



## Management Agreement – Forest Conservation

Tax Account No.\* \_\_\_\_\_

**THIS MANAGEMENT AGREEMENT** (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (the “Property Owner”) and the City of Annapolis, a municipal corporation of the State of Maryland (“City”).

**WHEREAS**, the Property Owner owns real property in the City of Annapolis, known as \_\_\_\_\_, and described in a deed dated \_\_\_\_\_, \_\_\_\_\_ and recorded among the land records of Anne Arundel County, Maryland in liber \_\_\_\_\_, page \_\_\_\_\_ (the “Property”); and

**WHEREAS**, the Property Owner submitted to the City a forest conservation plan related to the development of that Property, and is entering into this Agreement pursuant to the Code of the City of Annapolis (“City Code”), Chapter 21.71, as may be amended, as part of the City’s grading permit approval process; and

**WHEREAS**, pursuant to [Section 21.71.070\(C\)\(2\)\(v\)](#) of the City Code, the Property Owner is required to enter into a five (5) year agreement to detail how areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including watering and a reinforcement planting provision if survival rates fall below the required standards in the City’s Forest Conservation Technical Manual (“Manual”), as may be amended; and

**WHEREAS**, the Property Owner:

entered into a Deed of Conservation Easement and Agreement with the City dated \_\_\_\_\_, 20\_\_ (“Conservation Easement”), which is incorporated herein by reference; or

was not required to enter into a Deed of Conservation Easement and Agreement with the City for the Property.

**NOW, THEREFORE**, in consideration of these premises and the mutual promises and understandings stated herein, and other good and valuable consideration, the sufficiency of which the parties acknowledge, the parties agree as follows:

### **1. City Assignment.**

a. The City, without prior notice to or approval by the Property Owner, and by any action, formal or informal, which it may in its sole discretion take, may at any time delegate or assign any right or responsibility under this Agreement 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 this Agreement shall have the same right as the City to have its agents and employees enter upon the Property to monitor and enforce compliance with the provisions of this 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 Agreement may impose on the City. As such any reference to “City” in this Agreement shall also mean any entity delegated or assigned responsibility by the City pursuant to this Section 1.

c. The City will provide timely notice to the Property Owner of any assignment pursuant to this Section 1.

### **2. Forest Conservation Maintenance and Management Requirements.**

a. Subject to notice of completion pursuant to Section 3(b), this Agreement shall be binding on the Property Owner for a period of five (5) years commencing on the date of Inspector notice pursuant to Section 3(a) of this Agreement (the “Maintenance and Management Period”). The Property Owner shall provide in a City-approved landscape plan (the “Landscape Plan”), as depicted in [Exhibit A](#), attached hereto and incorporated herein, for how areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including watering and a reinforcement planting provision if survival rates fall below required standards as provided in the Manual (Section 3.4 Maintenance and Monitoring).

b. The Property Owner shall complete an assessment of existing conditions and needs pursuant to the Manual, shall establish a plan to conduct the needed treatments and monitor results of the Landscape Plan, and shall

incorporate all such items into the final specifications of a City-approved forest conservation maintenance and management plan (the "Maintenance Plan"), as depicted in Exhibit B, attached hereto and incorporated herein.

c. The Landscape Plan shall be planted by either the Property Owner or \_\_\_\_\_, an authorized contractor or agent of the Property Owner ("the Agent"), in accordance with the Landscape Plan, Chapter 21.71 of the City Code, and this Agreement.

d. The Property Owner shall maintain and manage the approved plantings of the Landscape Plan in accordance with the Maintenance Plan. This shall include but is not limited to:

- (1) Planting native plant species compatible with the existing habitat;
- (2) Watering, fertilizing, controlling competing vegetation and protecting plants from disease, pests and mechanical injury during the initial planting and through the Maintenance and Management Period as necessary; and
- (3) Providing protection devices such as fencing, retainer walls, raised sidewalks and interpretive signs as necessary to prevent the destruction or degradation of the Landscape Plan site.

e. The Property Owner shall monitor the Landscape Plan site of the Property for the duration of the Maintenance and Management Period, and the Property Owner shall replace any plantings that die within that Maintenance and Management Period to a minimum standard of one hundred (100) trees per acre or at least seventy-five percent (75%) of the total trees planted per acre (whichever is greater), so as to ensure compliance with survival requirements stated in the City Code and the Manual.

f. The Property Owner shall provide financial security in the form of a letter of credit or bond in a form approved by the City Attorney, in the amount of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$\_\_\_\_\_.\_\_\_\_) (the "Security"), estimated to cover the cost of plantings, installation and maintenance during the Maintenance and Management Period. The Security must be posted prior to any clearing or land disturbing activities on the Property. Up to half of the Security may be released after the planting has been completed if, the Inspector, as defined below, has determined that the Maintenance Plan has been followed and the stock is properly planted and in good condition.

g. The Property Owner is required to provide the City, on a semiannual basis, evidence of Maintenance Plan compliance and that the Security is in full force and effect.

