Camberwell Property (a.k.a. Camotop) Lot 10, Block B: Limited Preliminary Plan Amendment No. 11995016C
(In Response to a Forest Conservation Law Violation)

Stephen Peck, Senior Planner, DARC, Stephen.Peck@montgomeryplanning.org, 301-495-4564
Mark Pfefferle, Chief, DARC, Mark.Pfefferle@montgomeryplanning.org, 301-495-4730

Completed: 4/13/18

Description
Limited Amendment, Preliminary Plan No. 11995016C, Camberwell Property (a.k.a. Camotop) Lot 10, Block B (in response to a Forest Conservation Law violation)

- 10216 Iron Gate Road
- RE2 Zone
- Potomac Subregion Master Plan
- Applicant: Amir Tofigh
- Submitted on October 2, 2017

Summary
Request to amend the Preliminary Plan of Subdivision for forest conservation purposes:

1. Proposal to release of 1.08 acres (47,045 square feet) of M-NCPPC Conservation Easement consisting of 0.92 acre (40,075 square feet) of Category I Conservation Easement and 0.16 acre (6,970 square feet) of Category II Conservation Easement from Lot 10 and provide:
   a. Offsite mitigation with the acquisition of 2.1 acres (91,476 square feet) of forest mitigation bank credit to equal either 2.1 acres (91,476 square feet) of forest planting or 4.2 acres (182,952 square feet) of forest retention.
   b. Onsite mitigation with the establishment of a new 0.52-acre (22,651 square feet) Category II Conservation Easement and planting six (6) additional 2-inch caliper swamp white oak trees within the new Category II Conservation Easement.
STAFF RECOMMENDATION AND CONDITIONS

All previous conditions of Preliminary Plan No. 119950160, as contained in the Montgomery County Planning Board's Opinion dated February 23, 1995, remain in full force and effect. Preliminary Plans 11995016A and 11995016B were previously approved limited amendments for conservation easement changes on other Lots. Preliminary Plan Amendment 11995016A and 11995016B do not apply to the Subject Property. Staff recommends approval of Preliminary Plan No. 11995016C for forest conservation easement changes on Lot 10 with the new conditions specified below.

1. Within sixty (60) days of the mailing of the Planning Board Resolution, the Applicant must submit a cost estimate for the new tree planting and two-year maintenance requirements of the Forest Conservation Plan for Staff review and approval.

2. Within sixty (60) days of the mailing date of the Planning Board Resolution, the Applicant must record in Land Records of Montgomery County, Maryland a Certificate of Compliance, approved by the M-NCPPC Office of General Counsel, to use an offsite forest mitigation bank. The Certificate of Compliance must certify the purchase of 91,476 square feet of mitigation credit equivalent to either 91,476 square feet of forest planting or 182,952 square feet of existing forest retention for the removal of all existing conservation easement from the Subject Property.

3. Within ninety (90) days of the mailing date of the Planning Board Resolution, the Applicant must submit financial security for the planting and maintenance requirements of the Forest Conservation Plan in an amount and form approved by Staff.

4. Within ninety (90) days of the mailing date of the Planning Board Resolution, the Applicant must record a Category II Conservation Easement by deed, in a form approved by the M-NCPPC Office of the General Counsel, in the Land Records of Montgomery County, Maryland for all new Category II Conservation Easement area on the Subject Property.

5. Within ninety (90) days of the mailing date of the Planning Board Resolution, the Applicant must enter into a Maintenance and Management Agreement in a form approved by the M-NCPPC Office of General Counsel to ensure compliance with the conditions of the Forest Conservation Plan.

6. After recordation of the Certificate of Compliance to use an offsite mitigation bank, recordation of the new Category II Conservation Easement and posting of financial security for the requirements of the approved Forest Conservation Plan, the Applicant must obtain and record in the Land Records of Montgomery County, Maryland a release of the Category I and Category II Conservation Easements existing on the Subject Property as of the date of the Planning Board Resolution, in a form approved by the M-NCPPC Office of the General Counsel. All existing conservation easements on the Subject Property remain in full force and effect until this deed of release is recorded.

7. Within one hundred and fifty (150) days of the mailing date of the Planning Board Resolution, the Applicant must submit a complete Record Plat application for the Subject Property that delineates and references the new Category II Conservation Easement.

8. By April 15, 2019 the Applicant must complete the planting requirements in the Forest Conservation Plan and have the planting inspected and accepted by the M-NCPPC Inspector.

SITE DESCRIPTION

The Subject Property is known as Camberwell or Camotop Lot 10, Block B and is located at northwest corner of the Camberwell Property Subdivision. The Property is approximately 2.2 acres and consists of a single-family house surrounded by oak trees (Figure 1). Democracy Boulevard is at the rear of the
Property. Property access is from a shared private driveway with a gate at the entrance of Iron Gate Road and Democracy Boulevard.

Approximately 1.08 acres of the Property is within M-NCPPC conservation easement including 0.92 acres of Category I Conservation Easement and 0.16 acres of Category II Conservation Easement. The Property lies within the Cabin John Creek Watershed (a Use I-P stream).

