

Stormwater Rain Garden Drainage Maintenance Covenant

KNOW ALL MEN BY THESE PRESENTS that **Barberry Homes, LLC**, a Massachusetts limited liability company, with a principal business address of 10 Speen Street, 4th Floor, Framingham, Massachusetts 01701, is the owner of record of Lots 1 through 6, inclusive, of the Michael Road Subdivision, located in Wayland, Middlesex County, Massachusetts, being a portion of the property as set forth in a deed recorded with the Middlesex South District Registry of Deeds at Book 60615, Page 573, as shown on a plan of land entitled “‘Definitive Plan’ Proposed Conservation Cluster Subdivision Plan of Land in Wayland, MA,” dated September 25, 2009, revised through September 28, 2012 (the “Plan”) recorded with said Deeds as Plan No. 872 of 2012 (Sheet 2 of 2) and **KM Dover LLC**, a Massachusetts limited liability company, with a principal place of business at 109 Oak Street, Suite G20, Newton, Massachusetts 02464 is the owner of record of Lot 7 of the Michael Road Subdivision as shown on the Plan, and as set forth in a deed recorded with said Deeds at Book 67694, Page 559 (hereinafter together referred to as the “Grantors”).

WHEREAS, the Wayland Planning Board approved a Definitive Subdivision Plan and Conservation Cluster Development Special Permit for the “Subdivision at Michael Road” (the “Subdivision”) by a decision dated March 23, 2010, and recorded with the Middlesex South District Registry of Deeds at Book 60615, Page 576 (hereinafter the “Decision”);

WHEREAS, pursuant to the Decision, Barberry Homes, LLC is required to provide a Stormwater Drainage Rain Garden Operation and Maintenance Plan to the Town of Wayland Planning Board (the “Maintenance Plan”), which shall be recorded with the Middlesex South District Registry of Deeds, and shall be referenced in each deed or other instrument of conveyance for any lots within the Subdivision;

WHEREAS, pursuant to the Decision, Barberry Homes, LLC is required to provide a mechanism for the maintenance of the Stormwater Drainage Rain Garden (the “Storm Rain Garden”) located within the cul-de-sac at the terminus of Michael Road Extension;

WHEREAS, stormwater runoff from the surface of Michael Road Extension will be collected in the Storm Rain Garden;

WHEREAS, roof drains for each residence shall be routed to and discharge runoff into individual subsurface infiltration systems, and runoff from these systems will not enter the Rain Garden; the entrance to each driveway will be constructed using porous pavement to manage all stormwater runoff associated with driveway surfaces; and

WHEREAS, the Storm Rain Garden will include native plantings effective in treating direct stormwater runoff from the proposed development.

NOW THEREFORE, for mutual and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors, and on behalf of their successors and assigns, hereby covenant and agree as follows:

1. Creation and Administration of the Michael Road Extension Association

- a. The Michael Road Extension Association (the "Association") is hereby established for the purpose of the perpetual maintenance of the Storm Rain Garden, including, but not limited to, the landscaped island in the Storm Rain Garden.
- b. The record owner of each lot shown on the Plan shall automatically be a member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation, shall not be a member.
- c. The record owners of all said lots, their successors and assigns, by acceptance of a deed for a lot within the Subdivision, whether or not it is so stated in said deed or other instrument of conveyance, hereby covenant to abide by the covenants contained herein and to pay the assessments, if any, made by the Association and to take title subject to all matters herein.
- d. Each and every owner shall be jointly and severally responsible and liable for the reasonable costs associated with the ordinary maintenance, repair or reconstruction of the Storm Rain Garden, including the landscaped garden located therein.
- e. Officers of the Association shall be elected by a majority vote of those present at an Annual Meeting of the owners, and shall serve for a term of two (2) years. In the event of a vacancy, the remaining officers shall appoint a successor to such vacancy for the remainder of the term of the office which has become vacant, unless the Association meets and there is a majority vote electing an officer for such vacancy.

