

FOREST CONSERVATION DEED OF EASEMENT (“Easement”)
Category I
(with provision for automatic release and amendment in whole or in part)

DEFINITIONS

Grantor: The Mayor and Council of Rockville, Maryland

Grantee: Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ("Commission").

Property: Parcel P995, Subdivision: Cool Spring Level Williamsburg, recorded among the Land Records of Montgomery County, Maryland in Liber 2359, Folio 464

Planning Board: Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.

Planning Director: Director of the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission, Montgomery County, or the Director's designee.

Plan: Mandatory referral reviewed pursuant to Article 28 of Maryland State Code Annotated.

Forest Conservation Plan ("FCP"): Forest Conservation Plan No. MR 2011302 approved by the Planning Board or Planning Director pursuant to Chapter 22A, Montgomery County Code.

Exhibit A:

FCP approved as a condition of receiving any of the Plan approval noted above.

Exhibit B:

Description and sketch of the easement over and across property to be developed.

Exhibit C:

Form of Release.

WITNESSETH

The Easement reflects a grant of easement by Grantor to the Grantee.

WHEREAS Grantor has obtained authority to develop pursuant to a Plan in accordance

Grantor Initials _____

with Montgomery County, Maryland laws; and

WHEREAS, the Planning Board or other approving authority approved Grantor's Plan conditioned upon a requirement that development occur in strict accordance with an FCP approved by the Planning Board after full review of the FCP pursuant to the provisions of Montgomery County Code Chapter 22A (Forest Conservation); Chapter 50 (Subdivision Regulations); and/or Chapter 59 (Zoning Ordinance); and/or

WHEREAS, the Planning Board approved Grantor's Plan conditioned upon Grantor subjecting the property to be developed ("Property") or a portion of the Property to a conservation easement pursuant to the provisions of Montgomery County Code Chapter 50 (Subdivision Regulations), and/or Chapter 59 (Zoning Ordinance); and

WHEREAS, the property subject to this forest conservation easement is a portion of that Property on which the City of Rockville Water Treatment Plant was constructed to meet the water supply needs of the residents of the City of Rockville; and

WHEREAS, the location of this Easement is as shown on Exhibit A attached hereto and incorporated by reference into the terms of this Easement; and

WHEREAS, the purpose of this Easement is to protect existing and future forest cover; individual trees; streams and adjacent buffer areas, wetlands and other sensitive natural features; and to maintain existing natural conditions to protect plant habitats, water quality and wildlife; and

WHEREAS, the purpose includes preservation of the natural beauty of the Property subject to the easement and prevention of any alteration, construction or destruction that will tend to mar or detract from such natural beauty; and

WHEREAS, the purpose also includes the protection and preservation of natural features within the area of the Easement which efforts are consistent with the terms and conditions of the approved Plan and applicable law; and

WHEREAS, the Water Treatment Plant Property is almost entirely within a stream valley buffer with high priority forest for conservation, Grantee acknowledges that Grantor must also provide for the future expansion of the Water Treatment Plant to serve the residents of the City of Rockville; and

WHEREAS, the Grantor and Grantee (collectively referred to as the "Parties") intend for the conditions and covenants contained in this Easement to run with the land in perpetuity, subject to provision for automatic release in whole or in part as expressly provided herein, and to be binding on all subsequent owners and occupants of the Property; and

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WHEREAS, the Grantor intends that a servitude be placed upon the Property to create a conservation benefit in favor of the Planning Board.

NOW, THEREFORE, the Grantor has executed this Easement for no monetary consideration but for the purpose of ensuring compliance with development standards imposed in accordance with Montgomery County law as a condition of development approval. The Grantor does hereby grant and convey unto the Planning Board, in perpetuity, an easement on the Property of the size and location described in Exhibit B attached hereto and incorporated by reference into the terms of this Easement, and further described on the applicable record plat(s), of the nature and character described herein. This Easement constitutes a covenant real running with the title of the land, and is granted to preserve, protect and maintain the general topography and natural character of the land. The Grantor does hereby waive any challenge to the validity of this easement whether or not shown on a plat. Grantor, its heirs, successors and assigns covenant to abide by the following restrictions within the Easement:

