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LR - Agreement
Recording Fee 20.00
Grantor/Grantee Name:
sockwell
Reference/Control #:
LR - Agreement

Surcharge 40.00

10/16/2014 01:10 CC02-JS #3423140 CC0501 - Anne

Arundel County/CC05.01.09 -Register 09

USE AGREEMENT

RECITALS

WHEREAS, Sockwell Family Partnership, LP owns real property located in Anne Arundel County, Maryland known as Lots B and p/o Lot C, Block 4 as shown on a plat entitled "Arundel on the Bay," which plat is recorded among the Land Records of Anne Arundel Gounty, and Maryland in Plat Book S.H. 34, folio 509 (hereinafter, the "AOTB Plat"), by virtue of a deed dated March 5, 1999 and recorded among the Land Records in Liber 9054, folio 113, which is 115.00 on Chesapeake Walk, Annapolis, Maryland ("Sockwell Family Partnership Property"); and

WHEREAS, Kristine Sockwell Friend, Successor Trustee under the 3422 Chesapeake Arundel Avenue Trust, owns real property located in Anne Arundel County, Maryland known as Lot Apister Block 4 as shown on the AOTB Plat, by virtue of a deed dated October 9, 2008 and recorded in the Land Records in Liber 20511, folio 279, commonly known as 3422 Chesapeake Walk, Annapolis, Maryland ("Chesapeake Avenue Trust Property"); and

WHEREAS, James F. Sockwell and Katherine W. Sockwell own real property located in Anne Arundel County, Maryland known as Lots E and F, Block 5 as shown on the AOTB Plat, by virtue a deed dated December 1, 1975 and recorded in the Land Records in Liber 2812, folio 206, which is also known as 3428 Chesapeake Walk, Annapolis, Maryland ("Sockwell Property #1); and

WHEREAS, James F. Sockwell and Katherine W. Sockwell also own real property located in Anne Arundel County, Maryland known as Lot D, Block 5 as shown on the AOTB

No Taxes Necessary

10 15 14 14

Controller

Tax Division

10/15/14 US:12 PM C 0001 R 0003 Val #: 0003-124844 \$0.00 Easement - Recordation Tax - Exempt Instrument Type: Easement Plat, by virtue a deed dated April 8, 1986 and recorded in the Land Records in Liber 4051, folio 194, which is on Chesapeake Walk, Annapolis, Maryland ("Sockwell Property #2); and

WHEREAS, Wallace James Shaw and Toni Ray, Trustees of the Wallace James Shaw QPRT, and Koren Ray Brewer own real property located in Anne Arundel County, Maryland known as Lots A, B, and M, Block 5, as shown on the AOTB Plat, by virtue deeds dated February 13, 2007 and recorded in the Land Records in Liber 20208, folio 355, and January 4, 1988 and recorded in the Land Records in Liber 4531, folio 898, which is commonly known as 3436 Chesapeake Walk, Annapolis, Maryland ("Shaw/Ray Property #1); and

WHEREAS, Wallace James Shaw and Toni Ray, Trustees of the Wallace James Shaw QPRT, also own real property located in Anne Arundel County, Maryland known as Lot C, Block 5, as shown on the AOTB Plat, by virtue a deed dated February 13, 2008 and recorded in the Land Records in Liber 20208, folio 174, which is on Chesapeake Walk, Annapolis, Maryland ("Shaw/Ray Property #2); and

WHEREAS, David K. Brewer and Koren Ray Brewer own real property located in Anne Arundel County, Maryland known as Lots B and C, Block 6, as shown on the AOTB Plat, by virtue of a deed dated April 25, 2000 and recorded in the Land Records in Liber 9745, folio 231, commonly known as 1362 Linden Avenue, Annapolis, Maryland (Brewer Property #1); and

WHEREAS, David K. Brewer and Koren R. Brewer also own real property located in Anne Arundel County, Maryland known as Lot A, Block 6, as shown on the AOTB Plat, by virtue of a deed dated May 10, 2013 and recorded in the Land Records in Liber 26174, folio 308, commonly known as 1364 Linden Avenue, Annapolis, Maryland (Brewer Property #2); and

