington, DC 20001
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THE GOVERNMENT OF THE DISTRICT OF COLUMBIA

**District Department of the Environment
NATURAL RESOURCES ADMINISTRATION
WATERSHED PROTECTION DIVISION**

**DECLARATION OF COVENANTS
For a Stormwater Management Facility**

THIS DECLARATION OF COVENANTS (the “**Declaration**”) is made as of this _____ day of _____, 20__, by and between **LIST NAME OF OWNER, a LIST TYPE OF CORPORATION/PROPERTY OWNER**, and its successors and assigns (“**Owner**”), for the benefit of the DISTRICT OF COLUMBIA, a municipal corporation (the “**District**”).

RECITALS

A. The Owner is the owner in fee simple of certain real property and improvements (collectively, the “**Property**”) located in the District of Columbia and more particularly described in **Exhibit A** attached hereto and made a part hereof. No other person or entity has an ownership interest in the Property.

B. In order to accommodate and regulate changes in stormwater flow conditions resulting from certain improvements Owner will make to the property, Owner shall construct and agrees to maintain, at its sole expense, all stormwater best management practices (BMPs), stormwater infrastructure, and land covers (collectively, the “**Facility**”) identified as _____, pursuant to the plans approved by the District (and as the same may be amended after District’s approval) attached hereto as **Exhibit B** as the Site Plan.

C. Title 21 of the District of Columbia Municipal Regulations (“**DCMR**”) Sections 528.1, 528.3, and 528.6 require that an owner maintain all stormwater best management practices (BMPs), stormwater infrastructure, and land covers on its property in good condition, develop and submit for approval a maintenance schedule for the same and execute and record a covenant with the District of Columbia Recorder of Deeds setting forth the owner’s aforementioned maintenance responsibilities with specificity.

NOW, THEREFORE, for and in consideration of the issuance of building permits and approval of Owner’s plans by the District, and other good and valuable consideration the sufficiency of which is hereby acknowledged, for the benefit of and limitation upon Owner and all future owners of the Property, and for the benefit of the District, Owner for itself, its successors and assigns, does hereby acknowledge, represent, covenant, agree, and warrant to the District as follows:

1. The foregoing Recitals and attached Exhibits are all hereby incorporated in and made a part of this Declaration to the same extent as if herein set forth in full, provided however, that said Recitals shall not be deemed to modify the express provisions hereinafter set forth.

2. Owner shall construct and perpetually operate and maintain the Facility in such manner as to comply with the provisions of Title 21, Chapter 5 of the DCMR at its sole expense and in strict accordance with the development and maintenance plan approved by the District. Specifically, Owner shall be responsible for the maintenance of the Facility in accordance with the maintenance standards attached hereto as **Exhibit C**.

3. Owner shall, at its sole expense, make such changes or modifications to the Facility as may, in the District's discretion, be determined necessary to ensure that the Facility is maintained in good condition and continues to operate as designed and approved.

4. The District and its agents, employees, and contractors shall have the right to enter the Property for the purpose of inspecting the Facility in accordance with established inspection procedures and Section 16 of the Water Pollution Control Act of 1984 (D.C. Law 5-188; 32 DCR 919; D.C. Official Code §8-103.01, *et seq.* (2007 Supp.)), as amended (the "Act"), at reasonable times and in a reasonable manner, in order to ensure that the Facility is being properly maintained and is continuing to perform in the manner approved by the District.

5. Should Owner fail to perform its maintenance responsibilities as set forth herein and as contained in any and all plans submitted to and approved by the District, or fail to operate and, where necessary, restore the Facility in accordance with the approved design standards, as the same may be amended from time to time, and in accordance with all applicable laws and regulations, the District shall be entitled to pursue any and all enforcement actions available to it pursuant to the Act and Title 21, Chapter 22 of the DCMR, as the same may be amended from time to time. Without limiting the generality of the foregoing, in the event that a discharge or threat of discharge from the Facility poses an imminent and substantial danger to the environment or the public health or welfare, the District may take immediate action against Owner pursuant to Section 21-2207 or Section 21-2211.2 of the DCMR.

6. If Owner's failure or refusal to maintain the Facility in accordance with the covenants and warranties contained in this Declaration ultimately results in duly authorized corrective action by the District, Owner shall bear all costs incurred by the District for such corrective measures, such costs may be assessed against the Property, and Owner may be fined in accordance with the Act and Title 21, Chapter 5 of the DCMR.

