

# CLARK COUNTY STAFF REPORT

**DEPARTMENT:** Public Works / Clean Water

**DATE:** September 26, 2017

**REQUESTED ACTION:** Authorize the Interim County Manager or his designee to sign a Maintenance and Use Covenant between Clark County and the Village on the Glen Homeowner's Association

Consent     Hearing     County Manager

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## BACKGROUND

The Maintenance and Use Covenant between Clark County and the Village on the Glen Homeowner's Association is the final step in a series of actions taken to resolve issues concerning stormwater facilities and a walking trail serving the Village on the Glen, Village Estates, and North Glen Villas developments.

The three developments are served by a large wetland stormwater facility and several smaller stormwater facilities. The wetland facility has been owned and maintained by Clark County since Village on the Glen was constructed in 2008, and the smaller facilities have been privately owned by the developer. The intent at the time of development was to deed the private facilities to Clark County, but this turnover had not happened as of 2016.

The County allowed construction of a walking trail traversing all the stormwater facilities in 2008-2009, but did not accept maintenance responsibility for the trail. A 2012 Maintenance and Use Covenant invited the Village on the Glen HOA to apply for a license from the County to retain and maintain the walking trail, which is accessible to HOA members and the general public. A license was never issued, although the HOA continued to maintain the trail as it had done prior to 2012.

The HOA and concerned residents ultimately approached Public Works and Councilor Olson's office for assistance. Clean Water staff collaborated with the HOA, developer, Parks, Community Development, Councilor Olson's office, and Prosecuting Attorney's office to clarify ownership and maintenance responsibilities, clearly define the limits of trail maintenance, and allow the HOA to address potential liability issues surrounding the use of the trail by the general public.

A three-part solution was developed and is being implemented:

Part 1 - Consolidate stormwater facility and trail ownership by completing the planned transfer of remaining storm facilities to Clark County from the developer.

Part 2 - Allow the HOA to maintain the trail through participation in the Parks division volunteer maintenance program.

Part 3 - Establish a new Maintenance and Use Covenant superseding the 2012 covenant. The new covenant clarifies County ownership and responsibility for both the storm facilities and the walking trail, defines HOA participation in voluntary maintenance activities under County oversight, and establishes the County's right to allow, or disallow, continued use of the trail in the event the HOA declines to continue providing maintenance through the volunteer program.

PW 17-104

Part 1 and 2 of this solution have been implemented. The HOA has signed the new Maintenance and Use Covenant. BOCC approval of this staff report enables County signature on the covenant to complete Part 3.

**COUNCIL POLICY IMPLICATIONS**

None

**ADMINISTRATIVE POLICY IMPLICATIONS**

None

**COMMUNITY OUTREACH**

None

**BUDGET IMPLICATIONS**

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

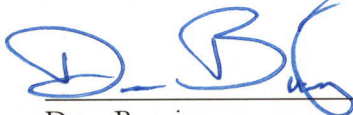
**BUDGET DETAILS**

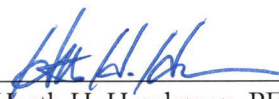
Local Fund Dollar Amount	N/A
Grant Fund Dollar Amount	N/A
Account	N/A
Company Name	N/A

**DISTRIBUTION:**


Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>

**Attachments:** Maintenance and Use Covenant (two (2) originals)

  
 Dean Boening  
 Clean Water Division Manager

  
 Heath H. Henderson, PE  
 Public Works Director/County Engineer

Primary Staff Contact: Jeff Schnabel Ext. 4583

**APPROVED:**   
 CLARK COUNTY, WASHINGTON  
 BOARD OF COUNTY COUNCILORS

DATE: 9/26/17

SR# 196-17



## MAINTENANCE AND USE COVENANT

This Maintenance and Use Covenant (this "Covenant") is made as of Sept. 26, 2017, with reference to the facts set forth in the Recitals below.

### RECITALS

A. A Declaration of Covenants, Conditions and Restrictions dated September 30, 2008 was recorded in the Deed Records of Clark County, Washington on December 7, 2008 as 4499544, as amended by a First Amendment dated October 13, 2009 and recorded in the Deed Records of Clark County, Washington on October 21, 2009 as 4612710 (together "CC&R's") for a residential subdivision known as Village on the Glen and comprising lots 1 through 96 of the plat (the "Plat") duly recorded in Book 311, Page 580, pages 1, 2, & 3 ("the Property").

B. As required by Clark County's approval of the Plat, Article X of the CC&R's and other recorded covenants require that the Homeowners' Association perform obligations pursuant to covenants relative to the area designated as Tract A (parcel #119575097) on the Plat.

C. Tract A has been dedicated to Clark County, and Clark County has accepted this dedication.

D. A Declaration of Covenants, Conditions and Restrictions dated September 17, 2014 was recorded in the Deed Records of Clark County, Washington on December 3, 2014 as 5126090, for a residential subdivision known as Village Estates and comprising lots 1 through 36 of the plat duly recorded in Book 311, Page 745. Parcel #119564000 is adjacent to the platted subdivision boundary, but provides stormwater treatment for Village Estates.