**Figure 1: Camotop Lot 10, Block B; 11995016C**

**BACKGROUND**

The Montgomery County Planning Board approved Preliminary Plan No. 119950160 "Camberwell Property" by Opinion mailed on February 23, 1995 and approved establishment of eight lots including the Subject Property (Attachment 1). The Preliminary Forest Conservation Plan approved in 1995 and amended in 1999 shows the protection of existing forest and proposed forest planting as Category I Conservation Easements (Attachment 2). On June 22, 2011, the Planning Department approved the Final Forest Conservation Plan for Lot 10 including a 0.25-acre forest planting area (Attachment 3). On February 19, 199 a Category I Conservation Easement was granted to M-NCPPC for the forest retention and planting areas in the Subdivision pursuant to the Agreement recorded in Liber 16797 Folio 622 among the Land Records of Montgomery County, Maryland (Attachment 4). Record Plat No. 21390, recorded on April 4, 2000, delineates the Category I Conservation Easement and Category II Conservation Easement on the Subject Property (Attachment 5).
House Construction – Forest Conservation Inspections

The house construction on Lot 10 started in 2011 and was completed in 2014. M-NCPPC forest conservation inspections occurred before, during and after the construction. Administrative Citation No. EPD 000209 citation was issued on April 3, 2014 to the owner’s representative for destroying vegetation within the Category I Conservation Easement while installing utility house connections (Attachment 6). The Property Owner implemented the required remedial actions listed on the Citation. The Property Owner conducted the necessary 0.25-acre planting and M-NCPPC Inspector accepted the forest planting in 2014 to start the required maintenance and management period. The M-NCPPC Inspector conducted a final planting inspection in November 2016 and approved release of the financial security.

Post Construction - Conservation Easement Encroachment – Administrative Citation No. EPD 000331

In July 2017 an inspection of the Property’s Conservation Easements determined that there were three new and separate violations. Mowing of portions of the Category I Conservation Easement behind the house recently occurred and resulted in the cutting of naturally regenerating plants. Inspection of the location of the driveway revealed that portions of the driveway were constructed within the Category II Conservation Easement. (Figure 3, 4, 5 and 6). Also, a portion of roof drain drywell was installed within the Category I Conservation Easement. The approved Forest Conservation Plan did not permit these improvements to be built within the respective conservation easement areas. Cutting of naturally regenerating plants is prohibited within a Category I Conservation Easement.

Figure 3: Mowing in Category I Conservation Easement next to Democracy Boulevard (M-NCPPC Inspector picture taken 7/13/2017)
Figure 4: Mowing and Maintenance in 0.25-acre forest planting area (M-NCPPC Inspector picture taken 7/13/2017)

Figure 5: Portions of Brick Paver Driveway and Gate within Category II Conservation Easement
Administrative Citation No. EPD 000331 was issued to the Property Owner on July 19, 2017 for unauthorized structural improvements existing within the Category I and Category II Conservation Easements and for destroying naturally regenerating plants within the Category I Conservation Easement (Attachment 7). The Property Owner met with Planning Staff to discuss the conservation easement violations and the proposed garage and driveway project. Planning Staff determined that a Preliminary Plan Amendment for conservation easement changes could address the conservation easement violations and the proposed new development activity.

APPLICANTS PROPOSAL

On October 2, 2017, the Property Owner submitted Preliminary Plan Amendment 11995016C for forest conservation purposes, for Lot 10 only, to resolve the conservation easement violations and accommodate a proposed garage, a new driveway and stormwater management modifications (Figure 6). The Forest Conservation Plan submitted on February 20, 2018 for Planning Board approval proposes releasing all existing Category I and Category II Conservation Easements on Lot 10 to allow for a new garage, driveway and storm water management modifications and to allow continued mowing adjacent to the home (Attachment 8).
Figure 7 and Figure 8 show the proposed Preliminary Plan Amendment, Plan No. 11995016C. Figure 7 outlines the existing 1.08 acres of conservation easement proposed to be released.

The Forest Conservation Plan proposes 2.62 acres of mitigation for the release of the 1.08 acres of the existing conservation easement. Offsite mitigation consists of 2.1 acres of forest conservation credit and is equal to 2.1 acres of forest planting or 4.2 acres of forest retention at an M-NCPPC approved forest bank. A new 0.52-acre Category II Conservation Easement is proposed onsite (Figure 8).
Figure 7: Existing Conservation Easements totaling 1.08 acres – to be released

Figure 8: Map of New 0.52-acre Category II Conservation Easement
The forest conservation plan submitted for Planning Board approval notes that the Property Owner, must secure M-NCPPC Executive Director approval of a Deed of Conservation Easement Release and record this Release among the land records of Montgomery County, Maryland, prior to the preconstruction meeting for the new garage and driveway. Any planting within the former 0.25-acre planting that may be impacted by the proposed garage and driveway construction will be transplanted into the new 0.52-acre Category II Conservation Easement. Also, six (6), new, two-inch caliper swamp white oak trees are to be planted within the new Category II Conservation Easement.

PLANNING BOARD REVIEW AUTHORITY

The Planning Board approved Preliminary Plan No. 119950160 “Camberwell Property” and required the establishment of conservation easements in the subdivision. The Planning Board has authority under Subdivision Regulations (Chapter 50 of the Montgomery County Code) to hear an amendment that proposes changes to the conservation easements.

In addition, the Planning Board has directed Staff to bring all requests for modifications to conservation easements before them to be considered in a public forum.

STAFF REVIEW

In response to a Citation and meeting with Staff, the Applicant submitted this Amendment proposing the release of 1.08 acres of conservation easement.

The Amendment addresses the forest conservation law violations on the Property and recognizes the decline of forest conditions on the Property. Unauthorized mowing of the retained forest areas has prevented forest regeneration. Regardless of the mowing, the number of live plants in the forest areas of the Property have been decreasing since the approved forest clearing allowed by the forest conservation plan was done in 2011. Root damage to trees growing at the edge of the conservation easement resulted in the recent death of few large oak trees. Also, Emerald Ash Borers, an insect pest of ash trees that is native to Asia have invaded the forest and are killing all the understory ash trees.