1. The foregoing recitals are agreed to and incorporated herein and shall be binding upon the Grantor.
2. No living trees or shrubs (of any size or type) shall be cut down, removed or destroyed without prior written consent from the Planning Board. Diseased or hazardous trees or limbs may be removed to prevent personal injury or property damage after reasonable notice to the Planning Board, unless such notice is not practical in an emergency situation or removal of trees is undertaken pursuant to a forest management plan approved by the Planning Director.
3. No plant materials (including, but not limited to brush, saplings, undergrowth, or non-woody vegetation) shall be mowed or cut down, dug up, removed or destroyed unless removed pursuant to the terms and conditions of an approved forest management plan. Noxious weeds (limited to those weeds defined as "noxious" under Maryland State or Montgomery County laws or regulations and "exotic or invasive plants" in the Montgomery County *Trees Technical Manual*) may be removed as required by law, but the method of removal must be consistent with the limitations contained within this Easement. Vegetation removal shall be limited to noxious weeds only, exotic and invasive weeds only, and protective measures must be taken to protect nearby trees and shrubs.
4. No mowing, agricultural activities, or cultivation shall occur. Grantor may replace dead trees or undergrowth provided that new plantings are characteristic of trees or undergrowth native to Maryland.
5. Nothing in this Easement precludes activities necessary to implement an afforestation or reforestation efforts pursued pursuant to an approved forest conservation plan or maintenance agreement implemented under Chapters 19 or 22A of the Montgomery County Code.

Grantor Initials _____

6. The following activities may not occur at any time within the Easement area:
- a. Construction, excavation or grading (except for afforestation and reforestation efforts conducted in compliance with an approved forest conservation plan).
 - b. Erection of any building or structural improvements on or above ground, including (but not limited to) sheds, dog pens, play equipment and retaining walls.
 - c. Construction of any roadway or private drive.
 - d. Activities which in any way could alter or interfere with the natural ground cover or drainage (including alteration of stream channels, stream currents or stream flow).
 - e. Industrial or commercial activities.
 - f. Timber cutting, unless conducted pursuant to an approved forest management plan approved by the Planning Director and the Department of Natural Resources for the State of Maryland.
 - g. Location of any component of a septic system or wells.
 - h. Excavation, dredging, or removal of loam, gravel, soil, rock, sand and other materials.
 - i. Diking, dredging, filling or removal of wetlands.
 - j. Pasturing of livestock (including horses) and storage of manure or any other effluent.
 - k. Alteration of stream.

7. Nothing in this Easement shall prevent construction or maintenance of stormwater structures and/or facilities or other utilities, including, but not limited to water and sewer lines, on, over, or under the easement area, if said structures, facilities or utilities are (i) required to implement the Plan, (ii) shown on the approved FCP, and (iii) approved by the appropriate governing bodies or agencies in accordance with applicable laws and regulations.

8. No dumping of unsightly or offensive material, including trash, ashes, sawdust or grass clippings shall occur. Natural biodegradable materials may be allowed in a properly located, designed, managed and maintained compost pile, provided the activity does not damage

Grantor Initials _____

adjacent trees. Upon prior written approval of the Planning Director, suitable heavy fill and other stabilization measures may be placed to control and prevent erosion, provided that the fill is covered by arable soil or humus and properly stabilized.

9. Fences consistent with the purposes of the Easement may be erected within the Easement area if shown on the FCP or only after written approval from the Planning Director.

10. Unpaved paths or trails consistent with the purposes of the Easement may be created only after written approval from the Planning Director.

11. 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 land within the Easement.

12. Grantor authorizes Planning Board representatives to enter the Property and easement area at their own risk and at reasonable hours for the purpose of making periodic inspections to ascertain whether the Grantor, its heirs, successors or assigns have complied with the restrictions, conditions, and easements established herein. This Easement does not convey to the general public the right to enter the Property or easement area for any purpose. This Easement does not restrict or enlarge access to the general public in common open space held under community or homeowner association control beyond any access rights created by applicable community or homeowner association covenants and by-laws.

13. The Grantor does hereby waive any challenge to the validity of this Easement in the event it is not shown on a plat, and Grantor agrees to make specific reference to this Easement in a separate paragraph of any subsequent deed, sales contract, mortgage, lease or other legal instrument by which any possessory or equitable interest in the Property is conveyed.

14. No failure on the part of the Planning Board to enforce any covenant or provision herein shall waive the Planning Board's right to enforce any covenant within this Easement.

15. Upon finding a violation of any of the restrictions, conditions, covenants and easements established by this Easement, the Planning Board 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 Planning Board also may 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 natural state, and Grantor agrees to pay for court costs and reasonable attorney fees if the Planning Board successfully seeks judicial relief.

