

REFORESTATION
DEED OF EASEMENT/MAINTENANCE
COVENANTS AND AGREEMENT

This Reforestation Deed of Easement/Maintenance Covenants and Agreement, (“Easement Agreement”) made this _____ day of _____, 2018, by and between ____ (Insert Owner Name Here) (hereinafter collectively, the "Grantor"), and Frederick County, Maryland, a body corporate and politic of the State of Maryland (“County”),

WHEREAS, the Frederick County Office of Sustainability and Environmental Resources has established a Reforestation Program to restore, enhance, and maintain the chemical, physical, and biological integrity of waterways, including the control and/or minimization of nonpoint source pollution, soil erosion, local flooding, and impervious surface runoff, and

WHEREAS, the Grantor is the owner of a certain tract of land located in Frederick County, Maryland (defined below as the “Property”), and has agreed to provide an easement over and across the Property for the planting and maintenance of trees, (the "Reforestation Easement"), and

WHEREAS, the parties have agreed to enter into this Easement Agreement to provide for the future protection, maintenance, and inspection of the Reforestation Easement and

NOW THEREFORE, WITNESSETH THAT, for and in consideration of the sum of \$1.00, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby grant and convey unto the County, its successors and assigns, an exclusive and perpetual Reforestation Easement through, over, and across that property which is more particularly described on Exhibit A which is attached hereto and incorporated herein by reference; located in Frederick County, Maryland, being part of the parcel of land which was conveyed unto ____ (Insert Owner Name Here) ____ from ____ (Insert Previous Owner Name Here) ____ by Deed dated XXXXXXXX, and being recorded among the Land Records for

Frederick County, Maryland, in Liber **XXXXXX**, folio **XXXXXX** (the "Property").

To have and to hold the Reforestation Easement, together with the rights and privileges appurtenant to their proper use and benefits, forever by the County, their successors and assigns, in accordance with the terms set forth herein, as follows:

FIRST: That the County, its successors, agents and assigns, shall at all times have a right of ingress to and egress from the Reforestation Easement for the purpose of inspecting, maintaining, planting or replacing vegetation within the Reforestation Easement. The right of access shall be in, through, over and across the land of the Grantor: provided, however, that the County shall use existing roadways and driveways where possible and shall minimize damage to growing crops, planted or cultivated fields, streams, lawns, pastures and structures;

SECOND: The responsibilities for the maintenance of, and the restrictions on the activities within, the Reforestation Easement shall be as set forth in the Maintenance Covenants and Agreement attached hereto as "Exhibit B" and incorporated by reference as if fully set forth herein;

THIRD: The Grantor further covenants and agrees that the easements, rights of way, maintenance covenants and agreements contained herein shall run with the land and shall bind the Grantor and its heirs, executors, administrators, successors and assignees and shall bind all present and subsequent owners of the Property;

FOURTH: The Grantor covenants and agrees that all parties having an interest in the Property which is subject to this Easement Agreement have executed this document and agreed to the terms hereof;

FIFTH: The Grantor agrees that no other easements may be imposed or placed in, on, or through the Reforestation Easement without the prior written consent of the County; and

SIXTH: The Grantor will warrant specially the Reforestation Easement and shall execute such further assurances thereof as may be requisite.

[SIGNATURES BEGIN ON THE NEXT PAGE]

GRANTOR:

Witness

_____(SEAL)
Owner Name

Witness

_____(SEAL)
Owner Name

STATE OF _____, COUNTY OF _____

On this ____ day of _____, 2018, before me, the undersigned, personally appeared **Owner Names**, who each acknowledged that he/she executed the foregoing instrument for the purposes therein contained, by signing his/her name.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

ATTEST/WITNESS:

FREDERICK COUNTY, MARYLAND

By: _____
Jan H. Gardner, County Executive

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Jan H. Gardner, County Executive of Frederick County, Maryland, a body politic and corporate of the State of Maryland, and acknowledged the foregoing instrument to be the act of said body public and corporate and that she is duly authorized to make this acknowledgment on its behalf.

