



Plan Name

Plan Number

## CONSERVATION AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ hereinafter called "Developer," and the Board of Supervisors of Fairfax County, Virginia, hereinafter called "County":

### WITNESSETH:

WHEREAS, Developer desires approval of its conservation plan, consisting of overlot grading plans (which are part of the approved subdivision or site plans), individual lot grading plans, erosion and sediment control plans, and/or landscaping plans, (hereinafter collectively referred to as "conservation plan"), for a project ("the project") known as \_\_\_\_\_ Plan# \_\_\_\_\_.

This conservation plan also includes all provisions for conservation measures as required by the Code of Virginia, the Fairfax County Public Facilities Manual, the Subdivision or Zoning Ordinances, and/or Chapter 104 of The Code of the County of Fairfax, Virginia; and

WHEREAS, the Developer intends to complete and obtain final acceptance by approving authorities for all of the development work contained on the approved subdivision or site plans, including but not limited to roads, sidewalks, trails, sewer systems, water systems, stormwater drainage systems, tree protection, and excavations for structures, at the project, which intention is set forth in a separate Agreement, and is separately secured; and

WHEREAS, pursuant to Va. Code § 10.1-565, and its subsequent codifications, and other statutory authority, the County desires to ensure the installation, maintenance and adequate performance of such conservation plan during the development process.

NOW, THEREFORE, for and in consideration of the foregoing premises and the following terms and conditions, and further in consideration of the approval of the aforesaid conservation plan by the County and the issuance of permits for the work proposed to be done hereunder, the parties hereto agree as follows:

1. Developer has deposited with the County, and the County by this execution hereof acknowledges that it holds, a Letter of Credit in the amount of \_\_\_\_\_ dollars .  
\_\_\_\_\_ issued by \_\_\_\_\_ under and subject to the terms of this Agreement.

2. In the event that measures for conservation as provided for in the conservation plan referred to herein, or on any approved revision hereof, are not constructed, installed, maintained, or otherwise implemented, as determined by the Director of the Department of Public Works and Environmental Services and or his designee or successor ("Director"), the County may give the Developer notice of violation and an opportunity to comply, and upon failure of the Developer to comply within the time period allowed by the County in its notice, the County, or its designee or agent, shall have the right, but not the obligation, to enter upon Developer's property and shall construct such measures or do such other work as may be necessary, according to the conservation plan.

3. In the event that immediate construction, installation, maintenance, and/or any implementation of conservation measures is required, as determined by the Director, during the development process to prevent adverse sedimentation or erosion or to protect the public health, safety or welfare, the County may give the Developer notice of violation and an opportunity to comply, and upon failure of the Developer to comply within the time period allowed by the County in its notice, the County, or its designee or agent, shall have the right but not the obligation to enter upon Developer's property and construct such measures or do such other work as may be necessary.

4. In the event the conservation plan has been installed or constructed according to design, but fails, or inadequately effectuates the conservation measures required by County standards, or inadequately controls sediment or erosion as determined by the Director, upon notice to the Developer by the County, the Developer agrees to submit a revision to the conservation plan and institute measures to effectuate such measures or control. In the event Developer fails to do so within the time period allowed by the County in its notice, the County may revise the conservation plan and may but is not obligated to enter upon Developer's property to construct the necessary measures, all at the expense of the Developer.

5. In the event sedimentation and/or erosion from the property adversely affects down-stream drainage, any adjacent or down-stream property owner, or any street, road, highway or other public easement, the County may give the Developer notice of violation and an opportunity to comply, and upon failure of the Developer to comply within the time period allowed by the County in its notice, the County shall have the right but not the obligation to enter upon Developer's property to take such steps as may be necessary to prevent future off-site or on-site sedimentation or erosion, repair or clean-up any off-site or on-site damage, or install any appropriate conservation measures, all at the expense of the Developer.

6. In the event tree protection or other conservation measures are not installed, damaged trees are not repaired, dead, dying or hazardous trees or branches within and contiguous to the development area are not removed, or trees or other conservation measures required by the conservation plan, or required revision, are not installed as specified on the conservation plan, or required revision, the County may give the Developer notice of violation and an opportunity to comply, and upon failure of the Developer to comply within the time period allowed by the County in its notice, the County shall have the right but not the obligation to enter upon the Developer's property to perform such work, all at the expense of the Developer.

7. In the event County performs work of any nature, including labor, use of equipment, and materials under the provisions of Paragraphs 2, 3, 4, 5 and 6 above, either by use of public forces or by private contract, it shall use the sum deposited herewith and any accrued interest to pay for such work. The Developer shall be sent notice when such sums are used. In addition, the Developer shall reimburse the County for all costs the County incurs to perform such work in excess of the amount of the sum deposited with this agreement.

