

PARKS FACILITIES AGREEMENT

Tax ID #
09-00772244

(BLOOM MONTGOMERY VILLAGE)

THIS PARKS FACILITIES AGREEMENT (the "Agreement"), made this 10th day of JULY, 2018, by and between the MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION ("M-NCPPC"), a public body corporate and agency of the State of Maryland, and USL2 MR MONTGOMERY VILLAGE BUSINESS TRUST, a Maryland Statutory Trust ("Owner").

WHEREAS, M-NCPPC is authorized by the Maryland Annotated Code, Land Use Article, Title 17, ("Land Use Article") to acquire, develop, maintain, and administer a regional system of parks and other related activities within the Maryland-Washington Metropolitan District in Montgomery County; and

WHEREAS, the Montgomery County Planning Board ("Planning Board") is charged by the Land Use Article with the authority to approve subdivision plats for recordation in the designated sections of the Maryland-Washington Metropolitan District located in Montgomery County; and

WHEREAS, Owner is the current owner/applicant of certain property that is the subject of Preliminary Plan #120170150 ("Preliminary Plan") and Site Plan #820170130 (the "Site Plan"), for the development of approximately 494 residential units in the project entitled Bloom Montgomery Village (the "Project"), said property being the same land conveyed by deed to Owner, which is recorded in the Land Records Office of Montgomery County, Maryland, in Liber 52377, folio 207, and comprising five parcels of land containing 46.31 acres, 17.34 acres, 16.96 acres, 38.93 acres and 27.49 acres ("Property"); and

WHEREAS, the Property includes approximately 49.23 acres of land area to be known as Cabin Branch Stream Valley Park ("Park") as shown on Exhibit A comprised of Parkland I and Parkland II (collectively, "Parkland"), with Parkland I providing a continuous east-west connection over the Parkland, connecting Watkins Mill Road to Centeryway Local Park; and

WHEREAS, for development purposes the Property, less the Parkland, is divided into six areas (individually a "Development Parcel" and collectively the "Development Parcels") designated as Development Parcels I-VI on Exhibit A.

WHEREAS, as part of the governmental approval process for the Project, Owner must complete requirements as conditioned in the Preliminary Plan and Site Plan approvals ("Conditioned Requirements"); and

WHEREAS, in addition to the Conditioned Requirements, Owner shall have the option (but not the obligation) to complete the Restoration Work, as defined herein, and in the event that the Owner completes the Restoration Work, Owner shall offer to dedicate the Parkland to M-NCPPC upon the terms and conditions set forth below; and

WHEREAS, in the event Owner exercises the option to complete the Restoration Work and offer Parkland to M-NCPPC, Owner and M-NCPPC desire to set forth their rights and obligations in

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 56317, p. 0134, MSA_CE63_56274. Date available 07/19/2018. Printed 03/17/2021.

connection with the Parkland prior to M-NCPPC acceptance of the dedication (as set forth below).

NOW THEREFORE, in consideration of the above recitals and other good and valuable consideration, which is hereby acknowledged, the parties hereto have agreed to the following provisions:

1. **Owner’s Option to Complete Restoration Work.** During the “**Term**”, as defined below, Owner shall have the option (but not the obligation) to complete the Restoration Work of the Parkland, subject to the terms and provisions of this Agreement. Prior to the completion of any such Restoration Work Owner shall maintain the proposed Parkland in accordance with County regulations.

2. **Conditions to Dedication.**

A. **Restoration Work.**

1) Prior to dedicating the Parkland to M-NCPPC, which dedication shall occur in no more than two separate conveyances as set forth below, Owner shall have performed or caused to have been performed the following work on such portion (the “**Restoration Work**”):

- a. Parkland to be dedicated must be cleared of debris and unnatural materials.
- b. Remove all trees, which have been determined by M-NCPPC Urban Forester to be a threat to the Parkland or adjacent private property;
- c. Provide a stable aquatic passage through stream crossing in the Parkland;
- d. Remove existing ponds and restore the area to Park approved habitat;
- e. Restore Cabin Branch Stream and remove the dam, to include improvement to sinuosity, channel restoration, and reconnection of stream flow to floodplain area; and
- f. Daylight existing piped tributaries across park dedication areas that connect to the Cabin Branch.

2) Prior to dedicating the Parkland to M-NCPPC, all Restoration Work shall have been performed pursuant to plans prepared by Owner and approved by M-NCPPC and other applicable agencies (“**Restoration Plan**”) as evidenced by a validly issued Park Construction Permit (the “**Park Permit**”). The Restoration Plan will be submitted and reviewed as part of the Park Permit process. M-NCPPC agrees that its review of the Owner’s Restoration Plan and the issuance of the Park’s Permit shall be performed in a timely manner. Prior to issuance of any Park Permit, Owner must apply for and obtain all applicable state, federal, and/or local permits required for the Restoration Work.