WHEREAS, each of the properties described above is bound by Chesapeake Walk, an unimproved right-of-way shown on the AOTB Plat that runs parallel to the waters of the Chesapeake Bay; and

WHEREAS, the Chesapeake Avenue Trust Property also is bound by Sycamore Avenue, the Sockwell Property #1 also is bound by Sycamore Avenue, the Shaw/Ray Property #1 also is bound by Redwood Avenue, and the Brewer Property #2 also is bound by Linden Avenue, each of these being an unimproved right-of-way shown on the AOTB Plat that runs perpendicular to and intersects with Chesapeake Walk; and

WHEREAS, the Association is organized and exists to promote and protect the general interest, welfare, and property of the lot owners of the subdivision of Arundel on the Bay, as shown on the AOTB Plat; and

WHEREAS, the Association owns real property located in Anne Arundel County, Maryland known as Lots C-I, Block 13, and Lots I, K, L and M, Block 32, as shown on the AOTB Plat; and

WHEREAS, the Parties wish to memorialize their respective rights and obligations as to the use of those portions of Chesapeake Walk, Sycamore Avenue, Redwood Avenue, and Linden Avenue that abut the Property Owners' respective properties (collectively, the "Abutting Roads" and/or "Abutting Streets"); and

WHEREAS, the Parties desire to enter into a Use Agreement regarding the use and maintenance of the Abutting Roads in accordance with the terms more fully set forth herein.

NOW, THEREFORE, WITNESSETH, that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Permitted Use. The Use Agreement recognizes and confirms the Parties, including the Association and its members, have a right of way in common over the Abutting Roads in order for lot owners in Arundel on the Bay to access platted lots and/or the Chesapeake Bay for normal waterfront activities, including, but not limited to walking, swimming, and fishing, and to maintain the existing uses of the Abutting Roads ("Permitted Use"). If a dispute arises as to what normal waterfront activities are permitted, the parties agree to follow the dispute resolution procedures set forth in Paragraph 8 of this Agreement.

2. Condition.

- 2.1. <u>Current Condition</u>. The Parties agree to maintain and preserve the Abutting Roads in perpetuity in materially the same condition as they were in at the time of execution of this Use Agreement, except as set forth in Paragraph 2.2 herein. Chesapeake Walk shall be preserved in its natural, grassy condition; Sycamore Avenue, Redwood Avenue and Linden Avenue shall be maintained as gravel or pebble roads and/or in a grassy condition.
- 2.2. <u>Unforseeable Circumstances</u>. The Parties acknowledge and agree that due to certain circumstances which are presently unforeseeable, some or all may deem it necessary to change the condition of an Abutting Road in the future. In order to change the condition of an Abutting Road, the party seeking such change shall follow the Notification and Dispute Resolution procedures set forth in Paragraph 4.4 below, up to and including mediation.
- 3. <u>Improvements</u>. Except as otherwise provided in this agreement, no structures shall be constructed, erected, or permitted on any portion of the Abutting Roads including, but not limited to impervious walkways, stairways, pavers, boardwalks, benches, gazebos, lighting or any active or passive recreational amenities. No trees, shrubs, plants or other vegetation shall be planted or maintained in such a manner as to impede access over the Abutting Roads for their Permitted Use. The parties agree that the Association may maintain the existing signs on and/or relating to the Abutting Roads and the parties agree such signs may state as follows: "AOTB Community Access, property owners, residents and authorized guests only, ID required, Private Property, No trespassing."

4. Maintenance and Repairs.

4.1. <u>Joint Rights and Obligations</u>. Subject to the conditions of Paragraph 4.2, the Parties shall have the joint right but not the obligation to maintain and repair the Abutting

Roads. The purpose of any maintenance or repairs is to keep the Abutting Roads in usable condition for their Permitted Use.