The total amount of mitigation is 2.62 acres. The amount of conservation easement released is 1.08 acres. Montgomery County Planning Board policy is for 2 acres of planting mitigation for every 1 acre of conservation easement released. In this case, Staff requested the Applicant provided additional mitigation for the release of the 0.25 acres forest planting area. The additional mitigation amounts to 0.46 acres of additional offsite planting. The overall mitigation rate for this amendment is 2.43 acres of mitigation for every acre of conservation easement released.

The Amendment resolves the forest clearing violation and does not alter the minimum forest planting requirements of the subdivision.
NOTIFICATION and OUTREACH

The Subject Property was properly signed with notification of the upcoming Preliminary Plan Amendment prior to the acceptance of the application. Staff has not received correspondence from community groups or citizens as of the date of the staff report. As of April 13, 2018, all adjoining and confronting property owners, civic associations, and other registered interested parties will be notified of the upcoming public hearing on the proposed amendment.

RECOMMENDATION

Staff recommends that the Planning Board approve this Amendment with the conditions specified at the beginning of this report.

ATTACHMENTS

1. Montgomery County Planning Board Opinion, Preliminary Plan No. 119950160 "Camberwell Property"
2. Approved Preliminary Forest Conservation Plan No. 119950160
3. Approved Final Forest Conservation Plan No. 119950160 for Camotop Lot 10, Block B
4. Category I Conservation Easement Agreement LF16797.622
5. Record Plat No. 21390
6. Administrative Citation No. EPD 000209
7. Administrative Citation No. EPD 000331
8. Forest Conservation Plan No. 11995016C "Camotop Lot 10 Block B" submitted for Montgomery County Planning Board approval of February 20, 2018
Date of Mailing: February 23, 1995

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation with Conditions
(Motion of Comm. Aron, seconded by Comm. Holmes, with a vote of 4-0; Comm. Aron, Holmes, Baptiste, and Hussmann voting in favor, with Comm. Richardson absent).

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-95016
NAME OF PLAN: CAMBERWELL PROPERTY

On 08-19-94, IRONGATE PROPERTIES, submitted an application for the approval of a preliminary plan of subdivision of property in the RE2 zone. The application proposed to create 8 lots on 20.20 ACRES of land. The application was designated Preliminary Plan 1-95016. On 02-09-95, Preliminary Plan 1-95016 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-95016 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-95016, subject to the following conditions:

1) Compliance with Environmental Planning Division approval regarding the requirements of the forest conservation legislation (as part of the preliminary plan). Applicant shall satisfy all conditions prior to recording of plat(s) or MCDEP issuance of sediment and erosion control permit, as appropriate.

2) Access and improvements as required and approved by MCDOT including access from existing driveways to Democracy Boulevard.

3) Record plat(s) to reflect delineation of a conservation easement over the areas of tree preservation and wetland buffer.

4) Conditions of MCDEP stormwater management approval dated 1-24-95.

5) Dedication of Democracy Boulevard 40 feet off center line.

6) Record plat(s) to reference common ingress/egress easements.

7) Record plat to reference a 20 foot building restriction line/non-disturbance line on proposed lot 4 adjoining side line of parcel 642.

8) Other necessary easements.

- continued -
This preliminary plan will remain valid until March 23, 1998. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.
June 22, 2011

Amir Tofigh
14048 Gorky Drive
Potomac, MD 20854

RE: Final Forest Conservation Plan
   Project Name: Lot 10, Block B, Camotop
   Plan Number: 119950160

Dear Mr. Tofigh:

The forest conservation plan for Lot 10 Block B Camotop, submitted to the
Montgomery Planning Department on June 21, 2011 is consistent with final forest
conservation plan 119950160 is approved with the following conditions:

1. Inspections consistent with COMCOR 22A.00.01.10 of the Forest
   Conservation Regulations.
2. Financial security for the conservation easement planting must be submitted
to Planning Department and accepted by the Associate General Counsel’s
   office prior to any onsite clearing and grading. The required financial
   security is $6,200.
3. The planting area is subject to a maintenance and management agreement,
   which must be approved by the Planning Department prior to the start of
   the 2 year maintenance period.
4. The permanent conservation easement markers are to be installed prior to
   completion of construction activities and before removal of the tree
   protection fencing.

Please note, this approval modifies the previously approved planting location on
Lot 10, Block B but does not affect the recorded conservation easements and the
tree save and protection areas shown on approved final forest conservation plan
119950160. In addition, the forest conservation worksheet shown on the
submitted plan was not necessary for the planting requirements were established
for the forest conservation plan submitted and approved for the entire subdivision.

Any changes from the approved final forest conservation plan may constitute
grounds to rescind or amend any approval actions taken, and to re-evaluate the site
for additional or amended plantings. If there are any subsequent additions or
modification planned for this development, a separate amendment must be
submitted to Planning Department for review and approval prior to those changes.
occurring. If you have any questions regarding these actions, please feel free to contact Stephen Peck at stephen.peck@montgomeryplanning.org or (301) 495-4622-4564.

Sincerely,

Mark Pfefferle
Forest Conservation Program Manager
Acting Chief Development Applications & Regulatory Coordination
Montgomery County Planning Department

CC: David Post 10725 Santa Anita Terrace Damascus, MD 20872
**SPECIMEN TREE TABLE**

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**NOTES:**
- The terminalia is not affected by disease.
- The location is marked with a survey flag.
- All trees are healthy and free of any damage.