3) Owner at any time during the Term may enter into an agreement with one or more third parties (each a “**Conservation Group**”) whereby the Owner may convey some or all of the Parkland or grant an easement to a Conservation Group for such Conservation Group to perform the Restoration Work (the “**Conservation Agreement(s)**”) or for any other purpose that is generally consistent with the conservation and/or restoration of the Parkland, subject to all applicable state, federal and/or local permits (“**Further Restorative/Conservation Work**”). If Owner grants an easement to Conservation Group over Parkland, such easement must be abandoned prior to dedication to M-NCPPC. For avoidance of doubt, any Parkland or easement(s) conveyed hereunder to a Conservation Group shall be limited solely for the purpose of conducting the Restoration Work and/or any Further Restorative/Conservation Work.

B. **Additional Conditions to Dedication.** In addition to the Restoration Work, prior to dedication of any portion of the Parkland, Owner shall perform the following (collectively the “**Additional Conditions to Dedication**”):

1) Owner shall establish permanent markers to clearly identify the boundaries between the portion of the Parkland to be dedicated and the areas of the Parkland or other areas of the Property, that are owned by or the responsibility of Owner or third parties, including but not limited to homeowner’s associations (the “**Boundary Markers**”);

2) Owner shall complete the removal of all golf course infrastructure located within the portion of the Parkland to be dedicated, including the removal of select tees and greens, cart paths, bridges, culverts, drinking fountains, signs, bollards, buildings, sand traps, water features, debris and unnatural materials per the Restoration Plan; and

3) Owner shall construct the trail(s) and trail connections located within the Parkland as shown on the Site Plan pursuant to Park trail standards. Owner must apply for and obtain a Park Permit prior to undertaking any trail and trail connections construction.

4) Completion of any planting required under the forest conservation plan for the Project on the portion to be dedicated or any forest banking approved by the Montgomery County Planning Department.

3. **Dedication of Parkland.**

A. In the event Owner completes the Restoration Work and the Additional Conditions to Dedication as enumerated above, and with respect to Parkland II, completes all afforestation required in connection with the development of the Project, Owner shall offer Parkland for dedication, or in the event such Parkland has been conveyed to a Conservation Group prior to the completion of the Restoration Work and the Additional Conditions to Dedication, Owner shall cause the Conservation Group to offer for dedication Parkland to M-NCPPC. M-NCPPC, upon confirmation of the completion of the Restoration Work, as well as the Additional Conditions to Dedication, pursuant to the Park Permit, and subject to Planning Board approval as applicable, shall accept such dedication.

B. The deed(s) for the dedication of any of the Parkland to M-NCPPC shall:

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1) Be subject to easements for all stormwater facilities treating existing neighborhoods existing on the dedicated Parkland, such easements being granted to the County for the benefit of neighboring communities that utilize such facilities and include the right to modify or upgrade those portions of such existing stormwater pipes which are directly impacted by the construction of the Project; and

2) Contain a reservation for Owner and its assignees to place storm drainage easements on the dedicated Parkland to accommodate stormwater management outfalls in connection with the development within Development Parcels I, II and VI respectively, provided all such outfalls are approved through the Park Permit process.

C. Owner shall endeavor to convey Parkland at the same time; however, if not reasonably commercially feasible, Owner shall have the right to convey Parkland I and Parkland II separately, upon the satisfaction of the conditions pertaining to Parkland I and Parkland II, respectively.

4. **General Provisions.**

A. **Non-discrimination.** The Owner shall not discriminate against any individual due to age, gender, race, creed, color, national origin or physical disability in the fulfillment of its parks facilities obligations.

B. **Binding Covenant.** The provisions of this Agreement shall be a covenant that runs with the land and are binding on the M-NCPPC and the Owner and its successors and/or assigns

C. **Recordation.** This Agreement shall be recorded in the Land Records of Montgomery County prior to the acceptance of the above-referenced final record plats for the Property by the Development Review Division. All recording fees shall be paid by the Owner. The original recorded Agreement shall be returned to M-NCPPC's Department of Parks.

D. **Deeds.** This Agreement will be referenced in any deed of dedication and respective record plat concerning the Parkland.

E. **Modification.** Any material modification to this Agreement as determined by the M-NCPPC, shall be permitted only upon the approval by the Planning Director or the Director of Parks, and the recording of an amendment to the Agreement.

F. **Entire Agreement; Exhibits.** This instrument contains the entire agreement between the parties and shall not be modified except by written agreement signed by the parties and attached hereto. All exhibits attached to this Agreement and all recitals set forth herein shall be deemed to be incorporated into the Agreement.

G. **Severability.** The invalidity or illegality of any provision of this Agreement shall be severed from this Agreement and shall not affect the remainder of this Agreement or any other provision contained herein.

H. **Applicable Law and Forum.** This Agreement shall be enforced in any court of competent jurisdiction in Montgomery County, Maryland and interpreted in accordance with the

laws of the State of Maryland.

