

WOODLAND AND WILDLIFE HABITAT
CONSERVATION EASEMENT

This Woodland and Wildlife Habitat Conservation Easement (hereinafter called the "Easement") is made this ____ day of _____, 20__ , by and between _____, having an address at _____(hereinafter called the "Grantor"), for the benefit of Prince George's County, Maryland (hereinafter called the "Grantee").

RECITALS

WHEREAS, the County Council for Prince George's County enacted CB-27-2010 amending Subtitle 25, Division 2, the Woodland and Wildlife Habitat Conservation Ordinance to require the recordation of a woodland conservation easement over any land area used to meet the requirements of the ordinance; and

WHEREAS, this Easement advances the woodland conservation policies and requirements of Prince George's County, Maryland (see generally Subtitle 25, Division 2 of the Prince George's County Code (the "Woodland Conservation Ordinance")) and the State of Maryland, (see generally Title 5, Subtitle 16, of the Natural Resources Article of the Annotated Code of Maryland); and Title 08, Subtitle 19, of the Code of Maryland Regulations (the "Forest Conservation Act"); and

WHEREAS, the Grantor is the owner of all that piece or parcel of real property, described as _____(insert street address), and identified in Tax Account Number _____ and being all or a portion of the property acquired by the Grantor herein by deed recorded among the Land Records of Prince George's County, Maryland in Liber _____, folio _____ (hereinafter called the "Property"), located in Prince George's County, Maryland; and

WHEREAS, the Grantor has encumbered the Property with a Tree Conservation Plan showing woodland conservation in the form of preservation, reforestation, and/ or afforestation as described in the approved and/or modified Type 2 Tree Conservation Plan (TCP2-_____-_____), submitted to and approved by the Prince George's County Planning Board OR Planning Director as appropriate; and

WHEREAS, the issuance of certain permits are conditioned upon the provision of woodland conservation areas and require that areas dedicated for satisfying the woodland conservation requirements be protected in perpetuity by a woodland conservation easement; and

WHEREAS, the Grantor desires to establish this Easement of approximately _____ acres of preservation and approximately _____ acres of reforestation and/ or afforestation as shown on the approved Type 2 Tree Conservation Plan (TCP2-_____-_____) to be used to satisfy woodland conservation requirements for the subject developing property, and as further described by Exhibit A; and

WHEREAS, Grantor understands and acknowledges that any subsequent conveyance of the Property shall be subject to the notification requirements of Section 2-162.01(e) of the Prince George's County Code; and

WHEREAS, Grantor understands and acknowledges the restrictions on the use of the land within this Easement are described in the Woodland Conservation Ordinance and run with the Property and bind future owners thereof; and

WHEREAS, Grantor desires and intends to convey to Grantee the right to preserve and protect the conservation values of the Woodland Conservation Area in perpetuity; and

WHEREAS, the Grantee understands and acknowledges that disturbance within the limits of disturbance as shown on the approved TCP2 may occur in accordance with certain permits prior to the planting associated with reforestation and/ or afforestation within the Easement; and

WHEREAS, the Grantee agrees by accepting this Easement to preserve and protect in perpetuity the conservation values of the Easement for the benefit of this generation and the generations to come;

NOW, THEREFORE, in consideration of the sum of One Dollar and No Cents (\$1.000, the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity (or until modified pursuant to the laws of the State of Maryland or Prince George's County) this Easement consisting of approximately _____ acres, across Grantor's

property, as more particularly described on attached Exhibit "A" attached hereto and made a part hereof.

2. Grantor, their successors, heirs and assigns, covenant and agree to preserve and protect the conservation values contained within this Easement, thus providing for all planting, maintenance, and protection of woodlands within this Easement to ensure that the Property is and remains in compliance with the approved Tree Conservation Plan and all applicable standards, rules, regulations and laws.

3. Unless otherwise provided, all persons or entities having legal title to the Easement are responsible for the maintenance and protection of that area. In the event this Easement is located on one or more parcels under different ownerships, the owners of the parcels are responsible for their pro rata share of any maintenance.

4. No right of access by the general public to any portion of the Property is conveyed by this Easement. The Easement neither restricts nor enlarges access to the general public in common open space held under community or homeowner association control, beyond any access rights specific to the applicable community or homeowner association covenants and bylaws.

5. The Grantee is conveyed the right to preserve and protect the conservation values of this Easement, the right to enter upon the Property containing the Easement at reasonable times for the purpose of monitoring compliance with or otherwise enforce the terms of this Easement, and the right to prevent any activity or use of the Easement that is inconsistent with the terms of this Easement and to require the restoration of features that may be damaged by an inconsistent activity or use.

6. If the Grantor is found in violation of any terms of the Easement or that a violation is threatened, the Grantee shall give written notice to the Grantor of such violation and demand corrective action sufficient to remedy the violation in conformance with the enforcement provisions of the Woodland Conservation Ordinance.

7. The Grantor shall indemnify and hold the Grantee harmless from any and all claims for damages to persons or property arising from the construction, maintenance, and the use of the PROPERTY. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property including, without limitation, the payment of taxes on the Property.

