



TOWN OF BOONSBORO

DEPARTMENT OF PLANNING, ZONING & ENGINEERING
WWW.TOWN.BOONSBORO.MD.US ♦ 301-432-5690

**PLAN CHANGE: SYCAMORE RUN RETAINING WALL, DRAINAGE, AND GRADING
ALTERATIONS
STAFF REPORT
May 17, 2018**

PROJECT: Sycamore Run Landscape Plan Change 2 (BNSP18-01)

OWNER/DEVELOPER: King Road Associates
1054 31st Street, NW Ste 340
Washington DC 20007

TAX ID: TM 73/ P/O Parcels 10, 200, and TM 601 Parcels 804 and 809, TC(R) ZONE

LOCATION: Along the East side of US Alternate 40 abutting the Boonsboro Cemetery

PROPOSAL: To remove a proposed retaining wall on Monument Drive, and implement alterations to drainage and grading.

PROJECT NOTES:

1. The project proposes to remove a proposed retaining wall near Monument Drive and alter the drainage and grading in the vicinity.

STAFF COMMENTS:

1. ARRO reviewed the improvement plans for the Sycamore Run Plan Change #2 on May 7th, 2018. See attached for the comments provided by ARRO Project Manager I, Brian Hopkins.
2. In addition to ARRO's comments on the adjacent, affected property owner, staff recommends that any agreement be between the builder, the owner, and the town. A formal agreement between all parties would cover the town when the town takes over the storm water infrastructure. The email exchange sent to the town as a part of the plan change submission does not suffice.
3. In reviewing this plan change, the town discovered a nearby retaining wall measuring higher than 36 inches that was built without a permit. This issue needs to be rectified.

STAFF RECOMMENDATION:

Staff recommends the APPROVAL of the Plan Change CONTINGENT upon a signed, formal agreement between the property owner (Barbara Swanhart) indicating permission for a temporary grading easement on her property, as well as other approvals from the appropriate county agencies.

Respectfully Submitted,

Ethan Strickler
Town Planner / Zoning Administrator



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TEMPORARY GRADING EASEMENT AGREEMENT

THIS TEMPORARY GRADING EASEMENT AGREEMENT (“Agreement”) is made this ____ day of _____, 2018, by and between BARBARA J. SWANHART (the "**Grantor**"), and KING ROAD ASSOCIATES, a Maryland limited partnership (the "**Grantee**"). The Mayor and Council of Boonsboro, a municipal corporation of the State of Maryland (the "**Town**") join in this Agreement to consent to its terms and provisions thereto.

R E C I T A L S:

WHEREAS, the Grantor is the owner in fee simple of real property described in a deed from Curt Fales to Grantor, recorded among the Land Records of Washington County, Maryland, in Liber 2327, folio 715 (the "**Grantor Property**");

WHEREAS, the Grantee is the owner and developer of certain real property which is located in the vicinity of and/or adjacent to the Grantor Property, known as the "Sycamore Run" subdivision (the "**Project**");

WHEREAS, the Town has approved a Drainage Plan (as defined below) for the Project;

WHEREAS, pursuant to the terms of that certain Letter Agreement by and between the Grantor and the Grantee, dated April 8, 2018 (the "**Letter Agreement**"), the Grantor has agreed to establish a temporary grading easement for the benefit of the Grantee, and its successors and assigns, for the adjustment to the grade in the rear yard of the Grantor Property in conjunction with the construction and development activities for the Project, including, without limitation, the implementation of a grading and drainage plan for the Project (the "**Drainage Plan**"); and

WHEREAS, pursuant to the Letter Agreement, the Grantor desires to grant unto the Grantee a temporary grading easement on, over, and across a portion of the Grantor Property, in order to allow Grantee to implement the Drainage Plan for the benefit of the Project, and the Grantor may make any use of the temporary grading easement granted herein that is not inconsistent with the rights conveyed to the Grantee herein or with the purposes named in the Letter Agreement or herein.

W I T N E S S E T H:

NOW THEREFORE, in consideration of the premises, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants and conditions hereinafter recited, and subject to the terms, covenants and conditions of the Letter Agreement, and incorporating the recitals and intending to be legally bound hereby, the Grantor does hereby grant and convey unto the Grantee, its successors and assigns, a non-exclusive and temporary grading easement as shown

on the Drainage Plan (the “**Temporary Easement**”) for the purposes named in the Letter Agreement and herein. The Grantor and the Grantee, for themselves, their respective successors and assigns, hereby covenant and agree, as follows:

1. The Grantor hereby grants to the Grantee a temporary grading easement on, over and across the Grantor Property, for the purposes of: (i) ingress and egress to and from the Grantor Property in connection with the construction and development of the Project, and implementation of the Drainage Plan, as provided in the Letter Agreement and otherwise herein; (ii) a temporary construction easement located on, over and across the Grantor Property, as reasonably required in connection with the construction and development by the Grantee of the Project and the implementation of the Drainage Plan, and as provided in the Letter Agreement and otherwise herein.