7. The provisions of this Declaration shall be deemed warranties by the Owner and covenants running with the land and shall bind and inure to the benefit of Owner and the District, their respective heirs, successors and/or assigns. When Owner ceases to own an interest in the Property, the rights, warranties, and obligations under this Declaration shall become the rights, warranties, and obligations of the successor-in-ownership and interest to the Property.

8. Owner shall, at its cost and expense, properly record this Declaration with the Recorder of Deeds and furnish the District's Department of the Environment and Office of the

Attorney General with a copy of this Declaration, certified by the Recorder of Deeds as a true copy of the recorded instrument.

9. Owner shall indemnify, save harmless, and defend the District, and all its officers, agents, and employees from and against all claims or liabilities that may arise out of or in connection with, either directly or indirectly, any of Owner's actions or omissions with regard to the construction, operation, maintenance and/or restoration of the Facility.

10. Owner shall ensure that all prior liens recorded against the Property are subordinate to this Declaration. Failure to subordinate any such liens may give rise to termination of any building permits and/or invalidation of any certificate of occupancy relating to the Property.

11. Owner shall, at its sole expense, comply with all provisions of this Declaration regardless of any conflicting requirements in any other covenant, easement, or other legal document recorded or unrecorded against the Property. Neither the entering into of this Declaration nor performance hereunder will constitute or result in a violation or breach by Owner of any other agreement or order that is binding on the Owner.

12. To the extent the Owner is an entity, the Owner warrants that it is (i) duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the laws of the District of Columbia, (ii) is authorized to perform under this Declaration and (iii) has all necessary power to execute and deliver this Declaration.

13. The form of this Declaration has been approved by the District of Columbia Office of the Attorney General for legal sufficiency pursuant to Title 12A, Section 106.6 of the DCMR. This Declaration, and the provisions contained herein, may not be modified, amended, or terminated without the prior written consent of the District and legal sufficiency approval by the District of Columbia Office of the Attorney General, such agreement to be evidenced by a document duly executed and delivered in recordable form and recorded with the Recorder of Deeds at no expense to the District.

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

15. This Declaration shall be governed by, construed, and enforced in accordance with the laws of the District of Columbia.

16. This Declaration has been duly executed and delivered by the Owner, and constitutes the legal, valid, and binding obligations of the Owner, enforceable against the Owner and its successors and assigns, in accordance with its terms.

17. If any of the covenants, warranties, conditions or terms of this Declaration shall be found void or unenforceable for whatever reason by any court of law or of equity, then every other covenant, condition or term herein set forth shall remain valid and binding.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, Owner has, as of the day and year first above written, caused this Declaration of Covenants to be signed by **LIST NAME OF OWNER**, a **LIST TYPE OF CORPORATION/PROPERTY OWNER**.

By: _____
LIST NAME
LIST TYPE OF COMPANY/PROPERTY OWNER

NOTARIZATION

_____**LIST STATE**_____))
_____) ss:
_____**LIST COUNTY**_____))

I, **LIST NAME OF NOTARY**, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that **LIST NAME OF PERSON SIGNING ON BEHALF OF OWNER**, party to the foregoing Declaration of Covenants, personally appeared before me and, being personally well known to me, who has been appointed its attorney-in-fact and has acknowledged said Declaration of Covenants to be the act and deed of **LIST NAME OF OWNER/LIST NAME OF COMPANY IN CAPACITY AS OWNER/PROPERTY OWNER**, and that s/he delivered the same as such.

GIVEN under my hand and seal this ____ day of _____, 20__.

Notary Public

My commission expires:

[NOTARIAL SEAL]

APPROVED AS TO TECHNICAL SUFFICIENCY:

District of Columbia Department of the Environment
Natural Resources Administration
Watershed Protection Division

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO LEGAL SUFFICIENCY:

District of Columbia Office of the Attorney General
Real Estate Transactions Section

By: _____
Assistant Attorney General
Date: _____

Property Address:

EXHIBIT A
[LEGAL DESCRIPTION]

EXHIBIT B
[SITE PLAN]

EXHIBIT C
[MAINTENANCE SCHEDULE]