



**Easement – Conservation
 Deed of Easement and Agreement**

Tax Account No. _____
 GRD _____ - _____

THIS DEED OF EASEMENT AND AGREEMENT (the "Easement Agreement") is made this ____ day of _____, 20__ by and among _____ (the "Property Owner"), _____ ("Association") and the CITY OF ANNAPOLIS, a municipal corporation of the State of Maryland ("City").

WHEREAS, the Property Owner is fee simple owner of real property at _____, Annapolis, Maryland _____, more particularly described in a deed dated _____, _____ and recorded among the land records of Anne Arundel County, Maryland in liber _____, page ____ (the "Property"), further described in Exhibit A; and

WHEREAS, the Property Owner has applied to the City for a grading permit related to the development of the Property as _____ to be known as "_____;" and

WHEREAS, one of the conditions of grading permit approval and approval of the Plat referenced below is the designation by the Property Owner of certain areas of the Property as permanent conservation easement areas, and conveyance to the City of a perpetual easement interest in each such conservation easement area; and

WHEREAS, "Site Plan" refers to the City-approved "Site, Sediment, Erosion Control, Grading Plan" for the Property prepared by _____, a professional engineering firm or landscape architecture firm licensed in the State of Maryland, the requirements of which are hereby incorporated into this Agreement by reference; and

WHEREAS, each "Conservation Easement Area", collectively _____ (_____) acres, is shown more particularly on a ____ page plat, referenced above entitled "_____" recorded as Plat No. ____ through ____ among the land records of Anne Arundel County, Maryland in Plat Book _____, pages ____ through ____ (the "Plat"), as further shown and depicted on Exhibit B, which Exhibits are attached hereto and adopted by reference herein (collectively, the "Forest Conservation Property"); and

WHEREAS, the parties intend that this Easement Agreement shall constitute compliance with the requirements of the grading permit application.

NOW, THEREFORE, in consideration of these premises, the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Property Owner hereby grants and conveys to the City, a perpetual easement on, over, under, across, along and through each Conservation Easement Area as shown on the Site Plan and Plat in accordance with the terms set forth below.

1. Management

a. The City shall be solely responsible for the management of each Conservation Easement Area, which includes, but is not limited to, having sole discretion to monitor and enforce compliance with this Easement Agreement, and to determine from time to time the restrictions and permitted activities that apply to the Conservation Easement Area.

b. The City may, at reasonable times and in a reasonable manner, have its employees, contractors, and agents enter upon each Conservation Easement Area to monitor and enforce compliance with the provisions of this Easement Agreement and for any other purpose which in any way is related to the management thereof.

2. Assignment

a. The City, without prior notice to or approval by the Property Owner or the Association, and by any action, formal or informal, which it may in its sole discretion take, may at any time delegate or assign responsibility for the management of any or all of the Conservation Easement Area to the Annapolis Conservancy Board, an agency of the City, or any other land trust or other entity that is either non-profit or in the nature of a land conservancy.

b. Any entity to whom the City may delegate or assign responsibility for the management of any Conservation Easement Area shall have the same right as the City to have its agents and employees enter upon any Conservation Easement Area to monitor and enforce compliance with the provisions of this Easement Agreement and for any other purpose which in any way is related to the management thereof, and such entity shall assume any obligations which this Easement Agreement may impose on the City. As such any reference to "City" in this Easement Agreement shall also mean any entity delegated or assigned responsibility by the City pursuant to this Section 2(b).

c. The City will provide timely notice to the Property Owner of any assignment pursuant to this Section.

3. Conveyance of Conservation Easement Areas

The Property Owner shall convey the fee simple interest in each Conservation Easement Area to the Association at the time of or before the City gives final approval to the development of the Property in accordance with the approved grading permit plans.

4. Restrictions

Subject to Sections 5, 6, and 8 below, the following restrictions shall apply to each Conservation Easement Area, unless the City and the Association agree otherwise in writing:

a. There shall be no temporary or permanent residential, commercial or industrial improvements or any other structures of any type constructed, placed, kept or maintained on any Conservation Easement Area.

b. There shall be no paving, excavation or topographic change of any type, whether by grading, drilling, filling or other such activities on any Conservation Easement Area.

c. There shall be no materials, bulk materials, refuse or trash placed, kept or maintained on any Conservation Easement Area.

d. There shall be no motor vehicles brought upon, parked, placed, kept or maintained on any Conservation Easement Area.

e. There shall be no cutting or removal of landscaping or other vegetation, except for grass, lawn or invasive species, in any Conservation Easement Area.

f. There shall be no cutting or removal of trees, except for fallen trees which are dead or dying, in any mature forest or wooded area of any Conservation Easement Area; or that which is in a weakened state and creates a safety hazard, or that which is diseased, dead, or dying.

g. There shall be no alteration of the general topography or the present natural state of any Conservation Easement Area.

h. Compliance with all laws pertaining to critical areas and wetlands if such laws affect any Conservation Easement Area.