**SITE DATA:**
- **ZONE:** W-2
- **WATER AND SEWER CATEGORIES:** W-1 and S-1

**APPLICANT:**
- **NAME:** AMIR TOFIGH
- **ADDRESS:** 1440 LOVE DRIVE
  POTOMAC, MD 20854
- **PHONE:** 301-219-1503
- **EMAIL:**

**MISS UTILITY:**
- Call Miss Utility at 8-1-1 one hour prior to the start of work. The excavator must notify all public utility companies with underground facilities in the area. The excavator must check and mark all facility locations.
- The utility companies will send a qualified person to mark the location of their facilities. If the utility colleges mark lines, the project must proceed in accordance with the guidelines of Chapter 36A of the Montgomery County Code.
WILL BE BONDED PRIOR TO THE ACCEPTANCE OF THE PLANTING AND

Quercus rubra Red Oak 2" CAL. B&B, SPRING PLANTING

Viburnum dentatum Arrowwood 3 GAL. CONTAINER

NOTE: ALL TREES WITHIN BF=402.75

CONSERVATION EASEMENT

B=402.75

LOO TO BE REMOVEY

Inventory:

APPLICANT:

WATER CALL MISS UTILITY AT 1-800-257-7777, 48 HOURS PRIOR TO THE START OF WORK. THE EXCAVATOR MUST NOTIFY ALL PUBLIC UTILITY EQUIPMENT OF LIMITS OF DISTURBANCE SHALL

SITE DATA:

PLAT 2-1; PLAT 10254

EL OF LIMITS OF DISTURBANCE SHALL

CONSERVATION EASEMENT

ARCHITECTURAL EASEMENT

CATEGOR 2 FOREST CONSERVATION EASEMENT

Conservation Plan No. 119950160 including, financial bonding, forest planting, and all other applicable agreements

APPROVAL

MISS UTILTY:

Call MS utility at 1-800-201-7777, 48 hours prior to the start of work. The excavator must notify all public utility companies with underground facilities in the area of proposed excavation and have those facilities located by the utility companies prior to commencing excavation. The excavator is responsible for verifying the requirements of chapter 56 of the Montgomery County code.
1. An on-site pre-construction meeting is required after the limits of disturbance have been staked and flagged, but before any clearing or grading begins. The property owner should contact the Montgomery County Planning Department and Department of Permitting Services (DPS) excise control inspector to attend this pre-construction meeting.

2. No grading or clearing shall begin before stress-reduction measures have been implemented. Appropriate stress-reduction measures include:
   a. Root pruning
   b. Crown reduction or pruning
   c. Watering
   d. Vertical mulching
   e. Root aeration matting
   f. Fertilizing
   g. Clean up of retention areas
   h. Scarification
   i. Mulching
   j. Root pruning

3. After completion of all construction activities, but before removal of tree protection fencing, to determine the level of compliance with the provision of the forest conservation plan.

4. Additional Requirements for Plans with Planting Requirements:
   a. Removal and replacement of dead and dying trees
   b. Super silt fence with wire strung between support poles (minimum 4 feet high) with high visibility flagging.
   c. 14 gauge 2 inch x 4 inch welded wire fencing supported by steel T-bar posts (minimum 4 feet high) with high visibility flagging.
   d. Fertilizing
   e. Watering
   f. Root aeration matting
   g. Clean up of retention areas
   h. Scarification
   i. Mulching

5. Long-term protection devices will be installed per the Forest Conservation Plan/Tree Save Plan and attached long-term protection measures to be installed.

6. The forest conservation inspector, in coordination with the DPS sediment control inspector, may make field inspections to assess compliance with the forest conservation plan.

7. A Maryland-licensed tree expert that will implement the tree protection measures, forest conservation inspector, and landscaper shall review and approve the approved plan.

8. The approved plan must be submitted to the forest conservation inspector prior to commencing excavation. The excavator is responsible for removing any construction activities. Tree protection fencing locations should be staked prior to the pre-construction meeting.

9. Additional stress-reduction measures may be required as determined by the forest conservation inspector. 

10. The Maryland-National Capital Park and Planning Commission does not specify any construction activities. Tree protection fencing locations should be staked prior to the pre-construction meeting.

11. No grading or clearing shall begin before stress-reduction measures have been implemented. Appropriate stress-reduction measures include:
   a. Root pruning
   b. Crown reduction or pruning
   c. Watering
   d. Vertical mulching
   e. Root aeration matting
   f. Fertilizing
   g. Clean up of retention areas
   h. Scarification
   i. Mulching

12. After inspection and completion of corrective measures have been undertaken, all temporary protection devices shall be removed from the site. Removal of tree protection devices that also serve for erosion and sediment control must be coordinated with the Department of Permitting Services and the forest conservation inspector. No additional grading, bulldozing, or mowing may take place after the tree protection fencing is removed.

13. All inspections must be requested by the applicant. Inspections must be conducted as follows:
   a. Membership and replacement of dead and dying trees
   b. Pruning of dead or declining limbs
   c. Fertilization
   d. Watering
   e. Rooting
   f. Planted species
   g. Tree protection zones

14. ADVANCEMENTS REQUIREMENTS FOR PLANS WITH PLANTING REQUIREMENTS:
   a. Before the start of any required reforestation and afforestation planting
   b. After the removal of any required reforestation and afforestation planting

15. COST UTILIZATION:
   a. AVOIDANCE OF COSTS BY THE USE OF NATIVE SPECIES
   b. COST UTILIZATION WHEN THE USE OF NATIVE SPECIES WILL NOT PROVIDE THE REQUIRED STRESS REDUCTION MEASURES
   c. COST UTILIZATION WHEN THE USE OF NATIVE SPECIES WILL NOT PROVIDE THE REQUIRED STRESS REDUCTION MEASURES
   d. COST UTILIZATION WHEN THE USE OF NATIVE SPECIES WILL NOT PROVIDE THE REQUIRED STRESS REDUCTION MEASURES

