GOVERNMENT OF THE DISTRICT OF COLUMBIA

**Office of the Attorney General**

##### Commercial Division

**Procedure and Protocol for obtaining legal sufficiency and DOEE approval of a TERMINATION AND RELEASE OF DECLARATION OF COVENANTS for**

**Stormwater Management**

DC Official Code Section 8-103.01 provides for the promulgation of rules to implement the provision. Section 529 of Title 21 of the District of Columbia Municipal Regulations (DCMR) requires that, under certain circumstances, owners of real property execute a stormwater declaration of covenants containing a stormwater management plan (SWMP) and an easement in favor of the Department of Energy and Environment (DOEE) ensuring access 120.2 of 2017 District of Columbia Building Code states: Any modification or termination of a Covenant shall require: prior witness approval of the District of Columbia in a form approved by OAG; Accepted and approved as beneficiary by Department of Energy and Environment; and approval for legal sufficiency by OAG or OAG’s designee.

**Instructions: Owner/developer must:**

1. Draft the termination and release of declaration of covenants when requested by the DOEE plan reviewer. A template has been provided to assist with language. Edit the highlighted yellow sections to reflect the proposed recitals and exhibit revision(s). In addition, Edit the highlighted turquoise sections to justify the termination per condition of your development. Include the legal description of the property (Exhibit A).
2. Provide the updated site/site Demolition plan (Exhibit B) showing all changes and removals of stormwater BMPs and their land cover in both the private and public right-of-way.
3. Email a pdf of the termination and release of declaration of covenants based on the attached form and modified and completed for execution (with all the exhibits) to the Contact Person at OAG and DOEE reviewer [**the submission need not be executed**] for preliminary approval.
4. Once the OAG Contact Person and DOEE reviewer have issued preliminary approval of the termination and release of declaration of covenants form and any applicable exhibits, upload the complete, signed, and notarized Termination and Release of Declaration of Covenants **excluding instruction page** to the project’s page in DOEE’s Surface and Groundwater System (SGS) by selecting "Termination of previous Covenant" as the Type of Document. Indicate the page number under “Page of covenant with approval and legal sufficiency signatures” field. All termination and release of declaration of covenants are electronically signed and stamped in DOEE’s [Surface and Groundwater System](https://doee.dc.gov/sgs). Once approved by OAG and DOEE, the signed termination and release of declaration of covenants may be downloaded from the SGS.
5. Download the approved termination and release of the declaration of covenants from the DOEE SGS and have it recorded at the Office of Tax and Revenue, Recorder of Deeds. Documents can be processed online electronically. <https://otr.cfo.dc.gov/node/1240941>
6. Upload a copy of the recorded document into the DOEE Surface and Groundwater System by selecting "Recorded Covenant" as the Type of Document. Once the final DOEE fees have been paid, the approved plan set is accessible to download from the DOEE SGS.

Additional covenant instructions are available on DOEE’s [Stormwater Management Guidebook page](https://doee.dc.gov/swguidebook).

**Contact Person at OAG: Contact Person at DOEE:**

Lawrence WolkSee the SGS project page for the assigned Assistant Attorney General DOEE reviewer and contact information.

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

 **Department of Energy and Environment**

**NATURAL RESOURCES ADMINISTRATION**

**REGULATORY REVIEW DIVISION**

**TERMINATION AND RELEASE OF DECLARATION OF COVENANTS**

**For a Stormwater Management Facility**

THIS TERMINATION AND RELEASE OF DECLARATION OF COVENANTS (“Termination”) is entered into and made effective for all purposes as of this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20­­\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Declarant”) for the District of Columbia, acting by and through the Department of Energy and Environment (the “Beneficiary”).