16. All written notices required by this Easement shall be sent to the Planning Director, M-NCPPC, 8787 Georgia Avenue, Silver Spring, Maryland 20910.

Grantor Initials _____

17. Provision for Automatic Release. The Grantor may effectuate an automatic release of any portion of the property subject to this Easement, in whole or in part, that the Grantor deems is needed for the expansion of the Water Treatment Plant upon the completion of the following:

- a. Grantor shall submit to M-NCPPC Staff an amendment to the FCP showing that portion of the Easement to be released; and
- b. All areas to be released from this Easement must be mitigated by off-site replanting at a 2:1 ratio (or by preservation in a forest conservation bank at a 4:1 ratio); and
- c. Grantor shall record among the Land Records of Montgomery County, Maryland a partial release with a revised description and sketch of the Property attached showing the areas that continue to be encumbered by the Easement, so that the amended Easement area is clearly delineated.
- d. No further action by the Planning Board or M-NCPPC Staff shall be necessary to effectuate this automatic release.

The form of such Release is attached as Exhibit C.

TO HAVE AND TO HOLD unto the Planning Board, its successors and assigns forever, this Grant shall be binding upon the heirs, successors and assigns of the Grantor in perpetuity and shall constitute a covenant real running with the title of the Property.

[SIGNATURE PAGE FOLLOWS]

Approved for legal sufficiency
Office of the General Counsel, MNCPPC

Grantor Initials _____

IN WITNESS WHEREOF, Grantor has caused to be executed this Easement to be signed by itself or its duly authorized officer as of this ____ day of _____, 20__.

WITNESS:

GRANTOR:

Type: Scott Ullery, City Manager
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
P. 240-314-5000

STATE OF MARYLAND

COUNTY OF _____ to wit:

I HEREBY CERTIFY that on this _____ day of _____, 20__, before me, a Notary Public in and for the State and County aforesaid, 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]

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.

Grantor Initials _____

EXHIBIT 'B'

**Extinguishable Forest Conservation Easement
on the Property of
Mayor and Council of Rockville
Liber 2359 at folio 464
Tax Map FP 13, Parcel 995**

Beginning for the same at a point being 473.52 feet from the beginning of the third or South 13°21'00" East 603.55 foot line described in a deed dated July 10, 1957 and recorded in the Land Records of Montgomery County, Maryland in Liber 2359 at folio 464 which was conveyed by Herman Schmidt and Lorraine G. Schmidt to the Mayor and Council of Rockville; thence running with said deed line and referring the courses and distances of this description to the said deed in Liber 2359 at folio 464

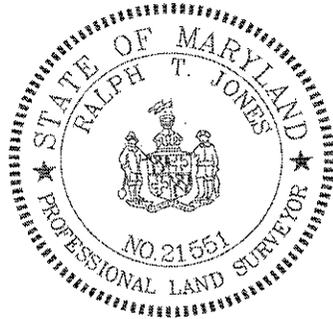
1. **South 13°21'00" East 130.03 feet** to a point on the fourth or South 72°54'50" West 260 feet: thence running with all of the said fourth deed line
2. **South 72°54'50" West 260.00 feet** to the beginning of the fifth or North 31°35'10" West 300.00 feet; thence running with part of the said fifth deed line
3. **North 31°35'10" West 105.54 feet** to a point: thence leaving said deed line and running in, over, through and across the land of the grantor the following twelve courses and distances
4. **North 46°19'05" East 78.69 feet** to a point: thence
5. **North 50°30'30" East 21.66 feet** to a point: thence
6. **South 38°14'45" East 19.97 feet** to a point: thence
7. **North 75°03'05" East 35.41 feet** to a point: thence
8. **North 70°24'18" East 23.02 feet** to a point: thence
9. **North 63°56'43" East 10.99 feet** to a point: thence
10. **North 69°01'01" East 27.94 feet** to a point: thence
11. **North 67°57'32" East 36.86 feet** to a point: thence
12. **North 02°40'42" West 15.71 feet** to a point: thence
13. **South 77°30'25" East 15.62 feet** to a point: thence
14. **North 76°57'45" East 11.75 feet** to a point; thence



15. **36.72' feet along a curve to the left** having a radius of 47.25 feet and being subtended by a chord bearing of North 89°52'14" East 35.80 feet to a point of beginning containing 0.8325 acres of land more or less.