I. **Waiver**. The failure of the M-NCPPC to enforce any part of this Agreement shall not be deemed as a waiver thereof.

J. **Termination**. This Agreement shall extend for the later of the duration of the Preliminary Plan validity period and adequate public facilities period, or twenty-five (25) years from the date of execution of this Agreement (such period being the “**Term**”).

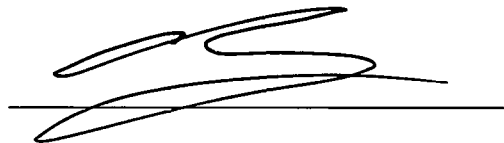
K. **Incorporation of Recitals**. The recitals are hereby incorporated in this Agreement.


[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Park Facilities Agreement to be properly executed on the day and year first written above.

SEAL/WITNESS:


USL2 MR Montgomery Village Business Trust,
By: USL2 Montgomery Village, LLC, its sole member,
By: MR Montgomery Village Capital LLC, its Operating Member,




By: 
F. Russell Hines, Authorized Signatory
Date: May 30, 2018

ATTEST:

MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION


By: Joseph C. Zimmerman
Secretary-Treasurer

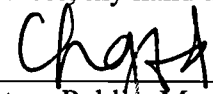

By: _____
Name: Patricia C. Barney
Title: Executive Director

~~STATE OF MARYLAND~~
~~COUNTY OF _____~~

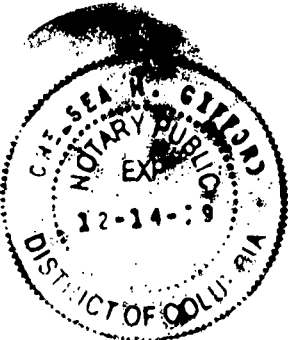
) District of Columbia
) ss.:

I hereby certify that before me, the subscriber, a Notary Public in and for the State aforesaid, personally appeared F. Russell Hines who acknowledged that he is authorized to execute the above Agreement for the reasons and purposes stated therein.

Witness, my hand and official seal this 30th day of May, 2018.


Notary Public, ~~Maryland~~ District of Columbia

My Commission Expires: 12/14/2019

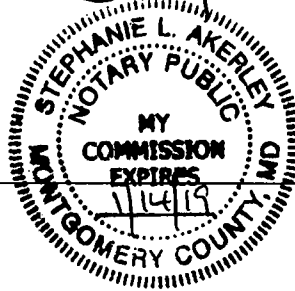


STATE OF MARYLAND)
COUNTY OF Montgomery) ss.:

I hereby certify that before me, the subscriber, a Notary Public in and for the State aforesaid, personally appeared Patricia Colman Barney, the Exec. Director of The Maryland-National Capital Park and Planning Commission, who acknowledged that she is authorized to execute the above Agreement for the reasons and purposes stated therein.

Witness, my hand and official seal this 10th day of July, 2018.

Stephanie L. Akerley
Notary Public, Maryland
My Commission Expires: 1/14/19



After recordation, return to:

Maryland-National Capital Park and Planning Commission
Montgomery County Department of Parks
Land Acquisition Specialist

Silver Spring, MD 20910
ATTN: _____

PLEASE RETURN TO:
Lerch, Early & Brewer, Chartered
7600 Wisconsin Avenue, Suite 700
Bethesda, MD 20814
Attn: Sheila A. Beza, Paralegal

89999.001 | PAW

Tax ID: 09-00772244
Title Insurer: None

EXHIBIT A

PROJECT AREAS AND PARKLAND

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 56317, p. 0141, MSA_CE63_56274. Date available 07/19/2018. Printed 03/17/2021.

State of Maryland Land Instrument Intake Sheet

Baltimore City County: Montgomery

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.

(Type or Print in Black Ink Only--All Copies Must Be Legible)

Form sections 1-11 including: Type(s) of Instruments, Conveyance Type Check Box, Tax Exemptions, Consideration and Tax Calculations, Fees, Description of Property, Transferred From, Transferred To, Other Names to Be Indexed, Contact/Mail Information, and Assessment Information.

Space Reserved for Circuit Court Clerk Recording Validation

Space Reserved for County Validation

Distribution: Clerk's Office, Office of Finance

SDAT, Preparer

AOC-CC-300 (5/2007)

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LR - Agreement
 Recording Fee 20.00
 Name: USL2 MR
 MONTGOMERY VILLAGE
 Ref:
 LR - Agreement
 Surcharge 40.00
 =====
 SubTotal: 60.00
 =====
 Total: 60.00
 07/16/2018 12:49
 CC15-CF
 #10675579 CC0602 -
 Montgomery
 County/CC06.02.06 -
 Register 06



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BARBARA H. MEIKLEJOHN
 Clerk of the Circuit Court for Montgomery County
 50 Maryland Avenue
 Rockville, Maryland 20850
 Recording and Licensing
 (240) 777-9470