Notary Public

My Commission Expires: _____

This instrument has been prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Kathy L. Mitchell

EXHIBIT A
Reforestation Easement

EXHIBIT B

**REFORESTATION
INSPECTION AND MAINTENANCE COVENANTS AND AGREEMENT
("Agreement")**

1. *OBLIGATIONS OF THE PARTIES:* The County shall be responsible for planting new forest and maintaining any existing forest from the date of the Easement Agreement for a period of five (5) years (until _____, 202X), and allowing natural regeneration of vegetation, at its discretion, within the Reforestation Easement. After the first five (5) year period described above, the Grantor its successors, heirs and assigns, shall be responsible for maintaining and protecting the reforestation and any existing forest within the Easement Area in accordance with the provisions of this Exhibit B. The maintenance standard shall be at least 100 trees per acre with at least 50 percent of those trees having a 2 inch or greater diameter at 4.5 feet above the ground.

2. *CORRECTING DEFICIENCIES:* Upon receipt of notice from the County of any problems or deficiencies in the new forest, existing forest, or regeneration vegetation in the Reforestation Easement caused by Grantor's violation of its responsibilities hereunder, the Grantor, its successors, heirs and assigns, will correct problems as directed. If the requested corrections are not made as directed in the notice, Frederick County may, at its discretion, perform all of the necessary work to bring the Reforestation Easement into compliance with the requirements set forth in this Exhibit B, and the Owners of the land(s) upon which the Reforestation Easement is located shall be assessed for the cost of the work. If not paid within thirty (30) days, the assessment shall create a lien on the Property and may be included in the tax bill for the Property or properties on which the Reforestation Easement is located and collected

as taxes by Frederick County.

3. *INDEMNIFICATION*: The Grantor shall indemnify and save the County harmless from any and all claims for damages to persons or property arising from the use of the Reforestation Easement, excluding any damages caused by the County's agents and employees.

4. *INDIVIDUAL TREE REMOVAL*: Non-commercial, selective clearing of individual trees that are less than 30 inches in diameter may occur, provided written permission is obtained in advance from the County. However, the forest easement area(s) shall not be cleared below the "standard forest density" of at least 100 trees per acre with at least 50 percent of those trees having a 2 inch or greater diameter at 4.5 feet above the ground. Hazardous trees or tree limbs may be removed to prevent personal injury or property damage without prior approval.

5. *REMOVAL OF NOXIOUS WEEDS AND EXOTICS*: Noxious weeds, as identified by the Maryland Department of Natural Resources; and exotic or invasive trees and shrubs, listed in the State Forest Conservation Technical Manual, may be removed without regard to the "Standard Forest Density" described in Section #4 above, and the method of removal must be consistent with the limitations contained in this Agreement. It shall be the responsibility of the County to provide weed control and mowing (if appropriate) during the time period described in Section 1 of this Exhibit. Thereafter, weed control and mowing (if appropriate) shall be the responsibility of the Grantor, its successors, heirs and assigns.

6. *BRUSH REMOVAL RESTRICTIONS*: Provided that it is outside a floodplain, stream, or floodplain buffer area as defined in the Frederick County Code, brush may be removed from areas within 35' of a residential dwelling structure or principle structures of a commercial, institutional or industrial use, subject to the restrictions listed in this Agreement.

7. *CONDITIONS OF PERMITTED BRUSH REMOVAL*: For areas of existing forest

that exceed the standard forest density, understory plant materials (including, but not limited to brush, shrubs, saplings, seedlings, undergrowth, or vines) may be cut down, removed or destroyed, provided that:

A) their removal does not damage, injure, or kill trees having a 6 inch or greater diameter at 4.5 feet above the ground;

B) their removal does not create erosion or slope stability problems;

C) the removal of such understory does not cause the forest easement area(s) to fall below the required standard forest density as described in Section #5;

D) the forest floor is allowed to continuously regenerate tree and shrub seedlings to create future forest growth, and to continuously support a biological community consistent with typical forest environments and habitats;

E) the shrubs, saplings, and seedlings were not planted as part of a forest establishment or improvement project; and

F) the removal of shrubs, saplings, and seedlings is approved by the County prior to commencement of clearing activities.