- 4.2. <u>Maintenance and Repairs Defined</u>. The maintenance and repairs permitted to be undertaken and performed pursuant to this agreement include the right to fill potholes, resurface with the same or substantially the same materials as the existing condition, provide adequate drainage, replace or improve bulkheads and rip rap for shore erosion control purposes, cut and maintain grass and other vegetation, and remove impediments to safe passage over the right of way. Any additional repairs or maintenance deemed necessary or advisable, but not included within the maintenance and repairs specified herein, shall not be undertaken without utilizing the Notification and Dispute Resolution procedures set forth in Paragraph 4.4 of this agreement.
- 4.3. <u>Costs</u>. Each party shall bear its own costs and expenses of repairs and maintenance authorized pursuant to this agreement, and no party shall be entitled to contribution for costs and expenses from any other party without its prior, express, written consent. However, nothing in this agreement shall interfere with the rights of any party to request or expend funds from the special taxing districts for Arundel on the Bay for repairs and maintenance of the Abutting Roads in the same manner in which all lot owners within Arundel on the Bay are entitled to participate.
- 4.4 <u>Notice</u>. Prior to undertaking any maintenance or repair activity, the Parties shall comply with the following terms and conditions:
- 4.4.1. <u>No notice required</u>. No notice shall be required for the following routine matters: (a) cutting, trimming, fertilizing, weeding, aerating and watering grass, except as provided in Paragraph 4.6.1 of this agreement, (b) repairing potholes, (c) removing ice and snow, (d) removing junk and debris, and (e) maintaining existing trees, shrubs, plants or other vegetation.
- 4.4.2. Notice by the Association. If the Association intends to conduct any non-routine repair and/or maintenance of an Abutting Street, including the installation of any additional sign or relocation of an existing sign, or of the bulkhead and/or rip rap abutting such Abutting Street, the Association shall provide at least thirty (30) days prior written notice, by sending such notice via certified mail, postage prepaid, or by hand-delivery, and by electronic mail, to the Property Owner whose property lies adjacent to the portion of the Abutting Street intended for repair or maintenance.
- 4.4.3. Notice by Property Owner. If a Property Owner intends to conduct any non-routine repair and/or maintenance of an Abutting Street, or of the bulkhead and/or rip rap abutting such Abutting Street, the Property Owner shall provide at least thirty (30) days prior written notice, by sending such notice via certified mail, postage prepaid, and email to the President of the Association, to the Association.
- 4.4.4. Objections. If the party(ies) to whom such notice was sent object(s) to the proposed repair and/or maintenance of an Abutting Street, the Association and

the affected Property Owner shall submit to dispute resolution, as set forth in Paragraph 8 of this agreement, within fifteen (15) days of receipt of notice from the other party.

- 4.4.5. <u>Notice Requirements</u>. If the Association or a Property Owner intends to repair and/or maintain the bulkhead and/or rip rap abutting any Abutting Street, its notice to the other party must include the name and business address of the entity with whom the party has contracted or intends to contract to undertake such repair and/or maintenance, together with a listing of all materials to be used in effecting such repair and/or maintenance, a copy of any plans, blueprints, or other drawings depicting the repair and/or maintenance to be undertaken, a copy of any permit applications submitted or required to be submitted to any governmental entity or agency regarding such repair and/or maintenance.
- 4.5. Quality. All work undertaken within the Abutting Roads shall be carried out in a good and workmanlike manner and with as little interference to adjacent lot owners as possible. The parties shall keep and maintain the Abutting Roads free from claims of all persons supplying labor or materials who enter into the construction of the Permitted Use, and shall promptly pay and discharge any mechanics' or materialmen's liens or other statutory lien of any kind which may be filed against the property and which are attributable to work undertaken or material supplied with respect to the Permitted Use.