### **3. Inspections.**

a. Upon completion of all required activities pursuant to the Landscape Plan, the Property Owner shall notify the City's inspector (the "Inspector") to schedule a post-planting inspection for Landscape Plan compliance. Upon acceptance of all required activities pursuant to the Landscape Plan, the Inspector will provide the Property Owner with written notice of the start of the Maintenance and Management Period in accordance with the Maintenance Plan.

b. The Property Owner shall contact the Inspector at the end of the Maintenance and Management Period to schedule a final inspection. After verifying Maintenance Plan compliance, the Inspector shall issue to the Property Owner a written notice of completion. If the Inspector has determined that the survival requirements have been met, the Security and this Agreement may be released upon such final inspection.

c. Throughout the Maintenance and Management Period, the Property Owner shall provide the City with access to the Property pursuant to Section 5 to make routine inspections for compliance with this Agreement and the Maintenance Plan.

### **4. Failure to Maintain or Manage.**

a. In the event the Property Owner is found in default of this Agreement, and pursuant to Section 5 of this Agreement, the City shall have a right of entry on the Property to inspect the Property for compliance with the Maintenance Plan, the Landscape Plan, this Agreement and all applicable laws, including all City standards.

b. The City shall provide notice to the Property Owner of any finding that the Property is inconsistent or not in compliance with the Maintenance Plan, the Landscape Plan, this Agreement or any applicable laws, including any City standards, and shall specify the remedial action(s) to be taken by the Property Owner.

c. The Property Owner, at its sole cost and expense, and subject to the City's inspection and final approval, shall timely complete all remedial action stated in the City's notice pursuant to Section 4(b) above.

d. In accordance with Section 6 of this Agreement, if the Property Owner shall fail to perform the remedial action(s) required by the City under this Section 4, the City shall have the right to perform all such work at the Property to bring it in compliance with the Maintenance Plan, the Landscape Plan, this Agreement, and all applicable laws, including all City standards. The City shall assess the Property Owner for all costs and expenses associated with this work pursuant to Section 6 of this Agreement.

**5. Access to the Property.**

a. At any time during normal business hours and upon reasonable notice of the City to the Property Owner, the Property Owner shall make the Property available to the City, and its officials, officers, employees, contractors and agents, for inspections.

b. The Property Owner shall maintain the Property in a manner that shall not impede personnel, vehicular and equipment access to the Property by the City, and its officials, officers, employees, contractors and agents in performing any inspections.

c. If reasonable attempts to provide notice to the Property Owner pursuant to this Agreement fail, or the City determines for any reason, in its sole discretion, that injury to persons or damage to property or public health or safety is imminent and likely to occur pending notice to the Property Owner and an opportunity to perform maintenance, repair or replacement, the City shall have a right of entry on the Property, without providing advance notice, to perform all maintenance, repair or replacement required for compliance with the Maintenance Plan, the Landscape Plan, this Agreement, and applicable laws, including all City standards. The City shall assess the Property Owner for all costs and expenses associated with this work pursuant to Section 6 of this Agreement.

**6. Assessment.**

a. The City shall assess the Property Owner for all costs and expenses that the City incurs for labor, materials and other services pursuant to this Agreement (each, an "Assessment"), including all reasonable legal fees and costs the City incurs to collect the Assessment, or to otherwise enforce this Agreement, whether in connection with litigation or otherwise. Assessments shall be made payable to "City of Annapolis", and submitted to the Finance Director, Finance Department, City Hall, 160 Duke of Gloucester Street, Annapolis, Maryland 21401.

b. If the Property Owner fails to pay an Assessment within thirty (30) calendar days after the City requests payment, or after final disposition of any reasonable dispute about such Assessment, the City shall have the right to record the Assessment on the annual property tax bill for the Property and collect payment as ordinary property taxes under the City Code with interest at the maximum lawful annual rate.

**7. Records.**

a. The Property Owner shall maintain all existing and subsequently generated records relating to this Agreement and the Maintenance Plan, and produce them to the City upon the City's request.

b. The Property Owner shall maintain records containing the dates and nature of all inspections, maintenance, repair and replacement on the Property pursuant to the Maintenance Plan, and provide them to the City upon the City's request.

**8. Recordation; Binding.**

a. It is expressly agreed that this Agreement shall be recorded among the land records of Anne Arundel County at the sole cost and expense of the Property Owner, and that the duties and responsibilities of this Agreement shall run with the title to the Property.

b. Subject to Section 10 of this Agreement, the parties and their respective successors, assigns and purchasers shall be entitled to all of the rights and privileges of this Agreement and shall be bound by all of its duties and responsibilities. All references to the "Property Owner" herein shall be interpreted to specifically refer to all of the Property Owner's successors, assigns and purchasers, without regard to privity with the City under this Agreement.

c. The terms of this Agreement shall be binding upon and shall inure to the benefit of the parties, any successor municipal authorities of the City or any successor quasi-governmental authority. Subject to Section 10 of this Agreement, successor owners of record of the Property and/or the successors and assigns of the Property Owner may assign their benefits, rights, duties and obligations hereunder either as part of the conveyance of the Property as an entirety or severally as part of the conveyances of portions of the Property.