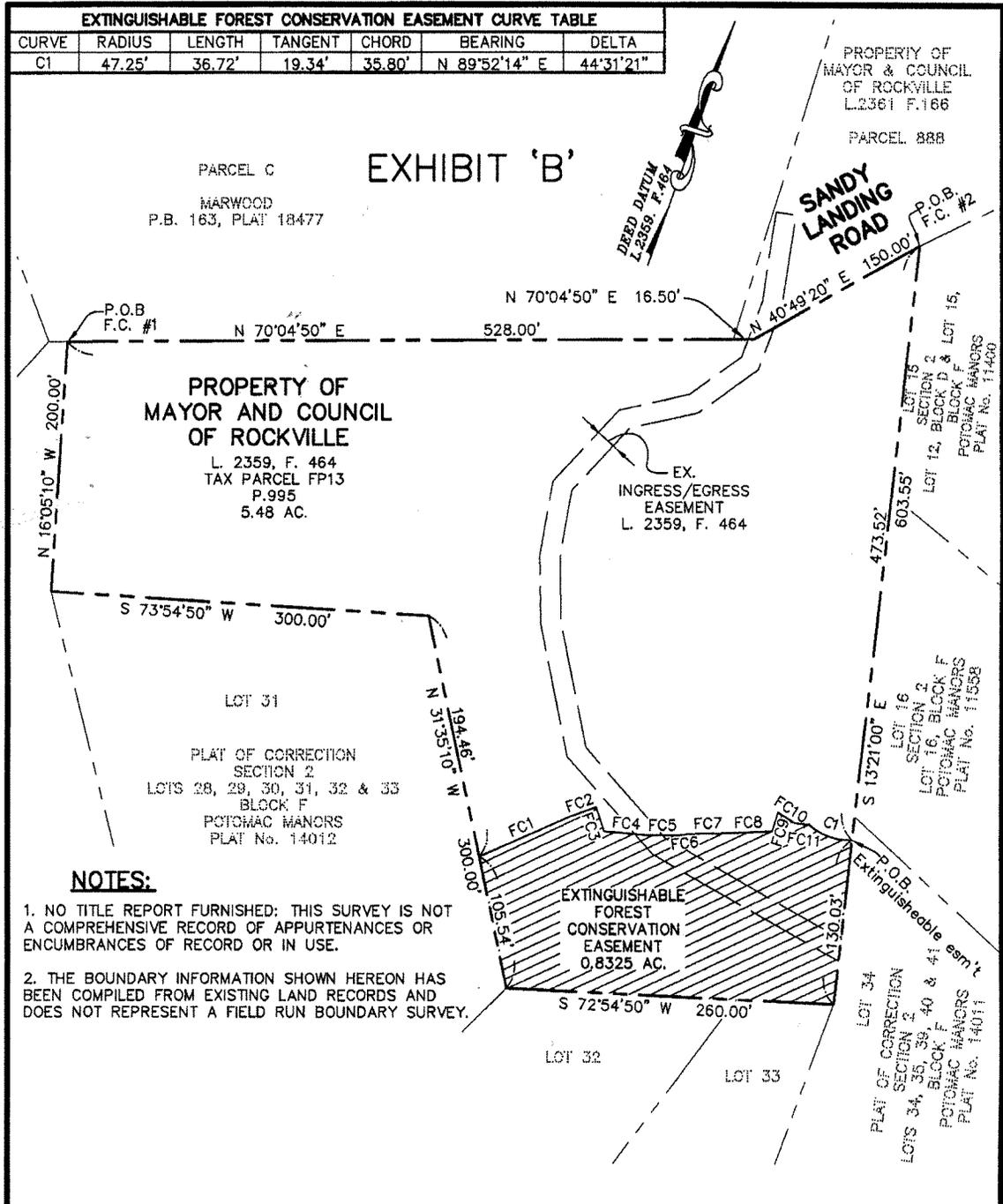
I hereby certify that this Description was prepared under my responsible charge, and that I am a duly licensed Professional Land Surveyor under the Laws of the State of Maryland, License No. 21551, expiration date December 23, 2011.

PHR+A



Ralph T. Jones 9/22/11

Ralph T. Jones
Professional Land Surveyor
Maryland Registration No. 21551



NOTES:

1. NO TITLE REPORT FURNISHED: THIS SURVEY IS NOT A COMPREHENSIVE RECORD OF APPURTENANCES OR ENCUMBRANCES OF RECORD OR IN USE.
2. THE BOUNDARY INFORMATION SHOWN HEREON HAS BEEN COMPILED FROM EXISTING LAND RECORDS AND DOES NOT REPRESENT A FIELD RUN BOUNDARY SURVEY.

