CONSERVATION DEED OF EASEMENT (“Easement”)

Category II

DEFINITIONS

**Grantor**: (insert grantor’s names) , fee simple owner(s) of real property subject to a:

1. Plan approval conditioned on compliance with a FCP, whether or not the applicant is the fee simple owner of the property; or

(ii) Plan approval conditioned on compliance with a conservation easement agreement (issued pursuant to Chapter 50 or 59, Montgomery County Code).

**Grantee**: Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ("Commission").

**Property**: Lot \_\_\_\_, Block \_\_\_\_, Subdivision: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Recorded among the Land Records of Montgomery County, Maryland in Plat Book Number \_\_\_\_\_ as Plat No. \_\_\_\_\_\_.

**Planning Board**: Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.

**Planning Director**: Director of the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission, Montgomery County, or the Director's designee.

**Plan:** Sediment control permit approved pursuant to Montgomery County Code Chapter 19; preliminary plan approved under Montgomery County Code Chapter 50; site plan, development plan, planned unit development, conditional use, or special exception application approved under Montgomery County Code Chapter 59; mandatory referral reviewed pursuant to Article 28 of Maryland State Code Annotated; approved major utility construction (as defined by Washington Suburban Sanitary Commission's regulations).

**Forest Conservation Plan ("FCP")**: Forest Conservation Plan No. \_\_\_\_\_\_\_\_\_\_\_\_ approved by the Planning Board or Planning Director pursuant to Chapter 22A, Montgomery County Code.

**Exhibit A**:

FCP approved as a condition of receiving any of the Plan approval noted above.

**Exhibit B**:

Description and sketch of the easement over and across property to be developed.

WITNESSETH

The Easement reflects a grant of easement by Grantor to the Grantee.

WHEREAS Grantor (or Grantor's agent) has obtained authority to develop pursuant to a Plan in accordance with Montgomery County, Maryland laws; and

WHEREAS, the Planning Board or other approving authority approved Grantor's Plan conditioned upon a requirement that development occur in strict accordance with an FCP approved by the Planning Board after full review of the FCP pursuant to the provisions of Montgomery County Code Chapter 22A (Forest Conservation); Chapter 50 (Subdivision Regulations); and/or Chapter 59 (Zoning Ordinance); and/or

WHEREAS, the Planning Board approved Grantor's Plan conditioned upon Grantor subjecting the property to be developed ("Property") or a portion of the Property to a conservation easement pursuant to the provisions of Montgomery County Code Chapter 50 (Subdivision Regulations), and/or Chapter 59 (Zoning Ordinance); and

WHEREAS, the location of this Easement is as shown on Exhibit A attached hereto and incorporated by reference into the terms of this Easement; and

WHEREAS, among the purposes of this Easement is to preserve trees and the natural beauty of the Property subject to the Easement for purposes of screening new development from the sight of adjacent and abutting property owners to ensure maximum compatibility between existing and proposed new developments; and

WHEREAS, the purpose of this Easement also includes prevention of any alteration, construction or destruction that will tend to mar or detract from such natural beauty; and

WHEREAS, the purpose also includes the protection and preservation of natural features within the area of the Easement which efforts are consistent with the terms and conditions of the approved Plan and applicable law; and

WHEREAS, the Grantor and Grantee (collectively referred to as the “Parties”) intend for the conditions and covenants contained in this Easement to run with the land in perpetuity and to be binding on all subsequent owners and occupants of the Property; and

WHEREAS, the Grantor intends that a servitude be placed upon the Property to create a conservation benefit in favor of the Planning Board.

NOW, THEREFORE, the Grantor has executed this Easement for no monetary consideration but for the purpose of ensuring compliance with development standards imposed in accordance with Montgomery County law as a condition of development approval. The Grantor does hereby grant and convey unto the Planning Board, in perpetuity, an easement on the Property of the size and location described in Exhibit B attached hereto and incorporated by reference into the terms of this Easement, and further described on the applicable record plat(s), of the nature and character described herein. This Easement constitutes a covenant real running with the title of the land, and is granted to preserve, protect and maintain the general topography and natural character of the land. The Grantor does hereby waive any challenge to the validity of this easement whether or not shown on a plat. Grantor, its heirs, successors and assigns covenant to abide by the following restrictions within the Easement:

1. The foregoing recitals are agreed to and incorporated herein and shall be binding upon the Grantor.

2. No tree with a diameter greater than six inches (at a height of four feet from the ground) or more than thirty feet in height (measured from the ground) (“Trees”) or any tree planted as part of an afforestation or reforestation plan may be cut down, removed or destroyed without prior written consent from the Planning Board staff. Diseased or hazardous trees or limbs may be removed to prevent personal injury or property damage after a minimum of ten business days notice to the Planning Director, unless such notice is not practical in an emergency situation.

3. Understory plant materials (including, but not limited to brush, shrubs, saplings, seedlings, undergrowth and vines may be cut down, removed or destroyed without prior written consent of the Planning Director, provided their removal does not damage, injure or kill Trees or create erosion or slope stability problems and provided that they were not planted as part of an afforestation or reforestation plan.

4. Fences are permitted within the Easement provided their construction and maintenance can be executed in compliance with the restrictions of this agreement.

5. Mowing may occur, provided it does not damage, injure or kill trees. Grantor may supplement or replace dead trees or undergrowth with new plantings provided that new plantings are characteristic of trees or undergrowth materials native to Maryland.

