

sWhen Recorded Return To:

City of Tacoma
Planning and Development Services
747 Market Street, Room 620
Tacoma, WA 98402

Document Title: MAINTENANCE COVENANT AND ACCESS EASEMENT
3812 S Tacoma Way, Tacoma, WA 98409

Grantor:

Micky LLC

Grantee:

CITY OF TACOMA, a Municipal Corporation

Legal Description (abbreviated):

Section 13, Township 20, Range 2, Quarter 14. Section 13 Township 20 Range 02 Quarter 14 : BEG AT A PT ON WLY LI SO TAC WAY 296.02 FT N OF E & W C/L OF SEC TH NELY ALG WLY LI SO TAC WAY 100 FT WHICH IS 392.04 FT N OF E & W C/L OF SEC TH W PAR WITH SD C/L 442 FT TO ELY LI N P R/W TH SWLY ALG ELY LI SD R/W TO PT 296.02 FT N OF C/L OF SEC TH E 450 FT TO BEG BEING TR OF UNREC PLAT.

See Page 10, Exhibit "A", for Complete Legal Description of Subject Property

Reference Number(s):

City of Tacoma Site Development Permit No. SDEV23-0202

Assessor's Parcel Number:

0220131004

MAINTENANCE COVENANT AND ACCESS EASEMENT

3812 S Tacoma Way

Tacoma, WA 98409

Grantor as fee simple owner of the herein described Property, hereby freely and voluntarily grants to the City of Tacoma, a municipal corporation operating under the laws of the state of Washington (**City**), and its successors and assignees, the following maintenance covenant and access easement, which covenant and easement shall run with the land and be binding on all current and future owners or any portion of, or interest in, Grantor's real property situated in Pierce County, Washington and legally described in **Exhibit A** .

RECITALS

A. Grantor is the owner of certain real property situated in the City of Tacoma, Pierce County, Washington, legally described on **Exhibit A** attached hereto and commonly known as 0220131004, the "**Property**".

B. As a condition of permit approval No. SDEV23-0202 type permit number the following private stormwater management system ("**Stormwater System**") was constructed or will be constructed at the Property in accordance with approved construction plans and as further described below and depicted in the approved permit.

The Stormwater System on the Property consists of:

Catch basins, Manholes, roof drains, footing drains, closed underground pipe conveyance system, a Modular Wetland and a StormTech Infiltration System.

C. The City has approved the Permit submitted by Grantor, or Grantor's tenant, for the new development or redevelopment of the Property, including Stormwater System as described above. The Stormwater System is designed in accordance with City's stormwater regulations. Any damages caused by the failure of the Stormwater System shall be the sole responsibility of the Grantor or Grantor's successors-in-interest.

D. Failure to inspect, maintain, repair, and replace the Stormwater System after construction can result in an unacceptable impact to the public stormwater system or receiving waters. The City requires Grantor to enter into this Agreement as a condition to the City's approval of Permit(s) for the development or redevelopment of the Property. This Agreement confirms Grantor's, and Grantor's successors and assigns', obligation to inspect, maintain, repair, and replace the Stormwater System. The term "**Owner(s)**" is used herein to refer to the owner or owners of any part of the Property on which Stormwater System are located. "Owner(s)" include Grantor while Grantor owns any part of the Property on which Stormwater System are located and, to the extent applicable, includes any homeowners association owning common areas on the Property on which Stormwater System are located.

E. In connection with its new development or redevelopment of the Property, Grantor may divide the property into individual lots (each a "**Lot**" and collectively the "**Lots**"). The Stormwater System for the Property will be maintained by the Owner(s). Therefore, although Grantor will be the sole owner responsible for constructing, inspecting, maintaining, repairing, and replacing the Stormwater System while Grantor owns the entirety of the Property, upon Grantor's sale or transfer of ownership of any Lot, or part of the Property, those responsibilities will be transferred jointly and severally to the subsequent Owner(s).

F. "Emergency" shall mean and refer to any time that the Stormwater System, or a discharge into or therefrom, pose an imminent threat to the health, well-being or safety of person's or property and immediate remedial action is required.

COVENANTS AND EASEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Grantor agree as follows:

1. Incorporation of Recitals and Exhibits. The Recitals and exhibits attached to this Agreement are incorporated into and made a part of this Agreement as though fully set forth herein.
2. Run with the Land. The parties' rights, duties and obligations contained herein shall run with the land and shall be binding upon the Grantor and its successors and assigns (including, without limitation, the Owner(s) of the Lot(s) and any homeowner's association owning common areas in the Property). Those rights and obligations shall inure to the benefit of the City, as well

as its successors and assigns and provide a public benefit.

