

AMENDED CONSERVATION DEED OF EASEMENT ("Easement")
Category I

DEFINITIONS

Grantor: Fee simple owner of real property subject to Plan approval conditioned on recordation of a Category I conservation easement agreement.

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

Property: that certain parcel of land containing 840 acres, known of record as Parcel P579 on Tax Map DU13;

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, or the Director's designee.

Plan: Forest Conservation Plan No.120090110 approved by the Planning Board or Planning Director pursuant to Chapter 22A of the Montgomery County Code.

Exhibit A: Approved Forest Conservation Plan No. 120090110

Exhibit B: Description and sketch of the Easement over and across the Property.

Exhibit C: Sketch of the Planning Board required Public Use Trail.

WITNESSETH

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

WHEREAS Grantor (or Grantor's agent) has obtained approval of a Plan in accordance with Montgomery County, Maryland laws; and

WHEREAS, the Planning Board or Planning Director approved Grantor's Plan conditioned upon Grantor subjecting the Property or a portion of the Property to a conservation easement pursuant to the provisions of Montgomery County Code Chapter 22A (Forest Conservation); and

WHEREAS, the location of this Easement is as shown and described on Exhibit B 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 portion of the Property subject to the Easement (“Easement area”) 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 Easement area, which efforts are consistent with the terms and conditions of the approved Plan and applicable law; and

WHEREAS, the approved Plan is conditioned upon the Grantor establishing a Public Use Trail allowing specified recreational activities within a portion of the Property that is also subject to a conservation easement; and

WHEREAS, it is the Grantee’s intention to permit the removal from the Trail or disturbance of certain trees, that are otherwise protected by this Easement in order to maintain the Public Use Trail required by the Grantee as a condition of approval of the final (record) plats; and

WHEREAS, the Grantee has determined that in order to harmonize the Amended Declaration of Covenant establishing the Public Use Trail with this Amended Conservation Easement any disturbance or removal from the Trail of a protected tree or understory on or adjacent to the Trail is conclusively determined not to be a violation of any provision of this Amended Conservation Easement or Chapter 22A of the Montgomery County Code 2004 as now or hereafter amended or in any regulation or policy implementing Chapter 22A of the Montgomery County Code.

WHEREAS, Grantee acknowledges that this Amended Conservation Easement is subject to Section 5-1101 through 5-1104 of the Natural Resources Article of the Maryland Annotated Code and expressly does not impose any duty of care on the Grantor that would be inconsistent with the protections afforded to Grantor by Section 5-1103 and 5-1104 of the Natural Resources Article of the Maryland Code; 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 and to be binding on all subsequent owners and occupants of the Property; and

WHEREAS, this Amended Conservation Easement supersedes and replaces the Easement recorded March 4, 2014 in Liber 48372 at folio 229; and

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 a Plan approved in accordance with Montgomery

County law and placement of appropriate measures for the long-term protection of conservation areas in accordance with Montgomery County Code, Section 22A-12(h)(2). 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. Except in connection with the Planning Board required routine maintenance of the natural surface Public Use Trail as depicted on the Trail Exhibit to the recorded, Amended Declaration of Covenant and as shown on the approved Forest Conservation Plan ("FCP"), no living trees or shrubs (of any size or type) shall be cut down, removed, or destroyed without prior written consent from the Planning Director. Diseased or hazardous trees or limbs may be removed from the Trail to prevent personal injury or property damage after reasonable notice to the Planning Director, 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. Except in connection with the Planning Board required routine maintenance of the natural surface of the Public Use Trail as depicted on the Trail Exhibit to the recorded, Amended Declaration of Covenant and as shown on the approved FCP, 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 and exotic and invasive plants only, and protective measures must be taken to protect nearby trees and shrubs.
4. Except in connection with the Planning Board required routine maintenance of the natural surface of the Public Use Trail as depicted on the Trail Exhibit to the recorded, Amended Declaration of Covenant and as shown on the approved FCP, 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 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, except as hereinafter set forth.

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. Stream alteration.

7. Nothing in this Easement shall preclude the routine maintenance required by the Planning Board of the natural surface of the Planning Board required Public Use Trail as depicted on the Trail Exhibit to the recorded, Amended Declaration of Covenant and as shown on the approved FCP or prevent the implementation of the approved development, the 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) shown on the approved Plan and (ii) 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 within the Easement area. Natural biodegradable materials may be allowed in a properly located, designed, managed, and maintained compost pile, provided the activity does not damage 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 Plan or only after written approval from the Planning Director.

10. Additional unpaved paths or trails consistent with the purposes of the Easement may be created only after written approval from the Planning Director. Other paths or trails may be allowed only if shown on the Plan.

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 area.

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. In order to harmonize the Declaration of Covenant establishing the Trail with this Conservation Easement, the disturbance or removal from the Trail of any tree or understory on or adjacent to the Trail is conclusively determined not to be a violation of any provision of this Conservation Easement or Chapter 22A of the Montgomery County Code 2004 as now or hereafter amended or in any regulation or policy implementing Chapter 22A of the Montgomery County Code.

15. This Amended Conservation Easement does not impose a duty of care to maintain the Trail or to keep it safe for entry or use by others or to give any warning of a dangerous condition, use, structure, or activity on the Trail to any person who enters the Trail for the permissible recreational or routine maintenance purposes ordered by the Planning Board. This Amended Conservation Easement does not impose upon Grantor any responsibility or duty to restore the trail to its natural state if damaged as a result of any of the Planning Board required recreational or routine maintenance activity.

16. It is expressly agreed that the protections afforded by the Natural Resources Article and Grantee's agreement that any disturbance or removal of any tree or understory on or adjacent to the Public Use Trail by a member of the general public would not be deemed to be a violation of the Preliminary Plan, the FCP or any recorded plat is of the essence of this Amended Conservation Easement and that Grantor its successors and assigns shall not be liable for any fine or penalty in connection with such disturbance or removal of a tree or understory by a member of the general public, or otherwise held responsible or penalized in any manner.

17. 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.

18. Except as provided in Paragraphs 14-16 above, upon finding a violation of any of the restrictions, conditions, covenants, and easements established by this Easement, the Planning Director and 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.

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

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.

IN WITNESS WHEREOF, Grantor has caused to be executed this Easement to be signed by itself or its duly authorized officer as of this 10th day of September, 2015.

WITNESS:

GRANTOR:
BARNESVILLE OAK FARMS, LLC
Agent for the Balsamah Corporation, N.V.

By: _____
Its

STATE OF MARYLAND
COUNTY OF MONTGOMERY:

On this 10th day of September, 2015, before me, the undersigned notary public personally appeared Katharine Sexton and proved to me through satisfactory evidence of identification, which consisted of her driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

Approved for legal sufficiency
Office of the General Counsel, MNCPPC

THE UNDERSIGNED, a member in good standing of the Bar of the Court of Appeals of Maryland, hereby certifies that the within instrument was prepared by him or under his immediate supervision.

Stephen J. Orens