16. MOST UTILIZATION:
   a. AVOIDANCE OF COSTS BY THE USE OF NATIVE SPECIES
   b. COST UTILIZATION WHEN THE USE OF NATIVE SPECIES WILL NOT PROVIDE THE REQUIRED STRESS REDUCTION MEASURES
   c. COST UTILIZATION WHEN THE USE OF NATIVE SPECIES WILL NOT PROVIDE THE REQUIRED STRESS REDUCTION MEASURES
   d. COST UTILIZATION WHEN THE USE OF NATIVE SPECIES WILL NOT PROVIDE THE REQUIRED STRESS REDUCTION MEASURES

17. IMPACTS OF COST UTILIZATION:
   a. AVOIDANCE OF COSTS BY THE USE OF NATIVE SPECIES
   b. COST UTILIZATION WHEN THE USE OF NATIVE SPECIES WILL NOT PROVIDE THE REQUIRED STRESS REDUCTION MEASURES
   c. COST UTILIZATION WHEN THE USE OF NATIVE SPECIES WILL NOT PROVIDE THE REQUIRED STRESS REDUCTION MEASURES
   d. COST UTILIZATION WHEN THE USE OF NATIVE SPECIES WILL NOT PROVIDE THE REQUIRED STRESS REDUCTION MEASURES

18. TO PERMIT FORST CONSERVATION EASEMENT ISSUE TO BE PREPARED AND INSTALLED AS SPECIFIED TOISPACY.
CONSERVATION EASEMENT AGREEMENT

Category I

DEFINITIONS

Grantor: Fee simple owner of real property subject to a:

(i) Plan approval conditioned on compliance with a FCP;
Or

(ii) Plan approval conditioned on compliance with a conservation easement agreement (issued pursuant to Chapter 50 or 59, Montgomery County Code).

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

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: Sediment control permit approved pursuant to Montgomery County Code Chapter 19; preliminary plan approved under Montgomery County Code Chapter 50; site plan, development plan, planned unit development or special exception application approved under Montgomery County Code Chapter 59; mandatory referral review pursuant to Article 28 of Maryland State Code Annotated; approved major utility construction (as defined by Washington Suburban Sanitary Commission's regulations).

Forest Conservation Plan ("FCP"): Forest Conservation Plan approved by the Planning Board or Planning Director pursuant to Chapter 22A, Montgomery County Code.
WITNESSETH:

This Agreement reflects a grant of easement by Grantor to the Grantee.

WHEREAS Grantor (or Grantor's agent) has obtained authority to develop pursuant to a Plan in accordance 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 a 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

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 ("Easement") pursuant to the provisions of Montgomery County Code Chapter 50 (Subdivision Regulations), and/or Chapter 59 (Zoning Ordinance); and

WHEREAS, the FCP includes 0.83 acres of forested area to be retained in excess of the amount required to achieve compliance with Chapter 22A, Montgomery County Code (the "Forestation Credit"); and

WHEREAS, Grantor intends to reserve the right to: 1) utilize the Forestation Credit for purposes of adjusting the amount of forested area provided on record plats for property governed by Preliminary Plan No. 1-95016 (the "Camberwell Property"), so long as said adjustments do not result in a reduction in forested area which exceeds the total area of the Forestation Credit; and 2) utilize areas identified as "tree areas to be saved" on the FCP to mitigate for the clearing of forested area designated for retention
(over and above the Forestation Credit) at a ration of 1 acre of trees saved per .25 acres cleared, or reforestation at a ratio of 2 acres planted for every acre removed; and

WHEREAS, the location of the area subject to the Easement, which area Grantor may reduce in Grantor's sole discretion, subject to the restrictions contained herein, is as described on Schedule "A" and shown on Exhibits "A", "B" and "C" (attached to and incorporated by reference into the terms of this Agreement) ("Easement Area"); and

WHEREAS, in the event that Grantor utilizes the Forestation Credit to achieve reduction the forested areas shown on the FCP and record plats for the Camberwell Property, Grantor shall record an amendment to this Agreement revising the Easement Area shown on Exhibit "A", "B" and "C".

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

WHEREAS, the purpose includes preservation of the natural beauty of the Easement Area and prevention of any alteration, construction or destruction of the Easement Area that may tend to mar or detract from such natural beauty; and

WHEREAS, the purpose also includes the protection and preservation of natural features of the Easement Area which efforts are consistent with the terms and conditions of the approved Plan and applicable law; and
WHEREAS, the Parties intend for the conditions and covenants contained in this Easement Agreement to run with the land in perpetuity and to be binding on all subsequent owner and occupants of the Property; and

WHEREAS, the Parties intend 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 agreement 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 Exhibits "A", "B" and "C" and further described on the applicable record plat(s), of the nature and character described herein, subject, however, to an adjustment of the forested area shown on Exhibits "A", "B" and "C", in accordance with the provisions of this Agreement, in the event that Grantor elects to apply all or a portion of the Forestation Credit toward a reduction in the forested area shown on one or more of the record plats for the Camberwell Property. In no event, however, may a reduction in the forested area subject to the Easement, as shown on Exhibits "A", "B" and "C", exceed, in the aggregate, the total area encompassed by the Forestation Credit, unless Grantor utilizes areas identified as "treed areas to be saved" on the FCP to mitigate the clearing of forested area designated for retention (over and above the area of the Forestation Credit) at a ration of 1 acre of trees saved for every .25 acres cleared, or provides reforestation at a ration of 2 acres planted for every acre cleared, in accordance with Chapter 22A of the Montgomery County Code. 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 Easement Area. Grantor, its heirs, successor and assigns covenant to abide by the following limitations on the use of land within the Easement Area:

1. The foregoing recitals are agreed to and incorporated herein and shall be binding upon the parties.

2. No living trees or shrubs (of any size or type) in the Easement Area shall be cut down, removed or destroyed without prior written consent from the Planning Board or its designee. Diseased or hazardous trees or limbs may be removed to prevent personal injury or property damage after reasonable notice to the Planning Board or its designee, unless such notice is not practical in an emergency situation or is undertaken pursuant to a forest management plan approved by the Planning Director or Maryland’s Department of Natural Resources ("DNR").