E. A commercial development (apartment complex) known as North Glen Villas was completed as FSR2011-00009 (final August 26, 2011) and FSR2012-00007 (final February 21, 2013). Parcel #986036087 and parcel #119564000 are adjacent to the site plan boundary, but provide stormwater treatment for North Glen Villas.

F. Parcel #986036087 and parcel #119564000 have been dedicated to Clark County, and Clark County has accepted these dedications.

G. This Covenant supersedes and replaces the Maintenance and Use Covenant dated July 10, 2012 and recorded in the Deed Records of Clark County on July 10, 2012 as 4870713.

### RELEASE

NOW, THEREFORE, in consideration of the facts set forth above, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the undersigned hereby covenants and agrees that:

#### 1. Responsibility for Stormwater Facilities and Other Maintenance Covenants.

Except as provided in Section 3 below, Clark County will be responsible for maintenance of the stormwater facilities contained in Tract A (parcel #119575097), parcel #986036087, and parcel #119564000 (the Facilities, which are shown on Exhibit A attached hereto) and not the owners or Homeowners' Association. Any obligation on the part of the Homeowners' Association to maintain the Facilities may be repealed.

2. Walking Trail Maintenance Covenants.

a. Except as provided in Section 3 below, Clark County will be responsible for maintenance of the publicly owned walking trail across the Facilities and not the owners or Homeowners' Association. Any obligation on the part of the Homeowners' Association to maintain the walking trail may be repealed.

b. If volunteer trail maintenance as provided in Section 3 below is discontinued, the County may, at its sole discretion, elect to continue maintaining the trail for public use and benefit.

3. VOG Trail Alliance/ VOG Homeowners' Association Volunteer Maintenance.

a. Notwithstanding the foregoing, the Owners, by and through their Homeowners' Association, and the owners, by and through their respective associations, if any, of the other subdivisions or commercial developments adjoining the Facilities (including Village Estates and North Glen Villas) (together the "Additional Owners"), or by and through cooperative efforts of these groups as represented by the VOG Trail Alliance, may maintain the walking trail across the Facilities under the Adopt-A-Rain Garden Program Policy for Clark County Public Works: Village on the Glen Homeowner's Association and the Volunteer Agreement and Code of Conduct with Clark County Public Works Parks Division, signed May 2017 (together the "Agreement").

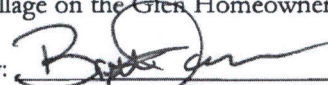
b. The Agreement sets conditions for trail maintenance sufficient to meet governing County requirements and is in accordance with the Conservation Covenant recorded in the Deed Records of Clark County, Washington on May 21, 2008. Under the Agreement, the Homeowners' Association shall contribute initial funds in 2017 for purchase of materials needed to improve the walking trail to County requirements, and the Homeowners' Association and/or Additional Owners may at their discretion contribute future funds for purchase of materials consistent with the Agreement.

4. Termination of Maintenance and Use Covenant.

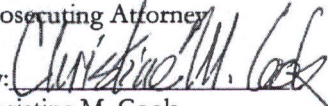
In recognition that the maintenance of the walking trail was initially a private obligation and that the HOA's have requested the county to take over maintenance, Clark County possesses and retains the sole discretion, at any time and for any reason, to terminate this Maintenance and Use Covenant, to discontinue all maintenance of the walking trail, and to secure from public access the trail and the Facilities.

IN WITNESS WHEREOF, this Maintenance and Use Covenant executed as of the date first set forth above.


Accepted and Approved by:  
Village on the Glen Homeowners' Association

By:   
Print name: BEST JAMES  
Title: President

Approved as to Form Only

Anthony F. Golik  
Prosecuting Attorney  
By:   
Christine M. Cook  
Sr. Deputy Prosecuting Attorney

Clark County, Washington

By:   
Heath H. Henderson, P.E.  
Public Works Director/County Engineer

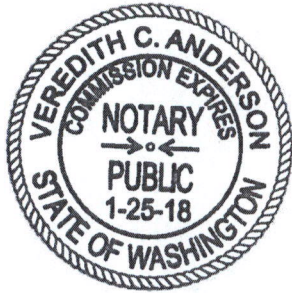
STATE OF WASHINGTON

COUNTY OF CLARK

I hereby certify that I know or have satisfactory evidence that Brett James is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it as the Clark County, Washington Public Works Director/County Engineer to be its free and voluntary act for the uses and purposes mentioned in the instrument.

Date: 8-22-17

Veredith C Anderson



Notary Public in and for the State of WA  
Residing at Vancouver, WA  
My commission expires: Jan. 25, 2018

STATE OF WASHINGTON

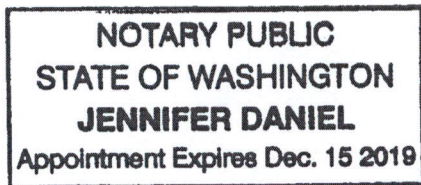
COUNTY OF CLARK

I hereby certify that I know or have satisfactory evidence that Heath H. Henderson is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it as the Clark County, Washington Public Works Director/County Engineer to be its free and voluntary act for the uses and purposes mentioned in the instrument.

Date: 9-13-17

Jennifer Daniel

Notary Public in and for the State of WA  
Residing at Vancouver  
My commission expires: 12-15-19



# Exhibit A