WHEREAS, a Declaration of Covenants was made by Declarant for the benefit of Beneficiary on \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_, and recorded in the land records of the District of Columbia as Instrument No. \_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Declaration”) against the affected property of the Declarant, which property is more specifically described in **Exhibit A** attached hereto (the “Property”); and

WHEREAS, the Declarant represented to Beneficiary that Declarant did not construct, nor cause to be constructed, the stormwater management facility on the Property as provided in the Declaration and that the development plans for the Property submitted to the District of Columbia, including the Site Plan attached as **Exhibit B** to the Declaration, as of the date that the Declaration was executed (collectively, the “Site Plans”) have been abandoned and are without permit under the laws of the District of Columbia; and

WHEREAS, the Declarant has cancelled any permit that may have been obtained for the Site Plans, and said Declarant has provided evidence of the same attached hereto as **Exhibit B**; and

WHEREAS, Declarant has requested a termination of and release from said Declaration, and based on the representations and agreements of Declarant, Beneficiary finds good cause for doing so.

 NOW, THEREFORE, in consideration of the foregoing premises of the mutual covenants and agreements set forth in this Termination, the sufficiency of which hereby are acknowledged, the Declarant and the Beneficiary agree as follows:

1. Termination and Release. Declarant, with the consent of the Beneficiary, hereby terminates the Declaration, and Beneficiary hereby releases Declarant from all covenants and obligations arising thereunder.
2. Declarant’s Representations. Declarant hereby represents to the Beneficiary as follows:
(i) at no time during Declarant’s ownership of the Property has a stormwater management facility been constructed on the Property, in whole or in part; (ii) neither Declarant nor its successors or assigns, to the best of Declarant’s knowledge, have any intention of constructing a stormwater management facility on the Property; (iii) any permits issued by the District of Columbia on the basis of the Site Plans have been cancelled and rendered void on or before the date first written above; and (iv) the Declarant has not transferred or provided copies of the Site Plans to any prospective successor to the Property and is not bound to do so under any ancillary agreement affecting the Property.
3. Indemnification. Declarant shall indemnify, hold harmless, and defend the Beneficiary from any claims or liability that may arise on or after the date of this Termination, directly or indirectly as a result of a breach of the representations of the Declarant set forth in Paragraph 2 above.
4. Recordation. The Declarant shall, at its sole cost and expense, record this Declaration in the land records of the District of Columbia by filing a fully-executed, notarized original with the Recorder of Deeds within 10 days after the date first written above. Within 10 days after recordation, Declarant shall furnish a copy of the recorded Termination, as certified by the Recorder of Deeds, to the undersigned representative of the Beneficiary.
5. Entire Agreement. This Termination constitutes the entire agreement between the parties hereto with respect to the matters contemplated herein. No oral modification of this Termination shall be binding upon the parties hereto.
6. This Termination shall be governed by, construed, and enforced in accordance with the laws of the District of Columbia.

**[SIGNATURES FOLLOW]**

**IN WITNESS WHEREOF**, Declarant has executed, acknowledged, and delivered this Termination as of the date first above written.

**DECLARANT:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Signature) (Signature)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Printed Name and Title) (Printed Name and Title)

DISTRICT OF COLUMBIA SS: |

|

I, NAME OF NOTARY, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that NAME OF PERSON SIGNING ON BEHALF OF OWNER, who is personally well known (or satisfactorily proven) to me, and being authorized to do so, executed the foregoing Declaration of Covenants and has acknowledged the same to be the act and deed of NAME OF OWNER, and that s/he delivered the same as such.

GIVEN under my hand and seal this \_\_\_\_ day of \_\_\_\_\_\_\_\_, 20\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public D.C.

My commission expires:

[NOTARIAL SEAL]

**ACCEPTED AND Approved as beneficiary:**

District of Columbia Department of Energy and Environment

Natural Resources Administration

Regulatory Review Division

By:

Name:

Title:

Date:

**APPROVED AS TO LEGAL SUFFICIENCY:**

District of Columbia Office of the Attorney General

Commercial Division

By:

Title:

Date:

**Property Address [include Square and Lot(s)]:**

**EXHIBIT A**

[LEGAL DESCRIPTION OF THE PROPERTY]

**EXHIBIT B**

[EVIDENCE OF CANCELLATION OF PERMIT]