3. No plant materials (including, but not limited to brush, saplings, undergrowth, or non-woody vegetation) in the Easement Area 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 of regulations) may be removed as required by law or according to an approved forest management plan, but the method of removal must be consistent with the limitations contained within this Agreement. Vegetation removal shall be
limited to noxious weeds only, and protective measures must be taken to protect nearby trees and shrubs.

4. No mowing, agricultural activities, or cultivation in the Easement Area 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 the Agreement precludes activities necessary to implement or maintain 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. Such activities may include care and maintenance by the developer’s or builder’s designees of trees and shrubs planted in the easement areas as part of an approved reforestation or afforestation plan.

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 current or stream flow).

(e) Industrial or commercial activities.

(f) Timber cutting, unless conducted pursuant to an approved forest management plan approved by DNR.

(g) Location of any component of a septic system.

(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 suit.

(k) Alteration of stream.

7. 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.
8. Fences consistent with the purposes of the Easement may be erected within the Easement Area only after written approval from the Planning Director.

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

10. 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.

11. Upon prior written notice given by the Planning Board, Grantor authorizes Planning Board representatives to enter the Property and Easement Area at their own risks and at a reasonable hours for the purpose of making periodic inspections to ascertain whether the Grantor, its heirs, successor or assigns have complied with the limitations, conditions, and Easement established herein. This Easement does not convey to the general public the right to enter the Property or Easement Area for any purpose. The Easement does not restrict or enlarge 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.

12. Grantor further 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 interest in the Property is conveyed.

13. 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 or provision herein shall waive the Planning Board’s right to enforce any covenant within this agreement.

14. Upon finding a violation of any of the limitations, conditions, covenants and Easement established by this Agreement, 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 land within the Easement Area to its condition prior to the violation, and Grantor agrees to pay for court costs and reasonable attorney fees if the Planning Board successfully seeks judicial relief.

15. Grantor shall record an amendment to this Agreement among the land records for Montgomery County, Maryland if, pursuant to the provisions of this Agreement, Grantor revises Exhibit “A” for purposes of utilizing the Forestation Credit to reduce the forested area to be retained on one or more record plats for the Camberwell Property. The right to so amend this Agreement is, however, reserved solely to Grantor and may not be
exercised by Grantor’s heirs, successors and assigns unless Grantor expressly assigns said right pursuant to a declaration, recorded among the land records of Montgomery County, which specifically references this Agreement.

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

17. Nothing in this Agreement 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.

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]
WITNESS/ATTEST:

CAMBERWELL PROPERTIES, LLC, a Maryland limited liability company

By: CAMBERWELL, INC., Manager

By: Louay Alwazir, President

COUNTY OF Montgomery
STATE OF Maryland

I HEREBY CERTIFY that on this 23rd day of December, 1998, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared Louay Alwazir, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument as President of Camberwell, Inc., Manager of Camberwell Properties, LLC, a Maryland limited liability company, and acknowledge that he executed the foregoing and annexed instrument as the act and deed of the said company for the purpose therein contained.

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

My Commission Expires: 1/1/02

[NOTARIAL SEAL]
ATTOENEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing document was prepared by or under the supervision of the undersigned, an attorney duly licensed to practice before the Court of Appeals of Maryland.

Todd D. Brown
DESCRIPTION OF A
CONSERVATION EASEMENT
ACROSS
PROPOSED CAMOTOP
L. 12083  F. 477
7.0204 ACRES

Being five (5) pieces or parcels of land situate, lying and being in the Potomac (10th) Election District of Montgomery County, Maryland and being part of the land conveyed by United States Trust Company of New York, Trustees to Camberwell Properties LLC by deed dated November 26, 1993 and recorded among the Land Records of the aforesaid County in Liber 12083 at Folio 477, Part One also being part of Lots 15, 16 and 17, Block B, as shown on plats of subdivision entitled, "CAMOTOP" prepared by Loiederman Associates, Inc. of Rockville, Maryland; containing 2.9776 acres of land, and being amended as shown on the proposed plat of subdivision correction by Bengtson, DeBell & Elkin, Ltd. of Rockville, Maryland; also being part of Lots 18, 19 and 17, Block B containing 2.7896 acres of land, dated December 20, 1998, Part Two being part of Lot 12, Block B, as shown on a plat of subdivision entitled "CAMOTOP" prepared by Loiederman Associates, Inc. of Rockville, Maryland; containing 0.2343 of an acre of land, and being amended as shown on the proposed plat of subdivision correction by Bengtson, DeBell & Elkin, Ltd. of Rockville, Maryland; Part Three being part of Lots 11, 12 and 13,
Block B as shown on the said plat of subdivision; containing 2.6463 acres of land, and being amended as shown on the proposed plat of subdivision correction by Bengtson, DeBell & Elkin, Ltd. of Rockville, Maryland; Part Four being part of Lots 14, Block B, as shown on said plat of subdivision; containing 0.2530 acres of land, and being amended as shown on the proposed plat of subdivision correction by Bengtson, DeBell & Elkin, Ltd. of Rockville, Maryland; Part Five being part of Lot 10, Block B, as shown on the said plat of subdivision; containing 1.0978 acres of land, and being amended as shown on the proposed plat of subdivision correction by Bengtson, DeBell & Elkin, Ltd. of Rockville, Maryland. Parts 1 through 5 being more particularly described as shown on “Conservation Easement Plats, labeled “Exhibits A, B, and C” attached hereto and made a part hereof; containing a total area of 7.0204 acres of land.