8. The Grantor is hereby notified of the following activities that constitute a violation of this Easement:

- (a) Failure to comply with the provisions of TCP2 _____ - _____.
- (b) The destruction of woodlands without a permit or contrary to the approved TCP.
- (c) Removal of stumps, leaf litter and/or removal of other plants in woodlands, except as provided for in paragraph 9 below.
- (d) Seeding woodlands with grass seed.
- (e) Covering of woodland grounds with hay or other materials that prevent woodland re-growth from occurring.
- (f) Installation of sheds, garages, large fountains, and other permanent or temporary structures in woodlands.
- (g) Failure of the Property owner to maintain preservation, afforestation or reforestation areas in accordance with the approved TCP. This includes conservation areas established in woodland conservation banks.
- (h) Any activity that adversely affects the health, structure or integrity of a woodland including, but not limited to, active recreational activities requiring the placement of playground equipment, paving for basketball or tennis courts, swimming pools, and similar impacts that eliminate or compromise perpetual woodlands.

9. The Grantor is hereby notified of the following activities that do not constitute a violation of this Easement, provided that they must be conducted by hand without the use of wheeled mechanical equipment:

- (a) Removal of a documented dead, dying or hazardous tree. In order to be deemed dead, dying or hazardous, the tree must be evaluated by a qualified professional or certified arborist. To be considered a hazardous tree, the professional must provide documentation that the tree is in a position where it threatens property damage or could cause injury.
- (b) Removal of documented exotic, invasive or noxious plant species.
- (c) Passive activities such as herb gardens, sitting areas, and wildflower gardens only if existing vegetation is not removed for installation.
- (d) Removal of severed trunks, dead branches and dead debris created as a result of storm damage.
- (e) Removal of trash and other human-made debris.
- (f) Work completed in conformance with a Forest Management Plan is not a violation and may be conducted with the use of wheeled mechanical equipment.
- (g) Grading completed in conformance with the provisions of an approved TCP2 _____ - _____ and in

conformance with an approved grading permit

10. The general provisions of this Easement are as follows:

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Maryland, and shall be enforced by a court of competent jurisdiction therein.

(b) Liberal Construction. Any general rule of construction to the contrary of, and notwithstanding this Easement, shall be liberally construed in favor of a grant to affect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement.

(e) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

11. Grantor acknowledges that nothing contained in this conservation easement shall be construed as some governmental takings. Grantee and all subsequent owners, successors, and assigns of the property hereby forever waives any and all claims that this conservation easement constitutes a governmental takings without just compensation.

12. Grantor agrees that nothing in this conservation easement shall be construed as impermissible government exactions/or takings in violation of the 5th Amendment to the U.S. Constitution or the Maryland Constitution, Article III §40.

SUBORDINATION PROVISION

The Grantor represents and warrants that the Property _____(IS/IS NOT) encumbered by a mortgage/deed of trust granted to _____ (“Mortgagee”), which is recorded among the Land Records of Prince George’s County, Maryland in Liber _____, folio _____ (the “Mortgage”) and that _____

is the current holder/payee of that mortgage to the best of his/her/their knowledge.

In order to provide for the non-disturbance of this Easement and assure that the County's rights and privileges, and Grantor's obligations under this Easement will not be disturbed, affected or impaired by, be terminated or affected by (i) any suit, action or proceeding on the Mortgage or other obligation secured by the Mortgage, or by any judicial sale or execution or other sale of the Property, or by any deed given in lieu of foreclosure, or by the exercise of any other rights given to any Mortgagee by other documents or as a matter of law, or (ii) any default under the Mortgage or the bond or note or other obligation secured by the Mortgage, Mortgagee, by its consent to this Easement, does agree to be bound under all the terms, covenants and provisions of the Easement; notwithstanding whether or not this Easement is subordinate to the Mortgage.

TO HAVE AND TO HOLD unto the COUNTY, its successors, and assigns forever.

IN WITNESS HEREOF, the GRANT or has hereunto set our hands and seal this _____day of _____, 201____.

WITNESS:

GRANTOR:

By: _____
Name
Title, if appropriate

STATE OF MARYLAND:

COUNTY OF _____: to wit:

I HEREBY CERTIFY that on this _____ day of _____, 200____, before me, the subscriber, a Notary Public in and for the County and state aforesaid, personally appeared _____ who stated that (he/she) is authorized to execute, and did execute, the foregoing EASEMENT for the reasons contained therein.

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

Notary Public

My Commission expires:

Notary Public

Consent by Mortgagee: Mortgagee, by its consent to this Easement does agree to be bound under all the terms, covenants and provisions of the Easement.

WITNESS:

MORTGAGEE:

By: _____
Name

STATE OF MARYLAND:

COUNTY OF _____: to wit:

I HEREBY CERTIFY that on this _____ day of _____, 201____, before me, the subscriber, a Notary Public in and for the County and state aforesaid, personally appeared _____ who stated that (he/she) is authorized to execute, and did execute, the foregoing Easement for the purpose of consenting thereto.

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

Notary Public

My Commission expires:

Notary Public