6. Nothing in this Easement precludes activities necessary to implement afforestation or reforestation efforts pursued pursuant to an approved forest conservation plan or maintenance agreement implemented under Chapters 19 or 22A of the Montgomery County Code.

7. The following activities may not occur without prior written consent from the Planning Director:

a. Construction, (including roadways, private drives, paths or trails) excavation grading or retaining walls.

b. Erection of any buildings or structural improvements on or above ground, including (but not limited to) sheds, dog pens, play equipment and retaining walls.

c. Activities which in any way could alter or interfere with the natural ground cover or drainage (including alteration of stream channels, stream currents or stream flow).

The Planning Director may approve these activities upon a finding that the proposed activity will not interfere with the purposes stated above, and in particular with tree preservation; screening existing and proposed development from adjacent and abutting landowners; maintenance of tree cover; and preservation of open space. This approval exception shall be narrowly interpreted, and the Director is under no obligation to authorize any of these activities when approval is requested.

8. Timber cutting or any other industrial or commercial activities shall not occur.

9. No posting of any advertising, including signs or billboards, shall occur.

10. No dumping of unsightly or offensive material, including trash, ashes, sawdust or grass clippings shall occur. Natural biodegradable materials may be allowed in a properly located, designed, managed and maintained compost pile, provided the activity does not damage adjacent trees. Upon prior written approval of the Planning Director, suitable heavy fill and other stabilization measures may be placed to control and prevent erosion, provided that the fill is covered by arable soil or humus and properly stabilized.

11. The Easement shall not be used as a site for any major public utility installations, such as, but not limited to electric generating plants, electric transmission lines, gas generating plants, gas storage tanks, radio or microwave relay stations, and telephone exchanges except upon prior written consent from the Planning Director. Nothing in this paragraph prevents the construction or maintenance of (on, over or under the property) facilities normally needed to serve a residential neighborhood and which have been approved by the appropriate reviewing agencies. These facilities should be located to prevent or minimize any loss of trees.

12. Nothing in this Easement shall prevent construction or maintenance of stormwater structures and/or facilities or other utilities, including, but not limited to water and sewer lines, on, over, or under the easement area, if said structures, facilities or utilities are (i) required to implement the Plan, (ii) shown on the approved FCP, and (iii) approved by the appropriate governing bodies or agencies in accordance with applicable laws and regulations.

13. All rights reserved by or not prohibited to Grantor shall be exercised so as to prevent or minimize damage to the forest and trees, streams and water quality, plant and wildlife habitats, and the natural topographic character of the land within the Easement.

14. Grantor authorizes Planning Board representatives to enter the Property and easement area at their own risk and at reasonable hours for the purpose of making periodic inspections to ascertain whether the Grantor, its heirs, successors or assigns have complied with the restrictions, conditions, and easements established herein. This Easement does not convey to the general public the right to enter the Property or easement area for any purpose. This Easement does not restrict or enlarge access to the general public in common open space held under community or homeowner association control beyond any access rights created by applicable community or homeowner association covenants and by-laws.

15. Upon finding a violation of any of the restrictions, conditions, covenants and easements established by this Easement, the Planning Board shall have the right to enforce such provisions in accordance with any statutory authority (including, if applicable, the imposition of civil monetary fines or penalties in amounts and by such means as may be promulgated from time to time). The Planning Board also may seek injunctive or other appropriate relief in any court of competent jurisdiction, including the right to recover damages in an amount sufficient to restore the property to its original natural state, and Grantor agrees to pay for court costs and reasonable attorney fees if the Planning Board successfully seeks judicial relief.

16. Grantor agrees to make specific reference to this Easement in a separate paragraph of any subsequent deed, sales contract, mortgage, lease or other legal instrument by which any possessory or equitable interest in the Property is conveyed.

17. No failure on the part of the Planning Board to enforce any covenant or provision herein shall waive the Planning Board's right to enforce any covenant within this Easement.

18. All written notices required by this Easement shall be sent to the Planning Director, M-NCPPC, 2425 Reedie Drive, Wheaton, Maryland 20902.

TO HAVE AND TO HOLD unto the Planning Board, its successors and assigns forever, this Grant shall be binding upon the heirs, successors and assigns of the Grantor in perpetuity and shall constitute a covenant real running with the title of the Property.

[SIGNATURE PAGE FOLLOWS]

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

Approved for legal sufficiency

Office of the General Counsel, MNCPPC

IN WITNESS WHEREOF, Grantor has caused to be executed this Easement to be signed by itself or its duly authorized officer as of this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

WITNESS: GRANTOR:

Insert Printed Name Insert Printed Name

Insert title (if applicable)

Insert Organization (if applicable)

Address

Contact phone number

NOTARY STATEMENT

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

On this\_\_\_\_\_\_ day of\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_ before me, the undersigned individual, personally appeared\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who acknowledged to be the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and that as such being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

|  |
| --- |
| **SEAL** |
|  |

Signature of notary public

My commission expires

# ATTORNEY OR GRANTOR CERTIFICATION

In accordance with Section 3-104(f)(1) of the Real Property Article of the Annotated Code of Maryland, I certify that this instrument was prepared by the undersigned, the Grantor or an attorney admitted to practice before the Court of Appeals of Maryland.

Include Attorney or Grantor’s signature