Subject to any and all other easements, rights of way, and covenants of record.
Administrative Citation
Forest Conservation
The Maryland-National Capital Park and Planning Commission

Name: Amir Tofiq

First Name: Amir
Middle Initial: T
Last Name: Tofiq

Company/Position: Property Owner
Address: 10216 Iron Gate Road, Silver Spring, MD 20910
Phone Number: __________________ Fax Number: __________________ Email: __________________

Location and Description of Violation:
Address/location of site: 10216 Iron Gate Road Category I Conservation Easement

Pursuant of the M-NCPPC’s authority under Chapter 22A of the Montgomery County Code, it is formally charged that the above named defendant on _________________ (date) at the stated site location did commit the following:

In violation of:
☐ Montgomery County Code, Chapter 22A
☐ Approval of Initial Forest Plan
☐ Lot 10, Block B Camotop

Civil Fine and Compliance:
1. (a) ☐ You shall pay a fine of $1,000.00 by ___________________ (date) and complete the remedial action listed below
   (b) ☐ You shall pay a daily fine of $________ if the original fine has not been paid by _________________ (date). The daily fine shall accrue (until the original fine is paid.

2. ☐ You shall pay a daily fine of $________ until the remedial action listed below is completed. This fine shall be paid within 15 days of completion of all remedial action.

Remedial Action:

☐ 1) STOP cutting plants from Category I conservation easement
   2) replant 20 six inch caliper trees to include 5 redbird viburnum 5 white oak and 5 black gum trees
   by: _________________ (date)

If remedial action is not completed by _________________ (date), you shall pay a daily fine of $50.00 a day until work is completed.

☐ 2) You have violated Chapter 22A of the Montgomery County Code, and may be subject to an Administrative Civil Penalty and additional corrective measures.

Acknowledgment:
I sign my name as a receipt of a copy of this Citation and not as an admission of guilt. I will comply with the requirements set forth in this Citation. I have a right to request a hearing for the offense(s) charged. If I do not exercise my right to a hearing, I agree to entry by the court judgment on affidavit for the amount of the fine.

Defendant’s Signature: __________________ Date: _________________

Affirmation:
I solemnly affirm under the penalties of perjury, and upon personal knowledge or based on the affidavit, that the contents of this citation are true to the best of my knowledge, information and belief and that I am competent to testify on these matters.

Inspector’s Signature: __________________ Date: __________________
Print Name: __________________ Phone Number: __________________
Administrative Citation
Forest Conservation
The Maryland-National Capital Park and Planning Commission
vs.

Citation No. EPD 000331

Name: Amir

Company/Position: Property Owner
Address: 10376 Iron Gate Road
Phone Number: ___________ Fax Number: ___________ Email: ___________

Location and Description of Violation:
Address/location of site: 10376 Iron Gate Road, Category I and Category II Conservation Easement

Pursuant of the M-NCPPC’s authority under Chapter 22A of the Montgomery County Code, it is formally charged that the above named defendant on ___________ (date) at the stated site location did commit the following:

- Without prior M-NCPPC approval installed a roof top drywell and portions of a stone wall within a Category I Conservation Easement.
- Without prior M-NCPPC approval installed brick driveway and brick lighting monument within portions of a Category II Conservation Easement.

In violation of:
☐ Montgomery County Code Chapter 22A
☐ Approval of Plan No. 119950160
☐ Other: ___________

Civil Fine and Compliance:
1. (a) ☐ You shall pay a fine of $1,000.00 by ___________ (date) and complete the remedial action listed below
   (b) ☐ You shall pay a daily fine of $__________ if the original fine has not been paid by ___________ (date). The daily fine shall accrue (until the original fine is paid).

2. ☐ You shall pay a daily fine of $__________ until the remedial action listed below is completed. This fine shall be paid within 15 days of completion of all remedial action.

Checks should be made payable to M-NCPPC and shall be paid during normal business hours at the information Counter of M-NCPPC’s Montgomery Regional Office located at 8787 Georgia Avenue, 2nd Floor, Silver Spring, MD 20910, 301-495-4610. Failure to comply with this citation may result in further enforcement proceedings and/or issuance of additional citations including additional fines. You may also request a hearing before the Planning Board or the Board’s designee. If you elect to request a hearing, you must notify the M-NCPPC Office of the General Counsel, in writing, at 8787 Georgia Avenue, Suite 205, Silver Spring, MD 20910, within 15 days of the citation.

Remedial Action:
1. ☐ 1) Remove portions of driveway and any brick monuments from the Category II Conservation Easement by ___________ (date)
2. ☐ 2) Remove drywell and stone wall from Category I Conservation Easement by ___________ (date)
3. ☐ 3) Either complete Remedial Action and Action 2 or by ___________ (date)

If remedial action is not completed by ___________ (date), you shall pay a daily fine of $__________ a day until work is completed.

Acknowledgment:
I sign my name as a receipt of a copy of this Citation and not as an admission of guilt. I will comply with the requirements set forth in this Citation. I have a right to request a hearing for the offense(s) charged. If I do not exercise my right to a hearing, I agree to entry by the court judgment on affidavit for the amount of the fine.