8. In the event any sums deposited herewith is used by the County pursuant to this Agreement, Developer agrees to deposit within ten (10) days of such use an amount sufficient to restore the deposit to its original balance, or to an amount determined by the Director necessary to secure all of the obligations set forth in the conservation plan, whichever is greater.

9. It is expressly agreed by all parties hereto that the Developer shall take all actions deemed by the Director to be necessary to ensure the construction, installation, maintenance, and performance of the conservation measures provided by the conservation plan or revisions thereto, and clean-up or repair all damages onsite and offsite resulting from inadequate conservation measures in the approved plan, failed conservation measures, lack of conservation measures, or erosion and/or sedimentation. This Agreement shall

not impose any liability on the County for damages resulting from inadequate conservation measures in the approved plan, failed conservation measures, lack of conservation measures, or from erosion and/or sedimentation.

10. This Agreement shall be secured by cash or by a Letter of Credit, in a form approved by the County. If a Letter of Credit secures this Agreement, then upon the expiration of such Letter of Credit, the Developer shall extend the Letter of Credit for an additional period of 24 months, unless some other period is mutually agreed upon in writing. Thereafter, the Developer shall continue to extend the expiration date until the terms of this Agreement have been fully satisfied in the sole discretion of the Director. In the event that the Developer fails to extend the terms of the Letter of Credit, and the County is required to perform conservation measures as set forth herein, then the Developer shall still be obligated to reimburse the County for its costs as set forth above.

11. The County shall hold the amount deposited with this Agreement until the Director is satisfied that no further land-disturbing activity will be or is necessary to be taken on site, all required conservation measures have been placed or installed, and the Director is satisfied that any required clean-up or repairs have been made. When these conditions are met, and in the event the deposit is not used by the County as part of the cost of completion of development improvements (including required fees), or to restore the balance of any other Conservation Agreement deposit between this Developer and the County to its required level, all funds remaining after disbursement, if any, shall be released in writing by the County, through its agent, the Director of the Department of Public Works and Environmental Services.

12. All notices to be given with respect to this Agreement shall be in writing. Each notice shall be sent by registered or certified mail postage prepaid and return receipt requested, to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing, or by delivery at the site of the permitted activities to the agent or employee of the permittee supervising such activities. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mails in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

13. In the event Developer fails to comply with any provision of this Agreement and the County initiates legal proceedings to enforce its provisions, the County shall be entitled to receive all foreseeable damages, including, but not limited to, costs of engineering, design, construction, administration, and reasonable attorneys' fees.

14. In the event this Agreement is breached by the Developer, in addition to the remedies provided herein, any such violation may be deemed a violation under Fairfax County Code §104-1-2 or 104-1-5, which is a Class I misdemeanor as defined in Va. Code Ann. § 18.2-11 (LNMB Supp. 2003), or its subsequent modifications.

15. In the event the Developer is notified by the County of a violation for failure to comply with the provisions of the applicable erosion and sediment control law and/or the provisions of this Agreement, and fails to comply within the time specified in the notice, the Developer shall be subject to the revocation of its permit.

16. In conjunction with or subsequent to a notice to comply, the County may issue an order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken. Where the alleged non-compliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the Commonwealth, such an order may be issued without regard to whether the Developer has been issued a notice to comply. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply and shall remain in effect for a period of seven (7) days from the date of service pending application by the County or the permit holder for appropriate relief to the Circuit Court. The order shall be lifted immediately following completion of the corrective action. Nothing in this paragraph shall prevent the County from taking any other action specified by law or this Agreement.

IN WITNESS of all of which, the parties hereto have caused this Agreement to be executed under seal on their behalf.

Legal Name and Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ COUNTY/CITY OF \_\_\_\_\_

I, \_\_\_\_\_, Notary Public in and for the State and County/City aforesaid, do hereby certify that \_\_\_\_\_ whose name(s) is (are) signed to the foregoing instrument, this day personally appeared before me in my State and County/City aforesaid and acknowledged the same.

Given under my hand this day of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

My commission expires: \_\_\_\_\_

NOTARY PUBLIC

IN WITNESS of which, the Board has caused this Agreement to be executed on its behalf:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: \_\_\_\_\_  
Director, Department of Public Works and Environmental Services or designee

COMMONWEALTH OF VIRGINIA, COUNTY OF FAIRFAX:

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, appeared before me in my State and County aforesaid, \_\_\_\_\_ Director, Department of Public Works and Environmental Services, and acknowledged signature.

My commission expires: \_\_\_\_\_

NOTARY PUBLIC