3. Agreement to Maintain and Repair. The Owner(s) shall, at their sole expense, themselves or through qualified independent contractors or through Owners' tenants, at all times during their ownership of the Property, or any portion thereof, maintain the Stormwater System in good working order, condition and repair, clear of all debris, and in compliance with the Permit and all applicable state and local rules, regulations, and guidelines (including those adopted from time to time by the City and including the City's Stormwater regulations) and the Stormwater System Operation and Maintenance Manual (the "**O&M Manual**") required to be provided by the Grantor pursuant to the City's stormwater regulations. The O&M Manual shall be retained within reasonable access to the site of the Stormwater System and shall be transferred with the Property, or any portion thereof, to a new Owner(s).

4. Agreement to Inspect. The Owner(s) shall perform, at a minimum, regular inspections of all Stormwater System covered by this Agreement, in accordance with the O&M Manual and applicable stormwater regulations and guidelines. The regular inspection required by this Agreement shall identify work necessary to repair or maintain the Stormwater System in good working order. The Owner(s) shall maintain records of inspection, maintenance activities (including identification of the corrective actions taken in response to the regular inspection), monitoring activities and results (if applicable), and receipts for such activities when contracted for. Such records shall be maintained for six years and made available to the City for inspection and copying upon request.

5. Easement. Grantor hereby grants the City, its employees, independent contractors and designees, a nonexclusive easement for ingress and egress over, across and under the Property from time to time at the City's sole discretion to inspect, sample, and monitor components of the Stormwater System and discharges therefrom to ensure that the Stormwater System are being maintained and operated in accordance with the O&M Manual and applicable stormwater regulations and guidelines. Grantor hereby grants to the City permission to undertake the actions described in Sections 7 and 8 of this Agreement. The City agrees that, except in case of Emergency, it shall conduct such inspections at Reasonable Times and that City, its employees, independent contractors and designees, shall conduct their activities in compliance with Owner's reasonable rules associated with access over and across the Property; provided that, such rules shall be in writing and provided to the City upon request (except to the extent prohibited by law), and shall not impair or prevent access to the

Stormwater System for the purposes set forth in this Agreement. Owner(s) shall cooperate with the City, its employees, independent contractors and designees, to ensure safe and secure access to the Stormwater System for the purposes set forth herein. The term “**reasonable times**” as used herein, shall mean between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, excluding holidays, but may also include the days and hours that commercial activities are conducted on the Property by the Owner, or its tenant’s.

6. Improvements by Grantor. Owner(s) shall not place or construct any permanent structures, landscaping or other improvements on the Property that would restrict or interfere with the proper functioning of the Stormwater System or the City’s access to perform the inspection, maintenance, or repair authorized under this Agreement. Any permanent structures or improvements subsequent to this agreement shall be permitted when required by the City set forth in the Building Code and Stormwater Management Manual.

7. Failure to Perform Agreement. If the City, in its sole and reasonable discretion, determines that the Owner(s) are not in compliance with the duties or obligations described in Sections 3 and 4 of this Agreement, the City or its designee shall provide the non-complying Owner(s) written notice to perform the maintenance and/or repair work specified in the notice. Provided, however, no prior written notice shall be required in the case of an Emergency, which shall be governed by Section 8. If such work is not performed to the City’s reasonable satisfaction within thirty (30) days after the date of such notice, or such other time as the City may in its sole discretion determine, exercise its rights under the Easement described in Section 5 of this Agreement to enter the Property, with all materials and construction equipment determined by the City to be necessary to perform any and all work required to bring the Stormwater System into compliance with this Agreement. Grantee may, in its sole discretion, extend said thirty day time period upon receipt of Owner’s written formal request for same, given good cause.

8. Emergency. If the City, in its sole discretion, determines that there exists or will likely exist an emergency on or about the Property with respect to the Stormwater System, the City, may immediately exercise its rights under the Easement described in Section 5 of this Agreement to immediately enter the Property, with all material and necessary construction equipment determined to be necessary to perform any and all work required to bring the Stormwater System into compliance with this Agreement, and in such case the City shall use reasonable efforts to notify the affected Owner(s) prior to entering the Property. Owner(s) shall

cooperate with the City, its employees, independent contractors and designees, to ensure safe and secure access to the Stormwater System on Property for the purposes set forth herein. Notwithstanding the above, the work performed may consist only of avoiding or mitigating the emergency and/or cleaning and/or repairing the Stormwater System to their original condition and standards.

9. City under No Obligation. The City, as well as its departments, employees, independent contractors and/or designees shall have no obligation to exercise its rights under this Agreement, including the right under Sections 7 and 8 of this Agreement, to perform the work required of the Owner(s), or to perform any other maintenance or repair of the Stormwater System. In addition, neither the City, nor any of its departments, employees, independent contractors and/or designees shall have any liability to any Owner(s) in connection with the exercise or non-exercise of such rights, the maintenance or repair of the Stormwater System, or the failure to perform the same.

10. Grantor Obligations. Grantor and each Owner agree that, prior to sale of any portion of the Property, they will make specific references to this Agreement and the O&M Manual in a separate notice paragraph in any contract, deed, lease or other legal instrument by which any possessory or equitable interest in the Property is conveyed.