- f. The officers shall be responsible for generating a proposed budget, and assessing and collecting Association dues.
- g. A majority of the officers shall have the power to enter into and execute contracts necessary for and in furtherance of the Association powers and duties as set forth in this Covenant and in the Decision.
- h. Annual Meeting. An Annual Meeting of the Association shall be held every year on the second Monday of January at a time and location established by the officers. The officers shall notify the owners of such time and location of the Annual Meeting at least two (2) weeks prior to the date of the meeting by U.S. mail. The President shall preside over the meeting.
- i. Annual Budget. The officers shall establish an annual budget commencing on the date of execution hereof and continuing thereafter on the date of the Annual Meeting. The Annual Budget must accomplish all the requirements of this Covenant to attend to the maintenance of the Storm Rain Garden and the landscaped island in the cul-de-sac. The officers shall impose annual dues based upon such budget on each owner. The officers shall provide each owner of a lot with written notice, delivered by U.S. mail, to the owner's address of record, reflecting the annual dues payment, if any, within ten (10) days after the Annual Meeting. Each owner shall pay, within thirty (30) days from the date of such notice, the amount so assessed, if any.
- j. Failure to pay such annual dues or any fees assessed hereunder shall entitle the officers of the Association to commence legal action and seek all other remedies available to recover the same. owners who fail to pay such dues or fees shall be responsible for reasonable attorneys' fees to collect the same and interest at the rate of 18% per annum running from the due date. In the alternative, the officers may impose a lien on an owner's lot for collection of the dues and all fees associated therewith, which shall include reasonable attorneys' fees and interest at 18% per annum running from the date due. Any subsequent purchaser of a lot may rely on a certificate executed by any one officer of record, on behalf of the Association stating whether there are any unpaid dues or fees with respect to the respective lot. The members of the Association may elect to either convert to a corporate or trust form of entity to adopt by-laws and rules for maintenance of the Storm Rain Garden, and any and all storm water management infrastructure (the "Stormwater Drainage System") and operation of the Association. Until Barberry Homes, LLC conveys all of the lots on the Plan, it shall be the designated officer for all purposes hereunder.

2. Maintenance of the Storm Rain Garden

The Association shall maintain the Storm Rain Garden in perpetuity in accordance with the approved design standards, the terms, requirements and provisions of the Decision and the Maintenance Plan, including, but not limited to, the following:

- a. Engage the services of a professional engineer with expertise in stormwater management to perform an annual inspection and draft an annual report; and further engage a maintenance firm to carry out any required maintenance of the Stormwater Drainage System at least once per year.
- b. Maintain the records of all inspection and maintenance activities as set forth in the Maintenance Plan;
- c. Perform all maintenance activities as set forth in the Maintenance Plan relative to Michael Road and the driveways to remove sediment, clean the catch basins within the Storm Rain Garden and roof infiltration systems all as set forth in the Maintenance Plan;
- d. Notify the Town of the President of the Association, or such other person designated to receive correspondence from the Town; and
- e. Provide copies of all maintenance records to the Planning Board of the Town.

3. Enforcement

- a. The Grantors grant to the Town (said Town acting through its delegated officials) the right in perpetuity to enter upon the Subdivision to inspect the Stormwater Drainage System and to maintain said Stormwater Drainage System if (a) the Town determines that an emergency exists requiring such action on the part of the Town to protect and/or promote public safety and public interests, or (b) the owners have failed to maintain the Stormwater Drainage System as required by the Decision and the Maintenance Plan within seven (7) days after the Town has sent notice to the record owners of the lots as such information appears in the Town of Wayland Assessors' database by certified mail. Such emergency repair or maintenance shall, if performed by the Town, be at the expense of the owners.
- b. If the Town determines that the owners have failed to maintain the Stormwater Drainage System as required by the Decision and the Maintenance Plan and no emergency exists, such maintenance shall, if performed by the Town, be at the expense of the owners if the owners fail to maintain the Stormwater Drainage System within ninety (90) days after the Town has sent notice to the record owners of the lots as such information appears in the Town of Wayland Assessors' database by certified mail. Alternatively, the Town may seek other legal remedies to compel the performance of needed maintenance or repair of the Stormwater Drainage System.
- c. Payment for maintenance of the Stormwater Drainage System by the Town shall be made by the owners within thirty (30) days of billing by the Town.

d. The terms hereof and the agreements and covenants herein set forth shall be binding upon the undersigned and upon the successors, assignees, grantees, heirs, personal representatives, administrators, receivers, and all successors in interest or title of the undersigned.

e. It is expressly understood and agreed that the covenants contained herein shall attach to and run with each and every lot within the Subdivision, and shall be enforceable by the Town pursuant to law.

4. Miscellaneous

The Grantors hereby make the following representations:

- (a) Grantors, (i) are limited liability companies duly organized under the laws of the Commonwealth of Massachusetts, (ii) have the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) have the full legal right, power and authority to execute and deliver this Agreement.
- (b) The execution and performance of this Agreement by Grantors, (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Grantors are a party or by which it or the land subject of the Subdivision Plan is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature, not otherwise caused to be permitted by Grantors.
- (c) Grantors have, and shall maintain until the time of the recording or filing of this instrument, good and marketable title to the land constituting the land that is the subject of the Plan, free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement).