8. *SAPLING AND SEEDLING PROTECTION*: For Reforestation Easements that are below the standard forest density, (such as areas set aside for ‘Natural Regeneration’; or for forested areas that fall below the standard forest density due to natural occurrences, such as fire, pest damage, wind storm, etc.) saplings and seedlings may not be cut down, removed or destroyed until the Reforestation Easement contains sufficient living trees to meet or exceed the standard forest density.

9. *FENCES*: Fences are permitted along the boundary of the Reforestation Easement, provided their construction and maintenance can be executed in compliance with the restrictions

of this Agreement. In the event the Property is utilized for the grazing of animals, the owner of the Property shall install fencing along the boundary of the Reforestation Easement, sufficient to prevent the animals from entering the Reforestation Easement. The Grantor shall be solely responsible for the installation and maintenance of any fences.

10. *SUPPLEMENTAL PLANTING*: Grantor may supplement existing (or replace dead) trees or undergrowth with new plantings provided that new plantings are characteristic of trees or undergrowth materials native to Maryland.

11. *ALLOWABLE COMMERCIAL TIMBER CUTTING*: Timber cutting for commercial purposes is permitted within the Reforestation Easement beyond 100 feet from the edge of stream, provided that the area of timber cutting is performed in accordance with:

- A) A Forest Management Plan that is:
 - (i) prepared by a licensed professional forester; and
 - (ii) approved by the Maryland Department of Natural Resources forester assigned to the County; and
 - (iii) approved by the County; or
- B) A Timber Harvest Plan that is:
 - (i) consistent with the intent of the Forest Management Plan, and the intent and requirements of the forest conservation plan;
 - (ii) prepared by a licensed professional forester; and
 - (iii) submitted to and approved by the local Forest Conservancy Board; and
 - (iv) approved by the County

12. *HARVESTING/REFORESTATION*: If harvesting performed in accordance with Section 11 above causes the Reforestation Easement to fall below the standard forest density, the

Grantor shall be responsible for reforestation, if natural regeneration is inadequate to provide for the cut area to achieve forested conditions in a timely manner. The posting of a financial guarantee and execution of a forest inspection and maintenance agreement (FIPA) shall be required to cover the costs of the Grantor's obligation under this section. The procedures for executing the FIPA and return of the financial guarantee shall be done in accordance with Section 1-21-25 of the Forest Resource Ordinance.

13. *ADDITIONAL IMPROVEMENT RESTRICTIONS*: No construction of new buildings, structures, roadways, driveways, parking lots, and impervious surface coverings is permitted within the Reforestation Easement.

14. *ADVERTISING RESTRICTIONS*: No posting of any advertisement, sign or billboard within the Reforestation Easement is permitted.

15. *DUMPING RESTRICTIONS*: No dumping, land filling, storage, burial, application, injection, burning, or accumulation of unsightly or offensive material, including but not limited to, solid waste, hazardous substances, petroleum, sewage, bio-solids, chemicals, pesticides, construction debris, ashes, sawdust, farm machinery, vehicles, or grass clippings shall occur within the Reforestation Easement.

16. *FILL AND GRADING RESTRICTIONS*: Construction, excavation, placement of heavy fill, re-grading of the surface, or construction of retaining walls is prohibited, except when done pursuant to a County approved environmental enhancement project (such as stream bank restoration). Any change in topography or soil disturbance by filling, grading, stripping of topsoil, plowing, cultivating, or other practices is prohibited.

17. *MOTORIZED VEHICLE RESTRICTIONS*: No motorized vehicles, such as go-carts, dune buggies, trucks, cars, vans, motorcycles, etc., shall be operated or stored in the Reforestation

Easement, except for those used in periodic maintenance or timber harvesting operations.

18. *UTILITY RESTRICTIONS*: The Reforestation Easement shall not be used as a site for any major public utility installation including, but not limited to, electric generating plants, electric transmission lines, gas generating plants, gas storage tanks, radio or microwave relay stations, or telephone exchanges.