5. Permitted Activities - City and Assigns

The City, and any entity to whom it subsequently delegates or assigns responsibility for the management of any Conservation Easement Area, may engage in the following activities within each Conservation Easement Area:

a. Landscaping, forestry activities and public improvements in accordance with any plan approved by the City or the Annapolis Conservancy Board;

b. All processes which may from time to time be reasonably necessary to inspect, maintain, repair and replace existing and subsequently constructed utilities and appurtenances, including but not limited to utilities and appurtenances related to stormwater management, water, sewer, electric and telephone appurtenances;

c. To bring thereon all materials, equipment, vehicles, employees and independent contractors and their subcontractors for such processes; and

d. To engage in any monitoring and compliance activities associated with its management of each Conservation Easement Area.

6. Permitted Activities - The Property Owner

In connection with the development of the Property, including the utilization of the Conservation Easement Areas in furtherance thereof, the Property Owner may engage in the following activities, provided that they are conducted only in the specific Conservation Easement Areas shown on the Plat:

a. Grading and filling in areas adjacent to all public streets and roads as may be reasonably necessary for the original construction of such streets and roads, provided that there shall be no such grading and filling thereafter, except as necessary for maintenance, repairs or replacement of any originally-constructed streets and roads;

b. Establishing pedestrian pathways and cutting and removing existing vegetation which is directly associated with the establishment and maintenance of such pathways;

c. Grading and filling to install asphalt, concrete or other impervious or pervious materials associated with the original installation of a Stormwater Management System, as defined in a "Stormwater Management Agreement" among the parties hereto to be recorded in the land records of Anne Arundel County, Maryland, provided that there shall be no such grading and filling thereafter, except as necessary for maintenance, repairs or replacement of any originally-constructed Stormwater Management System;

d. Placing benches and lights in the vicinity of pedestrian pathways and the community walkway/stairway to the Easement Conservation Area(s);

e. Placing recreation areas and recreational equipment, picnic tables, trash cans and and items directly associated therewith;

f. Removing lower limbs from existing trees in non-wooded areas to improve pedestrian vistas and safety;

g. Engaging in reforestation activities and to establish additional trees and vegetation;

h. Cutting, controlling and/or removing invasive vegetation species;

i. Granting public or private utility companies easements for the installation, inspection, maintenance, repair and replacement of utility lines and appurtenant facilities necessary to serve the Property or any portion thereof, including water, sewer, electric, telephone, storm drain and stormwater management facilities, provided that the initial and any subsequent placement of all such utility lines and appurtenant facilities is subject to prior permit approval by the City, that the initial and subsequent placement of such utility lines and appurtenant facilities and their inspection, maintenance, repair and replacement shall be completed with the least amount of disruption to and disturbance in each Conservation Easement Area and only to the extent necessary to complete such activities, and that the Property Owner shall restore all disturbed areas to the same or similar condition; and

j. Bringing onto applicable Conservation Easement Areas all materials, equipment, vehicles, employees and independent contractors and their subcontractors as may be necessary for purposes of performing the activities set forth herein.

7. Permitted Activities - Association

Upon conveyance of the Conservation Easement Areas to the Association, the Association may engage in the following activities, provided that they are conducted only in the specific Conservation Easement Areas shown on the Plat:

a. Maintaining, repairing and replacing the boardwalk, footbridge, community pier, bus shelter, pedestrian pathways, benches, recreational and playground areas and, in connection therewith, cutting and removing existing vegetation which is reasonably required in order to complete such activities;

- b. Removing lower limbs from existing trees in non-wooded areas to improve pedestrian vistas and safety;
- c. Engaging in reforestation activities and establishing and maintaining landscaping and additional trees and vegetation within each Conservation Easement Area, including removal of invasive species;
- d. Bringing onto each Conservation Easement Area all materials, equipment, vehicles, employees and contractors as may be necessary or desirable for purposes of performing such activities; and
- e. Maintaining, repairing and replacing any originally-constructed Stormwater Management System.

