

Forest Planting and Maintenance Agreement
Department of Natural Resources - Forest Service

This Forest Planting and Maintenance Agreement ("Agreement"), made this ____ day of _____ 20____, by and between _____ hereinafter referred to as "Applicant" and the Maryland Department of Natural Resources, hereinafter referred to as "DNR".

Witnesseth:

Whereas, Applicant has elected to engage in a regulated activity as defined by Natural Resources Article 5-1601 et seq., Annotated Code of Maryland, as implemented in COMAR Title 8, Subtitle 19 (Forest Conservation) on certain property located in _____ County (hereinafter referred to as "Site") and more particularly described as follows:

- Property Owner: _____
- Property Address: _____
- Deed Reference: _____
- Subdivision (if applicable): _____
- Lot No. (If applicable): _____
- Tax Map: _____
- Parcel: _____
- Acres: _____

Whereas, pursuant to the provisions of COMAR Title 8, Subtitle 19, the Applicant has submitted and the DNR has approved a Final Forest Conservation Plan, FCP # _____ (the "Plan"), which is hereby made a part of this Agreement and which provides for the forest retention, reforestation or afforestation required as a condition of approval of Applicant's regulated activity; and

Whereas, Applicant is prepared to plant and thereafter to maintain, manage and monitor for a minimum of two years the required reforestation or afforestation in accordance with the Plan and the terms of this Agreement.

Now, therefore, in consideration of the foregoing promises and the mutual covenants and agreements hereinafter expressed, the parties hereto agree as follows:

1. Applicant Planting and Maintenance.
 - A. Applicant hereby covenants and agrees, at its sole cost and expense, to provide, plant, maintain, manage and monitor the reforestation or afforestation plantings and to preserve the forest conservation areas as required by COMAR Title 8, Subtitle 19 and the Plan in a manner which ensures the protection and satisfactory establishment of the planted material, including reinforcement planting if survival rates fall below the standard set forth in the COMAR 08.19.04.05.C(4). (These obligations of the Applicant are collectively referred to as the "Work".)
 - B. Applicant shall complete the plantings in a timely manner, in accordance with the Plan, and shall monitor and maintain said plantings for a minimum period of two (2) years after the date or certification by Applicant's designated qualified professional, hereinafter identified, that all required afforestation and reforestation plantings have been installed as required, provided that the two (2) year period may be extended at the DNR's discretion in the event replacement plantings are required to ensure the required survival rate.
2. Forest Conservation Area. The area designated for forest retention, reforestation or afforestation (the Forest Retention Area) shall be as designated on the Forest Conservation Easement recorded among the land records of _____ County or for projects occurring on federal land, records maintained in the Maryland Forest Service _____ Region Office.

3. Professional Services.
 - A. Applicant has retained, at Applicant's expense, the services of _____ (hereinafter referred to as "Consultant"), to perform inspections and prepare the inspection reports and Certificate of Completion required under this Agreement. The Applicant has provided to the DNR satisfactory evidence of the Consultant's professional qualification to perform the aforesaid service under State and local laws.
 - B. Applicant has retained, at its sole cost and expense, the service of _____ (hereinafter referred to as "Contractor") to perform the "Work" required under this Agreement. The Applicant has provided to the DNR's satisfactory evidence of Contractor's professional qualification to perform the aforesaid services under State and local laws.
4. Commencement of the Work. Applicant agrees that the Work shall not begin until the following has occurred:
 - A. All agreements have been executed and all Plans have been approved by the DNR.
 - B. Notice has been provided of the starting date to the Department of Natural Resources - Forest Service at:

