FOREST CONSERVATION OFF-SITE MAINTENANCE AND MANAGEMENTAGREEMENT

This Agreement made and entered into this day of , 20 by and between (Applicant), (Owner),

 and the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission (the “Board”).

WHEREAS, the Applicant sought to develop certain property situated in Montgomery County, Maryland and was required to submit an application for (*identify the plan/ type of plan*) plan review with the Planning Board, the application was captioned

 Plan # “Plan”);

WHEREAS, Owner holds title to certain real property described as (*address or brief description of the land*) and recorded in the land records of Montgomery County, Maryland at Book Page [OR Shown in Plat Book Plat ] (“Property”);

WHEREAS, the Plan, in accordance with applicable state and county law, was reviewed and approved by the Planning Board, expressly subject to certain terms and conditions of approval;

WHEREAS, pursuant to Section 22A of the Montgomery County Code (“Forest Conservation Law”), the Board or the Planning Director, required a Forest Conservation Plan (“Plan”) (*Change to Restoration Plan as applicable*), as a condition of the Approval, which requires the Applicant to provide the following within the offsite area(s) specified on the Plan (“the Plan Area”) (*Check all activities below that apply)*:

* Planting of mitigation tree(s)
* afforestation and/or reforestation (“Forest planting”)
* planting within an area of existing forest (“supplemental planting”)
* management of non-native invasive vegetation in an area of forest planting
* management of non-native invasive vegetation in an area of existing forest;

WHEREAS, the Applicant has identified and acquired various easement rights to certain offsite areas that are suitable for the placement of a forest conservation easement which will meet the requirements of the Forest Conservation Law (“Easement Areas”);

WHEREAS, the right of the Applicant to provide the conservation easement and the acceptance by the Owner of the property being burdened by the limitations and obligations set forth in the easement are established by a Conservation Easement Agreement recorded on \_\_\_\_\_\_\_\_\_\_\_\_ (*date easement recorded in land records)* (“Easement”) in land records at Liber-Folio \_\_\_\_\_\_\_\_\_\_\_\_\_; *(Delete this line if not relevant, e.g. maintenance agreement for variance trees or Restoration Plans)*

WHEREAS, the Board requires that the required activities, as indicated above, be adequately installed, maintained, managed and monitored by the Applicant for five (5) years, unless reduced pursuant to Section 22A-12(h) of the Forest Conservation Law (the “Maintenance and Management Period”).

THEREFORE, in consideration of the foregoing premises which are incorporated herein as substantive provisions of this Agreement, the parties agree to the following terms and conditions:

1. All required mitigation tree(s), forest planting, supplemental planting, and/or management of non-native invasive vegetation shall be planted or conducted by the Applicant or the Applicant’s agent in accordance with the final specifications of the Forest Conservation Plan No. \_\_\_\_\_\_\_\_\_\_\_\_\_ (*Replace with “Restoration Plan No.” if necessary*)
2. The Owner shall provide the Board, or its designee reasonable access to the Easement Areas, i) to make routine inspections, or ii) to provide maintenance in the event the Applicant is found in default of such obligations as required under this Agreement.
3. Upon completion of all required plantings and/or completion of the first treatment or removal of non-native invasive vegetation, the Applicant shall notify the Board’s Forest Conservation Inspector (“Inspector”) to schedule an inspection for FCP compliance. Upon acceptance, the Inspector will provide the Applicant with written notice of the Maintenance and Management Period.
4. The Applicant shall maintain and manage any required plantings and maintain non-native invasive vegetation in accordance with the Plan. This shall include but is not limited to:
	* watering, fertilizing, controlling non-native invasive vegetation and protecting plants from disease, pests and mechanical injury during the initial planting and through the Maintenance and Management Period as necessary.
	* providing protection devices such as fencing, signage, and interpretive signs as necessary to prevent the destruction or degradation of the planting site.
5. The Applicant shall monitor all required Plan Areas for the duration of the Maintenance and Management Period and shall replace any forest plantings, variance mitigation trees, or other supplemental plantings that die within that Maintenance and Management Period so as to ensure compliance with survival requirements stated in section 22A.00.01.08.E(3) of the Forest Conservation Regulations for forest planting or as provided by the Inspector for other tree planting.
6. The Owner shall provide a cost estimate to the Planning Director, or their designee, to cover the cost of planting and/or required management of non-native invasive vegetation, which must include, as applicable, site preparation, periodic maintenance, plants and plant materials, labor to install the plantings, signage, fencing if necessary, and maintenance for the entire length of the Maintenance and Management Period (incorporated herein as **Attachment A**), or a cost estimate equal to the current in lieu fee rate for each square foot of planting required.
7. The Applicant shall provide financial security in the form of a letter of credit or bond in a form approved by the Board’s Office of the General Counsel, in the amount of

$ , estimated to cover the cost of installation and maintenance of all required plantings during the Maintenance and Management Period, and/or maintenance of non-native invasive vegetation during the Maintenance and Management Period. The security must be posted prior to any clearing or land disturbing activities as provided in the Plan. Up to half of the security may be released after the maintenance and/or planting has been completed if, the Inspector has determined that the FCP has been followed and the stock is properly planted and in good condition.

1. The Applicant is required to provide, on a semiannual basis, evidence of FCP compliance and that the financial security is in full force and effect. The semiannual report must be submitted directly to the appropriate inspector.
2. The Applicant must notify the Inspector at the end of the Maintenance and Management Period to schedule a final inspection. After verifying FCP compliance, the Inspector shall issue to the Applicant a written notice of completion. If the Inspector has determined that the survival requirements have been met, the financial security and this Agreement may be released upon final inspection.
3. A legal, permanent protection mechanism approved by the Board for all Forestation area(s) in the form of a conservation easement, deed restriction, covenant, or dedication shall be recorded among the Land Records of Montgomery County, Maryland and shall be noted on the record plat (if applicable) for the Property burdened thereby. *(Delete this line if not relevant, e.g. maintenance agreement for variance trees or Restoration Plans)*
4. This Agreement may be reviewed at 2425 Reedie Drive, 14th Floor, Wheaton, Maryland.

IN WITNESS WHEREOF, the parties have executed this Agreement for the purposes contained herein.

# [SIGNATURE PAGES FOLLOW]

APPLICANT

Signature Date

Type/Print Name

# 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

OWNER

Signature Date

Type/Print Name

# 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

Christina Sorrento, Chief Date

Intake and Regulatory Coordination Division

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Approved for legal sufficiency

Office of the General Counsel, M-NCPPC

# NOTARY STATEMENT

State of

County of

On this day of , before me, the undersigned individual, personally appeared Christina Sorrento, who acknowledged to be the Planning Director’s Designee, of Montgomery County Planning Department, 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

The Maintenance and Management Agreement is hereby released on day of 20 .

Chief, Intake and Regulatory Coordination Division