2. The Grantor hereby grants to the Grantee the right to remove, reinstall, grade or regrade as reasonably necessary, the aforementioned Temporary Easement which is located on, over and across the Grantor Property in order to allow for the development and construction of the Project and the implementation of the Drainage Plan, and any other necessary improvements related thereto as deemed necessary by the Grantee or the Town of Boonsboro, as the case may be.

3. All activity conducted by the Grantee on the Grantor Property shall be done in accordance with all applicable laws and regulations and the terms and limitations of this Agreement. The Grantee shall, before making any alterations, installations or improvements to the Grantor Property, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-government bodies and, upon completion, certificates of final approval thereof.

4. The Grantee shall (and shall cause its agents, employees, contractors and subcontractors to) obey all laws and regulations and keep the Grantor Property free of any liens, including mechanic’s liens, in connection with any work performed hereunder.

5. The foregoing easement shall automatically terminate, without the necessity of executing and recording a subsequent written instrument confirming such termination, one (1) year from the date of the recordation of this Agreement. Both parties hereby acknowledge that the foregoing easement is temporary, and limited in scope, and no permanent rights, easements or property interests are hereby conveyed by either party.

6. Upon completion or termination of the development and construction activities upon the Grantor Property, the Grantee shall reconstruct, regrade and permanently stabilize any area on the Grantor Property disturbed by the development and construction activities by the Grantee, consistent with industry standards, and in accordance with applicable regulations, and pursuant to the Letter Agreement.

7. Neither the Grantor nor its successors and assigns shall do anything to impede the Grantee’s access to the Grantor Property, nor shall any such parties take any action to impede the

Grantee's development and construction activities on the Grantor Property for the benefit of the Project and the implementation of the Drainage Plan.

8. The Grantee further agrees to indemnify and hold harmless the Grantor, its successors and assigns, from any loss, cost, damage or expense, including reasonable attorney's fees, arising from or related to the use of the Grantor Property, as provided herein, by the Grantee, its successors and assigns, contractors, sub-contractors and employees, except for that which is caused by the negligence of the Grantor. The Grantee hereby agrees to maintain in full force and effect liability insurance coverage with regard to the performance by the Grantee of any activity on or affecting the Grantor Property and any personal or bodily injury, death, property damage or liability arising from or out of, or in connection with such activity and the Grantee's exercise of the rights hereunder, and any activities conducted in, on or upon the Grantor Property by the Grantee or its agents, employees, officers, directors, contractors, licensees and invitees.

9. Nothing contained in this Agreement shall be construed to make the Grantor and the Grantee partners or joint venturers, or to render either liable for the debts or obligations of the other.

10. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, personal representatives and assigns.

11. The terms of this Agreement shall be governed by the laws of the State of Maryland.

12. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

13. In the event one of the parties to this Agreement violates the terms of the Agreement, the other non-violating party shall have the right to enforce the provisions hereof or secure damages for such violation by action at law in a court of proper jurisdiction. The non-prevailing party shall pay the costs of the suit and reasonable attorneys' fees. The parties agree to waive their right for a trial by jury.

14. This Agreement shall not be modified or amended except by an instrument duly executed by the Grantor and the Grantee, their respective successors and assigns, which instrument shall be recorded among the aforesaid Land Records by Grantee.

AND SUBJECT TO all applicable matters of record, the Grantor does hereby warrant specially the Temporary Easement conveyed herein and does further covenants and agree to execute such other and further assurances thereof as may be requisite.

IN WITNESS WHEREOF, the undersigned have given their hands and seals.

Witness:

_____ (Seal)
Barbara J. Swanhart

STATE OF _____, COUNTY OF _____, TO WIT:

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared, Barbara J. Swanhart, who is well known to me (or satisfactorily proven) to be the person who executed the foregoing instrument in her name for the purposes therein contained and delivered the same as such.

WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires: _____

[Signature Continues On Following Page]

Witness:

KING ROAD ASSOCIATES, a Maryland limited partnership

By: KRLP, LLC, a Delaware limited liability company, its General Partner

By: _____ (Seal)
Lester G. Fant, III, Manager

DISTRICT OF COLUMBIA, TO WIT:

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared, Lester G. Fant, III, known to me (or satisfactorily proven) to be the Manager of KRLP, LLC, a Delaware limited liability company, and the General Partner of King Road Associates, a Maryland limited partnership, and that such person, being authorized to do so, executed the foregoing Agreement on behalf of said company for the purposes therein contained.

WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires: _____

[Signature Continues On Following Page]

WITNESS/ATTEST:

THE MAYOR AND COUNCIL OF
BOONSBORO

Town Clerk

By: _____ (SEAL)
Howard M. Long, Mayor

STATE OF MARYLAND, COUNTY OF WASHINGTON, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____ 2018, before me, the undersigned Notary Public of said State, personally appeared Howard M. Long, Mayor of The Mayor and Council of Boonsboro, a body politic and corporate of the State of Maryland, and acknowledged the within instrument to be the act of said body politic and corporate; and at the same time, he made oath in due form of law that he is the Mayor of said body politic and corporate and is fully authorized to make this acknowledgement on its behalf.

WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires: _____

ATTORNEY CERTIFICATION

THIS IS TO CERTIFY that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Tracie L. Clabaugh, Esquire

4818-8777-4571, v. 1