4.6. Additional Conditions for Chesapeake Walk.

- 4.6.1. Grass. Each Property Owner shall have the sole and exclusive right to maintain grass and/or vegetation on the portions of Chesapeake Walk that abut their respective properties, which shall include the right to cut, trim, fertilize, weed, aerate and water the grass and/or vegetation. In the event that a Property Owner fails to maintain the grass and/or vegetation on Chesapeake Walk abutting the property, including failing to cut, trim, weed, aerate and/or water it to keep it in a healthy, attractive and usable condition, then the Association may, but is not obligated, to so maintain the grass and/or vegetation on Chesapeake Walk, provided it provides 14 days advance notice to the Property Owner via the method set forth in Paragraph 4.4.2 of this Agreement..
- 4.6.2. Shoreline. The provisions in this agreement shall apply to the shoreline of Chesapeake Walk, however, nothing herein shall effect or interfere with the right of Property Owners on Chesapeake Walk to use the riparian rights associated with their properties, if any, and to the exclusive use and ownership of the waterfront structures associated with their properties.
- 5. <u>Obstructions</u>. The Parties shall use the rights granted by this agreement with due regard to the rights of others and their use of such Abutting roads. No party shall obstruct or otherwise interfere with passage on the Abutting Roads.
- 6. <u>Limitation</u>. Nothing in this agreement shall affect the rights of owners of lots located on Chesapeake Walk to enforce their individual rights of access in and to Chesapeake Walk.

- 7. <u>Liability</u>. Each party assumes all risk of, and shall indemnify and defend the other against and save harmless from, any and all claims, actions, damages, liability and expense in connection with personal injury, loss of life or property or any other damage suffered by that party, its agents, employees and invitees insofar as such actions, damages, liabilities and expenses arise out of the construction and occupancy or use of the Abutting Roads and is occasioned wholly or in part by any act or omission of that party, its agents, contractors, employees and invitees.
- 8. <u>Dispute Resolution.</u> If a dispute arises under any provision of this agreement, the objecting party shall send written notice of the dispute to the other party via certified mail, postage prepaid, and by electronic mail. Upon receipt of the notice, the parties shall make a good faith effort to resolve the dispute. If, after thirty (30) calendar days from the date of notice of the dispute, the parties cannot resolve the dispute on their own, they shall submit their dispute to mediation before a mutually agreeable mediator. If the parties cannot agree on a mediator, they shall jointly request that the Anne Arundel Conflict Resolution Center, or its successor, or any other comparable organization, appoint a mediator for them. The parties shall share equally in the cost of such mediation. If, after a period of sixty (60) calendar days following the date of the initial mediation session the parties are still unable to resolve the dispute, either party may pursue any and all legal remedies available to such party.
- 9. <u>Binding Effect</u>. The rights, privileges, duties and obligations contained in this Use Agreement shall run with the land and shall be binding on and shall inure to the benefit of the parties to this agreement and their respective heirs, successors and assigns. This Use Agreement shall be recorded among the Land Records of Anne Arundel County, Maryland.
- 10. <u>Modification</u>. Any modification of this agreement or additional right granted or obligation assumed by any party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party and recorded among the Land Records of Anne Arundel County, Maryland.
- 11. <u>No Waiver</u>. The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- 12. Advice of Counsel. The parties acknowledge that they and their respective legal counsel actively participated in the negotiation and drafting of this Use Agreement. In the event that any ambiguity or question of intent or interpretation arises, or in the event of any dispute between the parties with respect to the provisions hereof, this agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions hereof.
- 13. <u>Photographs</u>. Each party agrees to photograph the Abutting Roads within two (2) months of the date of this Use Agreement for the purpose of depicting the current condition

of the relevant portions of the Disputed Streets, and to provide dated copies of the photographs to the other the other party no later than June 30, 2014.

IN WITNESS WHEREOF, the Parties have executed this Use Agreement for the respective purposes of conveying and accepting said Use Agreement in accordance with the terms and conditions set forth herein, under their respective seals as of the day and year first above written.