11. Reimbursement. If the City exercises its rights as described in Section 7 and Section 8 to perform compliance work and enters the Property pursuant to the Easement described in Section 5 of this Agreement, the Owner(s) shall reimburse the City for all its costs and expenses incurred in connection therewith within thirty (30) days after receipt of an invoice. If the Property is owned by more than one owner (i.e., multiple lot owners), for each property or Lot where the City exercises its rights as described in Section 6 and Section 7, the Owner(s) shall be severally liable for reimbursing the City for all its costs and expenses incurred in connection therewith within. If any of the Owner(s) fail to pay the invoiced amount within such period, such amount shall thereafter accrue interest at the statutory rate. Such amount, together with interest, shall be a lien on the Property (and each of the Lots within the Property) that may be foreclosed in accordance with applicable law.

12. Enforcement. In the event of a breach of any of the terms, covenants, agreements and/or conditions of this Agreement, the parties shall be entitled to any and all remedies available at law or in equity, including but not limited to the equitable remedies of specific performance or

mandatory or prohibitory injunction issued by a court of appropriate jurisdiction. In the event it becomes necessary for any party to defend or institute legal proceedings as a result of the failure of either party to comply with the terms, covenants, agreements and/or conditions of this Agreement, the prevailing party in such litigation shall be entitled to be reimbursed for all costs incurred or expended in connection with such legal proceedings, including, but not limited to, reasonable attorneys' fees (including appellate fees) and court costs.

13. Modification or Termination. No change or modification of, or waiver under, this Agreement shall be valid unless it is in writing and signed by authorized representative of the City. No waiver of a breach or violation of any term, covenant, agreement or condition contained in this Agreement shall be deemed to be a waiver of any subsequent breach or violation of the same or any other term, covenant, agreement or condition in this Agreement. If the conditions at the Property requiring this Agreement have changed or no longer exist, then the Owner(s) may submit a request to the City that this Agreement be amended or terminated.

14. All Writings Contained Herein. This Agreement, together with all exhibits, constitutes the complete and final agreement of the parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made on the subject matter.

15. Assignment. The obligations of Grantor under this Agreement shall run with the land and therefore shall bind the purchasers of the Property, in whole or in part, without the necessity of any separate agreement evidencing or confirming the assignment and the purchaser's assumption of the obligations.

16. Choice of Law; Venue; Severability. This Agreement shall be construed under the laws of the State of Washington and venue for any dispute related to this Agreement shall be in Pierce County, Washington. If any provision of this Agreement shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and every provision of this Agreement shall remain in full force and effect and enforceable to the fullest extent permitted by law. This Agreement shall be construed as covenants applicable to the Property and a violation hereof shall not be construed as causing a reversion of title.

17. Authority. If Grantor is an entity, the individual executing this Agreement on behalf of Grantor represents and warrants to the City that said individual the full power and authority to do so and that Grantor has full right and authority to enter into this Agreement and perform its

obligations under this Agreement.

18. Effective Date. This Easement shall become effective on the date it is recorded by the Pierce County Auditor's Office.

IN WITNESS WHEREOF, the GRANTOR has executed this instrument this _____ day of _____, 20____.

DO NOT SIGN PRIOR TO CITY REVIEW

Type name of signing authority for Grantor
Type title of signing authority for Grantor

ACKNOWLEDGEMENT

STATE OF WASHINGTON)
) SS.
COUNTY OF)

I, the undersigned, a Notary Public, do hereby certify that on this _____ day of _____, 20____, personally appeared before me _____ to me known to be the _____ (title of the grantor or grantor representative who executed the within instrument) and acknowledged that he/she/they signed and sealed the same, on oath stated that he/she/they was authorized to execute the instrument and acknowledged it as his/her/their free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of _____, 20____.

Notary Public in and for the State of Washington
residing at _____
My Commission expires _____

GRANTEE
CITY OF TACOMA

Corey Newton, P.E.
Environmental Services Division Manager,
PDS Site & Building Division

Approved as to Form:

Deputy City Attorney

EXHIBIT A

SUBJECT PROPERTY LEGAL DESCRIPTION

Section 13 Township 20 Range 02 Quarter 14 : BEG AT A PT ON WLY LI SO TAC WAY
296.02 FT N OF E & W C/L OF SEC TH NELY ALG WLY LI SO TAC WAY 100 FT WHICH IS
392.04 FT N OF E & W C/L OF SEC TH W PAR WITH SD C/L 442 FT TO ELY LI N P R/W TH
SWLY ALG ELY LI SD R/W TO PT 296.02 FT N OF C/L OF SEC TH E 450 FT TO BEG BEING
TR OF UNREC PLAT

With Tax Parcel No, 0220131004 , Situated in the City of Tacoma, County of
Pierce, State of Washington.