EXTINGUISHABLE FOREST CONSERVATION EASEMENT LINE TABLE		
LINE	BEARING	LENGTH
FC1	N 46°19'05" E	78.69'
FC2	N 50°30'30" E	21.66'
FC3	S 38°14'45" E	19.97'
FC4	N 75°03'05" E	35.41'
FC5	N 70°24'18" E	23.02'
FC6	N 63°56'43" E	10.99'
FC7	N 69°01'01" E	27.94'
FC8	N 67°57'32" E	36.86'
FC9	N 02°40'42" W	15.71'
FC10	S 77°30'25" E	15.62'
FC11	N 76°57'45" E	11.75'



Ralph T. Jones 9/22/11

RALPH T. JONES
PROFESSIONAL LAND SURVEYOR
MD REGISTRATION No. 21551

Patton Harris Rust & Associates Engineers. Surveyors. Planners. Landscape Architects.  8818 Centre Park Drive Columbia, MD 21045 T 410.997.8900 F 410.997.9282	EXTINGUISHABLE FOREST CONSERVATION EASEMENTS ACROSS THE PROPERTY OF MAYOR & COUNCIL OF ROCKVILLE L. 2359, F. 464 PARCEL P995
	10TH ELECTION DISTRICT MONTGOMERY COUNTY, MARYLAND SCALE: 1"=100' DATE: 09-20-11 DRAWN BY: H.J.M. P:\PROJECT\15676\1-1\SURVEY\FINAL\002 FC EASEMENT EXTINGUISHABLE.DWG

Exhibit C

PARTIAL RELEASE AND AMENDMENT OF FOREST CONSERVATION DEED OF EASEMENT

Rockville Water Treatment Plant Plan No. MR2011302

THIS PARTIAL RELEASE AND AMENDMENT OF FOREST CONSERVATION DEED OF EASEMENT ("Release") is made this _____ day of _____, 20____, by the Mayor and Council of Rockville, Maryland ("City") as approved by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission (the "Board") by Resolution MCPB No. 11-18.

WHEREAS, a certain Forest Conservation Deed of Easement with provision for automatic release in whole or in part, dated _____, 2011 was recorded among the Land Records of Montgomery County, Maryland on _____, 2011 in Liber ____ Folio ____ (the "Easement"), burdened certain real property, more particularly described therein (the "Property"). The Easement is incorporated by reference and all capitalized terms shall have the same meaning in this Release; and

WHEREAS, pursuant to the Easement, the City may effectuate an automatic release of any portion of the Property subject to the Easement, in whole or in part, that the Grantor deems is needed for the expansion of the Water Treatment Plant upon the completion of the following:

- a. The City shall submit to M-NCPPC Staff an amendment to the Forest Conservation Plan showing that portion of the Easement to be released; and
- b. All areas to be released from the Easement must be mitigated by off-site replanting at a 2:1 ratio (or by preservation in a forest conservation bank at a 4:1 ratio); and
- c. The City shall record among the Land Records of Montgomery County, Maryland a partial release with a revised description and sketch of the Property attached showing the areas that continue to be encumbered by the Easement, so that the amended Easement area is clearly delineated.
- d. No further action by the Planning Board or M-NCPPC Staff shall be necessary to effectuate the automatic release.

NOW, THEREFORE, by its signature hereunder, the City does hereby certify that it has met or will meet all conditions for release as set forth in Resolution MCPB No. 11-18; and

In consideration of the above provisions and the sum of One and No/100 Dollars (\$1.00) and other consideration, the receipt and sufficiency of which are hereby

Exhibit C

acknowledged, the Easement is hereby amended so that the remaining property which continues to be subject to this Easement is shown on Attachment A; and

In the event any of the required conditions have not been met, this Release shall be void ab initio and the property as described in the Easement (as previously amended, if applicable) shall continue to be encumbered by the Easement.

WITNESS, the following signatures and seals on the day and year first above written.

WITNESS:

GRANTOR:

Type: _____, City Manager
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
P. 240-314-5000

State of _____
County of _____

On this _____ day of _____, _____ before me, the undersigned individual, personally appeared _____, who acknowledged to be the _____, and that as such being authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

Notary Public

My Commission Expires: _____

AFTER RECORDING PLEASE RETURN TO: