**Impervious Surface Compliance Agreement**

This Agreement is made this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_, 2023, by and between [**Insert Name**] (the “Applicant”), and the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (the “Planning Board”).

**Background**

WHEREAS, the Planning Board is a body corporate created by the General Assembly of Maryland which, pursuant to the Land Use Article of the Annotated Code of Maryland, is authorized to approve site plans pursuant to Chapter 59 of the Montgomery County Zoning Ordinance, and preliminary plans pursuant to Chapter 50 of the Montgomery County Code.

WHEREAS, Applicant is the owner of certain real property consisting of a gross tract area of approximately [**xxxx**] acres located at [**Insert Address**]and identified on Montgomery County, Maryland Tax Maps [**xxxx and xxxx**] as [xxx] (“Subject Property”).

WHEREAS, pursuant to [**Section 59\_\_\_\_\_\_\_**] of the Zoning Ordinance, development of the Property is limited to a total impervious surface area of [**X**]% of the gross tract area.

WHEREAS, the Applicant filed and received Planning Board approval of a [**site, preliminary, administrative subdivision**] plan for construction of [**Project Name] for** [**development type**] on the Subject Property (the “Project”) designated [**Site, Preliminary, Administrative Subdivision**] Plan No. [enter Plan number] (the “[**Site, Preliminary, Administrative Subdivision**] Plan”) pursuant to the Planning Board Resolution MCPB No. [**XXXX**], dated and mailed on [**Insert Date**], attached hereto as Exhibit “A” (the “[**Site, Preliminary, Administrative Subdivision**] Plan Planning Board Resolution”).

WHEREAS, Condition No. [**xx**] of the Planning Board Resolution MCPB No. [**xx-xxx**] dated and mailed on [**xxxxx**] required the Applicant to enter into an Impervious Surface Compliance Agreement with the Planning Board to limit the impervious surfaces to no more than [**xxxx**] square feet or [**X**] percent ([**X**]%) of the Subject Property[, including the area between the property line and the edge of the existing pavement of **XX** Road].

NOW, THEREFORE, the parties desire to set forth herein their respective requirements and obligations.

**Agreement**

1. Impervious Surface Limit.
   1. Total imperviousness for the Project, including buildings, streets, sidewalks, paths, driveways, leadwalks, porches, patios, chimneys, welled exits, rear exits and any building feature shall not exceed [**x]** % of the net tract area ([**xxxx**] square feet) of the Subject Property or [**xxx**] square feet.
2. Building Permit(s).

Prior to the release of any building permit, the Applicant must show compliance with the approved [xxx] square foot impervious surface limit shown on the Water Quality Impervious Plan (Exhibit “B”) which shows the proposed impervious areas for the [**lot(s) by driveway area, house area by specific builder’s model type, and leadwalk area**], and it must list proposed impervious areas for all roads, sidewalks, paved trails, and any other impervious surface improvements included within the Subject Property’s gross tract area. Building permits for **xx** residential lots, identified on the [Site, Preliminary, Administrative Subdivision] Plan as Lots **xxxx**, Block **x**, shall be withheld from release by Planning Board Staff to ensure compliance with the imperviousness limitation set forth in Paragraph 1A of this Agreement (the “Withheld Lots”). Buildings Permits for the Withheld Lots will be released by the Planning Board Staff in accordance with the requirements of Paragraphs 3B and 3D of this Agreement.

1. Reporting.
   1. The Applicant must comply with the Approved Water Quality Impervious Surface Plan attached hereto as Exhibit “B” and submit surveyed “as built” drawings (“As-Built Drawings”) that include dimensions and impervious area calculations for buildings, driveways, sidewalks, leadwalks, porches, patios, chimneys, welled exits, rear exits, and any other building feature, and must also include impervious surface features that are under construction. [For Large Projects: Applicant must submit an impervious surface report to Planning Board Staff prior to issuance of the xx and xx building permits for the Project (the “Reports”). The Reports must include surveyed “as-built” drawings (the “As-Built Drawings”) that include dimensions and impervious areas for buildings, driveways, sidewalks, leadwalks, porches, patios, chimneys, welled exits, rear exits and any building feature that is two feet or less from the ground.]
   2. If the imperviousness is determined to exceed the limits imposed by the Planning Board, it will constitute a [**Site or Preliminary**] Plan violation and be subject to enforcement and penalties pursuant to Chapter 59 (Sec.7.8.1 for Site Plans or Chapter 50.10.6 for Preliminary Plans) of the Montgomery County Code. If the total amount of imperviousness shown on the As-Built Drawings submitted for the xx lots is less than the Total On-lot Imperviousness allocated to such lots as indicated on Sheet xx of the Certified [Site or Preliminary] Plan for the Project, then Planning Board Staff will release the xx Withheld Lots on a lot by lot basis, as long as the Project is at or below the compliance for the Total On-lot Imperviousness
   3. The Applicant will submit a Report for each of the remaining xxx building permits after the xx building permit.
   4. If at any time the impervious area limit is reached before building permits for all approved lots have been issued, the lots for which building permits have not been issued shall be re-recorded as non-impervious Homeowners Association open space parcels prior to issuance of the building permit for the last dwelling unit allowed under the impervious surface limit.
2. Record Plats

The Applicant recorded Plat xxxxx on M-NCPPC record plat book xxx and page xx that includes the Withheld Lots in the Land Records of Montgomery County (the “Land Records”) on [Insert Date].

1. Modifications. This Agreement may only be modified in a writing signed by the parties hereto, their heirs, successors or assigns.
2. Interpretation. This Agreement will be interpreted according to the laws of the State of Maryland.
3. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed fully given if mailed by first-class mail, postage prepaid, if to (a) the Applicant, [**in care of or to**] [**Insert Name and Address**]; and to (b) the Planning Board, in care of the Chairman, Montgomery County Planning Board, 2425 Reedie Drive, Wheaton, Maryland 20902, with a copy to the Office of the General Counsel, 2425 Reedie Drive, Wheaton, Maryland 20902. The parties shall be responsible for notifying each other of any changes of address. Notwithstanding anything to the contrary contained above, notice will be valid to the parties, upon being sent as above.
4. This Agreement shall be recorded by the Owner of the Subject Property in the Land Records of Montgomery County, Maryland and shall constitute a covenant running with the land and shall be binding on the Owner, its administrators, heirs, executors, and other successors in interest.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the Parties has caused to be executed this Agreement to be signed by its duly authorized officer as of this [**\_\_ day of \_\_\_\_\_\_\_\_, 2021**].

WITNESS: GRANTOR:

Name

Company

Address

Phone Number

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

COUNTY OF to wit:

I HEREBY CERTIFY that on this day of , 20 , before me, a Notary Public in and for the State of \_\_\_\_\_\_\_\_\_ and County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,the undersigned, personally appeared \_\_\_\_\_\_\_\_ known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

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

My Commission Expires:

[NOTARIAL SEAL]

WITNESS:/ATTEST GRANTEE:

[**Name**], Chief, [**Division**] Maryland-National Capital Park and

Planning Commission

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

DATE DATE

# ATTORNEY CERTIFICATION

I certify that this instrument was prepared under the supervision of the undersigned, an attorney admitted to practice before the Court of Appeals of Maryland.