8. Standards Applicable to All Permissible Activities

Except for ordinary and routine maintenance of the Stormwater Management System and the community walkway/stairway to the Easement Conservation Area(s), all activities in each Conservation Easement Areas set forth above which are permitted pursuant to this Easement Agreement:

- a. Are subject to the City's prior field or plan review and final approval;
- b. Shall be exercised with the least amount of disruption to and disturbance in each Conservation Easement Area and only to the extent necessary to complete such activities; and
- c. Shall not be construed to allow any disturbance of any mature forest within any Conservation Easement Area, except that which may be reasonably necessary to complete such activities.

9. Applicability

a. The Association shall assume the obligations of this Easement Agreement and be subject to its provisions and liable for any violation or breach thereof, and all liability resulting from any enforcement action taken by the City pursuant to this Easement Agreement, after all of the following have occurred:

- (1) The Property Owner has transferred to the Association the fee simple interest in each common area in which a Conservation Easement Area is located;
- (2) The Association is in good standing with the State Department of Assessments and Taxation;
- (3) The Association has a membership of a majority of the single family lot owners; and
- (4) The Association is functioning with officers and/or a board of directors and has held its first association meeting attended by a quorum of the members of the Association.

b. Until such time that all requirements of Section 9(a) have been achieved, the Property Owner shall have sole liability for the obligations of this Easement Agreement and any violation or breach thereof, and all liability resulting from any enforcement action taken pursuant to this Easement Agreement.

c. Subject to Section 9(d) below, after the Association assumes the obligations of this Easement Agreement, the Property Owner shall be jointly and severally liable with the Association for the obligations of this Easement Agreement and all liability caused by any violation or breach thereof by the Association, and all liability resulting from any enforcement action taken by the City pursuant to this Easement Agreement, and shall be a guarantor of the Association's obligations and liability imposed by this Easement Agreement if the Association's charter is forfeited or the Association is otherwise dissolved, voluntarily or involuntarily, or the Association otherwise becomes defunct, is no longer operating as a viable association or has otherwise become non-functional or is not fulfilling any of its obligations of this Agreement.

d. The Property Owner shall serve as a guarantor and shall be jointly and severally liable as set forth in Section 9(c) above until all of the following have occurred:

- (1) The Property Owner has, to the City's satisfaction and in the City's sole and reasonable discretion, completed the development of the Property in accordance with the approved grading permit plans;
- (2) The City has accepted as built drawings of the development of the Property in accordance with the approved grading permit plans as being complete and accurate;

(3) The City has released the full amount of any bond or other security the Property Owner has posted in connection with the development of the Property; and

(4) The Property Owner [has transferred] [intends to transfer] the fee simple interest in each of the single family lots within the Property to homeowners.

e. Once all of the events in Section 9(d) above have occurred, then the Property Owner shall have no further liability under this Agreement, except for such liability which it has already incurred prior thereto.

f. At any time after the Property Owner has no further liability pursuant to this Easement Agreement and the Association's charter is forfeited or the Association is otherwise dissolved, voluntarily or involuntarily, or the Association otherwise becomes defunct, is no longer operating as a viable association or has otherwise become non-functional, then the successor owners of each lot of the Property, in accordance with Section 14 below, shall be subject to the provisions of this Easement Agreement and jointly and severally liable for violations or breaches thereof and for all liability resulting from any enforcement actions taken by the City pursuant to this Easement Agreement.

10. Enforcement

a. The City shall have the right to enforce, by any proceeding at law or in equity, any violation or breach of this Easement Agreement.

b. If any violation or breach of this Easement Agreement occurs, then the City, or any entity to which the City may have delegated or assigned responsibility for management of the Conservation Easement Areas, shall give the offending party written notice thereof and a date by which it must be cured, such date to be not less than thirty (30) calendar days after the City's notice unless the continuation of the violation or breach for such thirty (30) calendar day period or any part thereof is likely, in the City's sole discretion, to cause an unreasonable risk to the safety of person or property, in which case the date for cure may be a date that is less than thirty (30) calendar days after the City's notice and which is consistent with the protection of person and property.

c. If the offending party after notice fails to cure such violation or breach within the time set forth in the City's notice, then the City shall have the right to enter onto the Property and each Conservation Easement Area and engage in all activities required to cure the violation or breach.

d. If the City is required to take enforcement action because of a violation or breach of this Easement Agreement, the offending party shall be responsible for all expenses of enforcement, including but not limited to labor and materials, and other expenses incurred by the City, including but not limited to reasonable attorney fees and costs related to all enforcement efforts both prior to the inception of litigation and in the course of litigation, including post judgment collection procedures.

11. Recordation

This Easement Agreement shall be recorded among the land records of Anne Arundel County, Maryland at the expense of the Property Owner.