Defendant’s Signature: ___________ Date: ___________

Affirmation:
I solemnly affirm under the penalties of perjury, and upon personal knowledge or based on the affidavit, that the contents of this citation are true to the best of my knowledge, information and belief and that I am competent to testify on these matters.

Inspector’s Signature: ___________ Date: ___________

Print Name: ___________________________ Phone Number: ___________
CAMBERWELL PROPERTY
LOT 10, BLOCK B
CAMOTOP
10216 IRON GATE DRIVE
POTOMAC, MARYLAND

SITE DATA:
ZONE: RE-2
WATER AND SEWER CATEGORIES: W-1 AND S-1

APPLICANT:
NAME: AMIR TOFIGH
ADDRESS: 10216 IRON GATE ROAD
CITY, STATE ZIP: POTOMAC, MD 20854
PHONE: 301-219-1503
EMAIL: Q'995016 C
AMIR TOFIGH
10216 IRON GATE ROAD, POTOMAC, MD 20854
301-219-1503 AT OFIGH2000 @ YAHOO.COM

SHEET INDEX:
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F-1A APPROVALS PAGE
F-2 AMENDMENT KEY MAP
F-3 CONDITIONAL APPROVAL PLAN 119950160
F-3A FOREST CONSERVATION PLAN 119950160
F-4 FOREST CONSERVATION PLAN 11995016A
F-4A FOREST CONSERVATION PLAN 11995016A
F-5 FOREST CONSERVATION PLAN 11995016B
F-5A FOREST CONSERVATION PLAN 11995016B
F-5B FOREST CONSERVATION PLAN 11995016B
F-6 FOREST CONSERVATION PLAN 11995016C
F-6A FOREST CONSERVATION PLAN 11995016C

* NOTE: THIS PLAN IS AN AMENDMENT TO CAMBERWELL PROPERTY FINAL FOREST CONSERVATION PLAN. IT PROPOSES THE REMOVAL OF 40,156 SF (0.92 AC) OF CATEGORY 1 FOREST CONSERVATION EASEMENT AND 8,718 SF (0.20 AC) OF CATEGORY 2 FOREST CONSERVATION EASEMENT PROPOSED BY THE PLAN ON LOT 10, BLOCK B, CAMOTOP. IT WILL BE REPLACED BY ON-SITE CATEGORY II CONSERVATION EASEMENT OF 3,446 SF (0.08 AC) AND THE PURCHASE OF AN OFF-SITE FOREST CONSERVATION EASEMENT OF 7 ACRES PLANTED 1/4 ACRES PER 0.43 ACRES OF INSTALLED FOREST AND IS TO BE ACQUIRED AT THE AN AMENDED FOREST CONSERVATION BANK.

1. 02/20/2018 PER REVIEW COMMENTS

Attachment 8 Page 1
EXCAVATOR RESPONSIBLE FOR COMPLIANCE WITH REQUIREMENTS OF CHAPTER 9A OF THE MONTGOMERY COUNTY CODE.

NEW FOREST PLANT SCHEDULE

TRANSPLANTED TREE PLANT SCHEDULE

AMENDMENT LIST:
1. Remove a Category I and Category II Conservation Easement from the property.
2. Provide 2.5 acres of mitigation for the removal of 6.8 acres of conservation easement.
3. Submit fee plans and approved a Category I Conservation Easement Agreement for the proposed 5.25 acres. After the MNCPC approval, the Category II Conservation Easement will be reissued.
4. Submit to MNCPC Executive Director and approved a Deed of Release which documented mitigation and release of 5.25 acres of forest conservation easement. Record this document among the Records of Montgomery County, MD, after approval.
5. Record this document for review and approval of the lot and setback documents.
6. For a Category I Conservation Easement, the applicant must provide a map and a summary letter.

SITE DATA:
ZONE: R-6
WATER AND SEWER CATEGORIES: W-1 AND S-1

APPLICANT:
NAME: AMIR TOFIGH
ADDRESS: 10766 IRON GATE ROAD
CITY, STATE, ZIP: POTOMAC, MD 20854
PHONE: 301-219-1535
EMAIL:

MISSISS: AMIR TOFIGH
Tree Protection Fence Detail

Notes:

- Any machine used for the construction of the fence shall be at least 2'-0" below any tree trunk.
- The fence shall be installed with at least 2' of clearance from the root collar of the tree.
- The fence shall be made of a material that is durable and weather-resistant.
- The fence shall be marked with a sign indicating that it is for tree protection.

Planned Protection:

- The fence shall be removed once the tree has been planted and has grown to a sufficient size.
- The fence shall be maintained and inspected regularly.

Conclusion:

- The fence shall be an effective tool for protecting trees during construction activities.
- The fence shall be installed in accordance with all applicable regulations.

Forest Conservation Plan:

- The forest conservation plan shall be developed and approved by the appropriate regulatory agencies.
- The forest conservation plan shall be a comprehensive document that outlines the steps necessary to protect the forest.
- The forest conservation plan shall be updated and revised as necessary.
Note: This plan is an Amendment to Camberwell Property Final Forest Conservation Plan dated June 16, 2016. Removal of 40.156 S.F. (0.92 Acre) Category I Forest Conservation Easement and 6,878 S.F. (0.16 Acre) of Category II Conservation Easement proposed by this plan. The purchase of an On-Site Forest Conservation Easement of 2.1 Acres and the purchase of a 4.2 Acre Retained Forest to be acquired at the AM-NCPB Approved Forest Conservation Bank.

C A T . 1  F O R E S T  C O N S E R V A T I O N E A S E M E N T  T O  B E  R E M O V E D  (40,156 S.F.)