| WITNESS: | |
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| Limitlane | Sockwell Family Partnership, LP |
| liverton | By: Oliver R. Sockwell, Jr., General Partner Kristine Sockwell Friend, Successor Trustee |
| like Kom | James F. Sockwell Deceases Jomes F. Sockwell |
| Dienton | Deceases Jomes & Sochwell 5/16/2010 Katherine W. Sockwell |
| Limbon | Wallace James Shaw QPRT |
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| tice Loc | By: Toni Ray, Trustee Koren Ray Brewer |
| Live Lo | Kolen Kay Threwer |
| | David K. Brewer |

| PROPERTY OWNERS ASSOCIATION OF |
|--------------------------------|
| ARUNDEL ON THE BAY, INC. |

| AKOI | ADDE ON THE BAT, INC. |
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| By: | Office |
| subscriber, a Notary Public in and for the State and R. Sockwell, Jr., who acknowledged himself to be Partnership, LP, and that he, as such general part foregoing instrument for the purposes therein concerning by himself as general partner. WITNESS in transferred Notarial seal. | e the general partner of the Sockwell Family tner, being authorized to do so, executed the |
| Notary Public Prince George's County Maryland My Commission Expires June 05, 2017 My Commission expires: \(\sum_{\text{out}} \) | Notary Public |
| | elf to be the successor trustee under the 3422 successor trustee, being authorized to do so, |
| WITNESS my hand and Notarial seal. Karen Biggs Notary Public, District of Columbia My Commission Expires 12/14/2014 My Commission expires: | Notary Public Ostrac |

100 1100

| STATE OF MARYLAND |
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| COUNTY OF Mantagement. |
| |
| I HEREBY CERTIFY that on the 4th day of June, 2014, before me, the |
| day of June, 2014, before me, the |
| subscriber, a Notary Public in and for the State and County aforesaid, personally appeared James |
| F. Sockwell and Katherine W. Sockwell, known to me (or satisfactorily proven) to be the persons |
| whose names are subscribed to the within Use Agreement, and acknowledged the foregoing |
| document to be their act and in my presence signed and sealed the same. |
| because to obtain act and in my presence signed and scared the same. |
| |
| WITNESS my hand and Notarial seal. |
| S. Maria |
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| SEPT. 13, 2015 / SE |
| Notary Public |
| My Commission expires y co |
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| CTATE OF MADVI AND |
| STATE OF MARYLAND |
| country of Conne anonde , to wit: |
| |
| I HEREBY CERTIFY that on the and day of, 2014, before me, the |
| subscriber, a Notary Public in and for the State and County aforesaid, personally appeared |
| Wellage James Show and Toni Day who columns and Country arolesard, personally appeared |
| Wallace James Shaw and Toni Ray, who acknowledged themselves to be the trustees under the |
| Wallace James Shaw QPRT, and that they, as such trustees, being authorized to do so, executed |
| the foregoing instrument for the purposes therein contained by signing the name of the trust by |
| themselves as trustees. |
| MIN A. MIKAMA |
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| STATE OF MARYLAND COUNTY OF, I HEREBY CERTIFY that on the a yaday of, 2014, before me, the |
| STATE OF MARYLAND COUNTY OF, I HEREBY CERTIFY that on the day of, 2014, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Koren |
| STATE OF MARYLAND COUNTY OF, I HEREBY CERTIFY that on the day of, 2014, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Koren |
| STATE OF MARYLAND COUNTY OF White County of White County of White County aforesaid, personally appeared Koren Ray Brewer and David K. Brewer, known to me (or satisfactorily proven) to be the persons |
| STATE OF MARYLAND COUNTY OF, I HEREBY CERTIFY that on the day of, 2014, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Koren |

1. 1.

WITNESS my hand and Notarial seal. **Notary Public** My Commission expires: STATE OF MARYLAND COUNTY OF Anne Arunde I HEREBY CERTIFY that on the 19 day of May the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared David Delia, known to me or satisfactorily proven to be President of the Property Owners Association of Arundel on the Bay, Inc., and, being authorized to do so, acknowledged that he executed the foregoing Use Agreement on behalf of the Property Owners Association of Arundel on the Bay, Inc. for the purposes therein contained, and further acknowledged that this Use Agreement is not a transfer of all or substantially all of the assets of the corporation. WITNESS MACH and Notarial seal. My Comm. Expires
Dec. 6, 2016

NO EL COUNTING

My Commission expires: **Notary Public**

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.

Eileen E. Powers

Canary – SDAT Goldenrod – Prepare AOC-CC-300 (5/2007)

State of Maryland Land Instrument Intake Sheet

BK 2 7 7 1 7 PG 4 6 3