This Covenant and all of its terms and restrictions shall be deemed to be an “other restriction” as that term is used in G.L. c.184, § 26. This Covenant is made for the benefit of the Town, and the Town shall be deemed to be the holder of the Covenant. The Town has determined that the acquiring of such Covenant is in the public interest.

The Grantors intend, declare and covenant on behalf of itself and its successors and assigns, and the parties hereto agree, that this Covenant and the covenants, agreements and restrictions contained herein (i) shall be and are covenants running with the land, encumbering the land shown on the Plan for the term of this Covenant, which shall be perpetual, and are binding upon Grantors’ successors in title, (ii) are not merely personal covenants of Grantors, and (iii) shall bind Grantors, its successors and assigns for the term of the Covenant, and shall inure to the benefit of the parties hereto and their respective successors and assigns. Grantors

hereby agree that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Covenant to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full. Grantors shall cause this Covenant to be recorded in the Registry of Deeds (or, if the Property consists of registered land, to be filed in the Middlesex (S.D.) Registry District of the Land Court). Grantors shall pay all fees and charges incurred in connection with such recording or filing.

This Agreement is deemed entered into in the Commonwealth of Massachusetts and shall be governed and construed in all respects by the laws of the Commonwealth of Massachusetts, without giving effect to principles of conflicts of law. Any litigation or other dispute resolution between the parties hereto relating to this Covenant shall take place only in the courts sitting in Middlesex County, Commonwealth of Massachusetts or the Massachusetts Land Court in Boston.

This Agreement may be executed in separate counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

[Signature Page Follows]

In witness whereof the undersigned have hereunto set their duly authorized hands and seals this 3rd day of March, 2017

Owner: **Barberry Homes, LLC**

[Signature]
By: **David Carter, Manager**

[Signature]
By: **Bennett Yee, Manager**

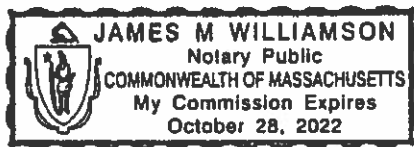
COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 3rd day of March, 2017, before me, the undersigned Notary Public, personally appeared **David Carter and Bennett Yee, Managers of Barberry Homes, LLC**, proved to me through satisfactory evidence of identification which were:

- Photographic identification with signature issued by a federal or state governmental agency, or
- Oath or affirmation of a credible witness, or
- Personal knowledge of the undersigned, or
- The following evidence of identification _____

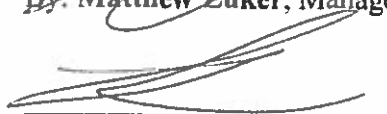
to be the persons whose names are signed on the preceding or attached document and acknowledged to me that they signed it voluntarily for its stated purpose.



[Signature]
Notary Public
My Commission Expires: Oct 28, 2022

Owner: KM Dover LLC


By: Matthew Zuker, Manager


By: Kenton Chase, Manager


COMMONWEALTH OF MASSACHUSETTS

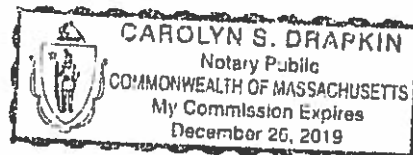
Middlesex, ss.

On this 3rd day of March, 2017, before me, the undersigned Notary Public, personally appeared **Matthew Zuker and Kenton Chase, Managers of KM Dover LLC**, proved to me through satisfactory evidence of identification which were:

- Photographic identification with signature issued by a federal or state governmental agency, or
- Oath or affirmation of a credible witness, or
- Personal knowledge of the undersigned, or
- The following evidence of identification _____

to be the persons whose names are signed on the preceding or attached document and acknowledged to me that they signed it voluntarily for its stated purpose.


Notary Public
My Commission Expires: 12/26/2019



ACCEPTANCE

The undersigned, being a majority of the members of the Wayland Planning Board, hereby accept the Stormwater Rain Garden Drainage Maintenance Covenant this 7th day of March, 2017.

TOWN OF WAYLAND,

By Its Planning Board

Nicole M. Ring
DM
Don Hill

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 7th day of March, 2017, before me, the undersigned Notary Public, personally appeared Don Hill, member of the Wayland Planning Board, proved to me through satisfactory evidence of identification which were:

- Photographic identification with signature issued by a federal or state governmental agency, or
- Oath or affirmation of a credible witness, or
- Personal knowledge of the undersigned, or
- The following evidence of identification license

to be the person whose name is signed on the preceding or attached document and acknowledged to me that he/she signed it voluntarily for its stated purpose.

[Signature] 10-26-2018
Notary Public
My Commission Expires.