12. Conflicts

If this Easement Agreement conflicts in substance with the terms of any other document, whether or not recorded, unless the City gives its written consent, this Easement Agreement shall have superseding effect.

13. Notices

a. Unless the parties agree otherwise, or unless this Easement Agreement specifically requires a written form of notice, notices between the parties regarding this Easement Agreement may be by e-mail, fax or regular mail.

b. All written notices between the parties may be hand delivered or sent to:

PROPERTY OWNER: _____

with a copy to ASSOCIATION: _____

and to the City at Department of Public Works, 160 Duke of Gloucester Street, Annapolis, Maryland 21401, Attn: Director.

- c. Notice by hand delivery shall be deemed given when received.
- d. Notice by regular or certified mail shall be deemed given three (3) business days after mailing.
- e. Notice by overnight delivery in any form shall be deemed given the day after mailing.
- f. The parties shall be responsible for notifying each other of address changes.

14. Binding Effect

This Easement Agreement and all covenants and conditions set forth herein shall run with the Property and each individual lot and each Conservation Easement Area, and be binding on and enforceable against the parties and their respective successors and assigns, and shall inure to the benefit of the City and any entity to whom the City may subsequently delegate or assign responsibility for the management of any Conservation Easement Areas.

15. Modification

This Easement Agreement shall not be modified except by a written instrument signed and notarized by the authorized representatives of all parties.

16. Severability

Invalidation of any provision of this Easement Agreement by a court of competent jurisdiction shall in no manner effect any other provision hereof, and each such remaining provision shall remain in full force and effect.

17. Governing Law

a. The construction of this Easement Agreement is governed by the laws of the State of Maryland.

b. The venue of any action brought pursuant to this Easement Agreement shall be in the courts of Anne Arundel County, Maryland. The parties hereby waive jury trial in all actions initiated pursuant to this Agreement.

18. Integration

This Easement Agreement is the final and entire agreement of the parties pertaining to the matters which are the subject of this Easement Agreement. There are no other representations, conditions or terms, oral or written, pertaining thereto.

19. Counsel

The parties acknowledge that, prior to execution of this Easement Agreement, they have had an opportunity to review it for any purpose with legal counsel of their own selection.

20. Ratification

The parties acknowledge that they have read and understand this Easement Agreement and hereby voluntarily and knowingly ratify its terms.

AS WITNESS the hands and seals of the parties.

PROPERTY OWNER:

_____ By: _____ (Seal)
Witness Name: _____
Title: _____

STATE OF MARYLAND, COUNTY OF _____, to wit:

I HEREBY CERTIFY, that on this _____ day of _____, in the year 20____, before me, the subscriber, a Notary Public, personally appeared _____, known to me or satisfactorily proven to be the person whose signature is above, and he/she has signed this Deed of Conservation Easement and Agreement in my presence and acknowledged that he/she is _____ of the Property Owner, and that as such person, he/she is authorized to sign this Deed of Conservation Easement and Agreement on behalf of all such entities and to bind them thereby, and that it is his/her free and voluntary act made for the purposes set forth therein.

AS WITNESS my hand and Notarial Seal.

Notary Public _____ My Commission expires _____

AS WITNESS the hands and seals of the parties.

ASSOCIATION:

_____ By: _____ (Seal)
Witness Name: _____
Title: _____

STATE OF MARYLAND, COUNTY OF _____, to wit:

I HEREBY CERTIFY, that on this _____ day of _____, in the year 20____, before me, the subscriber, a Notary Public, personally appeared _____, known to me or satisfactorily proven to be the person whose signature is above, and he/she has signed this Deed of Conservation Easement and Agreement in my presence and acknowledged that he/she is _____ of the Property Owner, and that as such person, he/she is authorized to sign this Deed of Conservation Easement and Agreement on behalf of all such entities and to bind them thereby, and that it is his/her free and voluntary act made for the purposes set forth therein.

AS WITNESS my hand and Notarial Seal.

Notary Public _____ My Commission expires _____

ATTEST:

CITY OF ANNAPOLIS:

_____ By: _____ (Seal)
Gavin Buckley, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Office of Law, D. Michael Lyles, City Attorney _____

It is certified hereby that this Deed of Easement and Agreement was prepared by or under the supervision of the undersigned, an attorney admitted to practice before the Court of Appeals of Maryland.

Name: _____

Title: _____

Signature: _____

Return to: City Attorney
Office of Law
160 Duke of Gloucester Street
Annapolis, Maryland 21401

**EXHIBIT A
PROPERTY**

Attach a Description/Diagram of the Property.

EXHIBIT B
CONSERVATION EASEMENT AREA
Attach a Description/Diagram of Easement Area.