19. *MINING RESTRICTIONS*: No mining or on-site extractive activity of any type; No new surface exploration for, or development, storage and extraction of, minerals and hydrocarbons in the Reforestation Easement by any method are permitted.

20. *PREVENTION OF DAMAGE*: All rights reserved by or not prohibited to Grantor shall be exercised so as to prevent or minimize damage to the forest and trees, streams and water quality, plant and wildlife habitats, and the natural topographic character of the Reforestation Easement.

21. *APPROPRIATE ACCESS*: Grantor will provide appropriate access to, and hereby authorizes the County representatives and agents to enter the property subject to the Reforestation Easement at reasonable hours for the purpose of making periodic inspections to ascertain compliance with the restrictions, conditions, and easements established herein or to install or maintain forest improvements. The right of access shall be in, through, over and across the land of the Grantor: provided, however, that the County shall use existing roadways and driveways where possible and shall minimize damage to growing crops, planted or cultivated fields, streams, lawns, pastures and structures.

22. *GENERAL PUBLIC RESTRICTIONS*: This Agreement does not convey to the general public the right to enter the Property or easement for any purpose. The Agreement does not restrict or enlarge access by the general public in common open space (if any) held under community or homeowner association control beyond any access rights created by the applicable community or

homeowner association covenants and bylaws.

23. *VIOLATIONS*: Upon finding a violation of any of the restrictions, conditions, covenants and easements established by this Agreement, the County shall have the right to enforce such provisions in accordance with any statutory authority (including, if applicable the imposition of civil monetary fines or penalties in amounts and by such means as may be promulgated from time to time). The County may also seek injunctive or other appropriate relief in any Court of competent jurisdiction, including the right to recover damages in an amount sufficient to restore the Property to its original state, and Grantor agrees to pay for Court costs and reasonable attorneys' fees if the County prevails in any judicial proceedings.

24. *LEGAL REFERENCES*: Grantor agrees to make specific reference to this Agreement in a separate paragraph of any sales contract, mortgage, subsequent deed, lease or other legal instrument by which any possessory or equitable interest in the Property is conveyed.

25. *ENFORCEMENT/INSPECTION FAILURE*: Failure on the part of the County to enforce any covenant or provision herein shall not constitute a waiver of the County's right to later enforce any covenant or provision within this Agreement. Failure on the part of the County to perform periodic inspection of the Reforestation Easement Area shall not constitute a breach by the County, nor shall any failure to inspect nullify or terminate the Reforestation Easement granted herein.

26. *FORCE MAJEURE*: The parties to this Easement Agreement shall be excused from the performance of their obligations under this Easement Agreement to the extent that such performance is prevented by force majeure (defined below), if the nonperforming party promptly provides written notice of such prevention to the other party. The excuse shall be continued so long as the condition constituting force majeure continues. The party affected by the force majeure also

shall notify the other party of the anticipated duration of such force majeure, any actions being taken to avoid or minimize its effect after such occurrence, and shall take reasonable efforts to remove the condition constituting such force majeure. For purposes of this Agreement, **force majeure shall include** conditions beyond the control of the parties, including an act of God, acts of terrorism, war, acts of war (whether war be declared or not), labor strike or lock-out, civil commotion, epidemic, failure or default of public utilities or common carriers, and the destruction of new or existing forest by fire, earthquake, storm, or like catastrophe.

27. *WRITTEN NOTICES*: All notices required or allowed by this Agreement shall be in writing and shall be sent to the Office of Sustainability and Environmental Resources, 30 North Market Street, Frederick, Maryland 21701, with a copy to the Frederick County Attorney, Winchester Hall, 12 East Church Street, Frederick, Maryland 21701 and to ___(Insert Property Address Here)___.

28. *NON-APPROPRIATION*. Any failure of the County to perform its obligations under this Agreement or the Easement Agreement, which failure resulted from non-appropriation of funds necessary to perform such obligations, shall be excused and shall not constitute a breach of this Reforestation Easement by the County.