**9. Indemnification.**

a. The Property Owner shall forever indemnify, defend and hold harmless the City, its elected officials, appointees, directors, employees, agents, and representatives from and against all liability for injuries to persons, including death, and damage to City property and other property arising from acts or omissions of the Property Owner, its officers, agents, employees, contractors, patrons, volunteers, guests or invitees resulting in connection with this Agreement, the Maintenance Plan, or the Landscape Plan.

b. Property Owner indemnification does not limit any immunity which the City, its elected officials, appointed officers, directors, employees, agents, and representatives are entitled to assert, and includes all costs and expenses, including attorney's fees, whether or not related to administrative or judicial proceedings.

c. The City, in its sole discretion, may participate in handling its own defense or exclusively handle its own defense, and select its own attorneys, including the City Attorney. The indemnification for attorney fees applies whether or not the City Attorney or other attorney handles the defense.

**10. Property Owner Assignment.**

a. Except in connection with a fee simple transfer of the property, no assignment by the Property Owner of any obligations of this Agreement shall be effective without the City's prior written approval and the prior written acknowledgement of the assignee agreeing to comply with the obligations of this Agreement.

b. Any City-approved assignment shall be in writing which, along with the City's consent and the assignee's acknowledgment, shall be recorded among the land records of Anne Arundel County, Maryland, at the Property Owner's sole cost and expense.

**11. Waiver.**

a. No delay or omission on the part of the City to exercise any right or option granted to the City under this Agreement, in any one or more instances shall constitute a waiver of the City's rights hereunder and each such right or option shall remain continuously in full force and effect.

b. The Property Owner hereby understands and agrees that this Agreement shall not waive any rights, powers or remedies that the City may have pursuant to the City Code, at law or in equity.

**12. No Partnership.**

Nothing contained in this Agreement shall be construed in a manner to create any relationship between the parties other than expressly specified herein, and the parties shall not be considered partners or co-venturers for any purpose on account of this Agreement.

**13. Severability.**

In the event any one or more of the provisions of this Agreement shall for any reason be held by a court or other lawful authority to be invalid, illegal or unenforceable, in whole or in part or in any other respect, the remaining provisions hereof shall not be affected thereby, and the Agreement shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

**14. Governing Law.**

This Agreement and its interpretation shall be governed by Maryland law. The venue for all actions pursuant to this Agreement shall be the Courts of Anne Arundel County, Maryland. The parties waive trial by jury in all actions brought pursuant to this Agreement.

**15. Captions and Headings.**

The captions and headings contained in this Agreement are included herein for convenience of reference only and shall not be considered a part hereof and are not in any way intended to limit or enlarge the terms hereof.

**16. Integration; Modification.**

a. This Agreement, and any documents incorporated herein by reference, are the final and entire agreement of the parties concerning all matters having to do with the Maintenance Plan and the Landscape Plan. The parties acknowledge that there are no other understandings or representations, oral or written, regarding the subject or matters having to do with the Maintenance Plan and the Landscape Plan.

b. None of the terms or provisions of this Agreement may be changed, waived, or modified exempt by written instrument executed by both parties hereto.

**17. Counterparts.**

This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

**18. Notice.**

Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered with signed receipt to the following address and individual or such other address and/or such other individual as a party may identify in writing to the other party:

To the City: Department of Public Works  
145 Gorman Street, 2nd Floor  
Annapolis, Maryland 21401  
Attn: Director

With a Copy to: City Attorney  
160 Duke of Gloucester Street  
Annapolis, Maryland 21401

To the Property Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**19. Property Owner Consent.**

As applicable if the Property Owner consists of two (2) or more individuals or entities:

- a. Each and any individual and/or entity that comprise the Property Owner shall have joint and several liability for each of the obligations of this Agreement.
- b. Notice to any individual and/or entity that comprises the Property Owner shall suffice to meet the notice obligations of this Agreement.
- c. Consent given by any individual and/or entity that comprises the Property Owner pursuant to this Agreement shall suffice to constitute consent of both.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed under Seal as of the day and year written below.

PROPERTY OWNER:

\_\_\_\_\_ By: \_\_\_\_\_ (Seal)  
Witness Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF Maryland, COUNTY OF \_\_\_\_\_, to wit:

I HEREBY CERTIFY that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before the subscriber, a Notary Public in and for the State and County aforesaid personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose signature is above, and he/she has signed this Management Agreement in my presence and acknowledged that he/she is authorized to sign this Management Agreement, 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:

\_\_\_\_\_  
Regina C. Watkins-Eldridge, MMC, City Clerk

By: \_\_\_\_\_ (Seal)  
Gavin Buckley, Mayor

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
OFFICE OF LAW  
D. Michael Lyles, City Attorney

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