Maryland Department of Natural Resources
Attention: Forest Conservation Coordinator
Forest Service
580 Taylor Ave E-1
Annapolis, MD 21401
(410) 260-8511
5. Certificate of Completion. Applicant shall provide the State with a written certification executed by Applicant's Consultant ("Certificate of Completion") when the reforestation and afforestation plantings required by the Plan have been installed and the appropriate protective measures have been put in place for these plantings and for the forest retention areas.
6. Protection and Maintenance. After the issuance of the Certificate of Completion, Applicant shall perform all tasks necessary to maintain and protect the Forest Retention Area for the duration of this Agreement in accordance with COMAR Title 8, Subtitle 19, the Plan, and the terms of this Agreement. The protection and maintenance hereunder shall be as delineated in the Plan and include, but are not limited to:

planting species or approved cultivars native to the physiographic region of the State and compatible with the existing site;

watering, fertilizing, mulching, thinning, replacement of damaged or dead plant materials, controlling competing vegetation, and protecting plants from disease, pests and mechanical injury during the initial planting and throughout the two-year maintenance period as necessary;

providing protective devices such as fencing, retainer walls and interpretive signs as necessary to prevent the destruction or degradation of the planting site.
7. Inspection.
 - A. The Applicant shall cause its Consultant to inspect the Forest Retention Area at the beginning and end of each growing season during the term of this Agreement and shall, within thirty (30) days after each inspection, provide to the DNR an inspection report which identifies particular problems, sets forth the survival rates, and specifies remedial actions necessary to correct existing problems.
 - B. The DNR shall inspect the Forest Retention Area to the extent it deems necessary during the period of the Agreement to ensure that the Work is being performed in accordance with the requirements of this Agreement. Applicant hereby grants to the DNR a right of entry for ingress and egress to, over and through the Forest Retention Area for the purpose of conducting said inspections.
8. Forest Conservation Easement. The Applicant shall execute and deliver a Forest Conservation Easement. Applicant shall execute and deliver said agreement to the DNR concurrently with the execution of this

Agreement for recording among the land records of _____ County.
Protection agreements in the form of Approved Forest Management Plans or Forest Conservation and Management Agreements approved pursuant to Tax Property Article 8-211 or other protective agreements in accordance with COMAR 08.19.05.02D shall be filed with DNR simultaneously with the execution of this Agreement

- 9. Indemnification. Applicant covenants to indemnify and save the DNR harmless from and against any and all claims, actions, damages liability, and expense of any nature, including reasonable attorney's fees and the DNR's cost of defense, in connection with the loss of life, personal injury and/or damage to or loss of property that arises from the performance of the Work or other activity of the Applicant, Applicant's Consultant, contractors, servants, employees, or other agents of the Applicant in, on or about, or impacting on the Forest Retention Area or any easements, open space, park land, or other property dedicated, leased or licensed to or owned or occupied by the State.

If the project is occurring on federal property, the Applicant agrees to promptly consider and adjudicate any and all claims which may arise out of this Agreement resulting from the actions of the Applicant, duly authorized representatives, or contractors of the Applicant, and to pay for any damage or injury as may be required by Federal law. Such adjudication will be pursued under the Federal Tort Claims Act, 28 U.S.C. Section 2671 et seq., the Federal Employees Compensation Act, 5 U.S.C. Section 8101 et seq., or such other legal authority as may be pertinent.

- 10. General Provision:
 - A. Applicant agrees to waive all right of appeal as to the issue of the necessity and requirement for the performance of the Work which is the subject of this Agreement.
 - B. Any assignment or pledge of this Agreement must be assented to, in writing, by the DNR prior to such assignment or pledge; otherwise, said assignment or pledge shall be invalid.
 - C. Failure to comply with the terms of this Agreement, Plan or COMAR 08.19.04.05.C(4) shall subject the Applicant to the penalties provided in Natural Resources Article 5-1601 et seq., Annotated Code of Maryland and COMAR Title 8, Subtitle 19, including but not limited to a penalty of thirty cents (\$0.30) per square foot of area not found to be in compliance, and the right to forfeiture of the posted security.

In witness whereof, the parties have executed this Agreement under their respective hands and seals as of the day and year first above written.

ATTEST:

Date: _____

APPROVED AND AGREED TO:

Applicant

Title:

Date: _____

ATTEST:

Date: _____

Department of Natural Resources -
Forest Service

Title:

Date: _____