

DEED OF CONSERVATION EASEMENT AND AGREEMENT

THIS DEED OF CONSERVATION EASEMENT AND AGREEMENT ("Easement Agreement") is made this 13th day of June, 2002, by AUGUST WOODS, LLC, ("August Woods"), a limited liability company of the State of Maryland, and the CITY OF ANNAPOLIS, a municipal corporation of the State of Maryland ("City").

WHEREAS, August Woods is fee simple owner of real property in the City of Annapolis, Maryland, more particularly described in a deed dated March 27, 2001 recorded among the Land Records of Anne Arundel County, Maryland in Liber 10285, folio 258 ("Property");

WHEREAS, August Woods was granted special exception approval for a planned unit development in Case No. 2001-7-507 by the City Board of Appeals ("PUD Approval");

WHEREAS, August Woods has applied to the City for a grading permit related to the development of the Property as a residential community of 64 single-family lots as provided in the PUD Approval;

WHEREAS, one of the conditions of grading permit approval and approval of the Plat referenced below is the designation by August Woods of a certain area of the Property as a permanent conservation area, and conveyance to the City of a perpetual easement interest therein;

WHEREAS, the conservation area is designated as a Permanent Open Space Area containing 150,587 square feet or 3.457 acres, more or less, shown more particularly on a plat entitled "Resubdivision of August Woods" recorded or intended to be recorded among the land records of Anne Arundel County, Maryland ("Plat");

WHEREAS, the parties intend that this Easement Agreement shall constitute compliance with the requirements of the grading permit application.

NOW, THEREFORE, in consideration of these premises, the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, August Woods hereby grants and conveys to the City, a perpetual conservation easement interest on, over, under, across, along and through the Permanent Open Space Area (hereafter "Conservation Easement Area") as shown on the Plat in accordance with the terms set forth below.

1. Management.

(a) The City shall be solely responsible for the management of the Conservation Easement Area, which includes but is not limited to having sole discretion to monitor and enforce compliance with this Easement Agreement.

(b) The City may, at reasonable times and in a reasonable manner, have its agents and employees enter upon the Conservation Easement Area to monitor and enforce compliance with the provisions of this Easement Agreement and for any other purpose which in any way is related to the management thereof.

2. Assignment

(a) The City, without prior notice and by any action, formal or informal, which it may in its sole discretion take, may at any time delegate or assign responsibility for the management of the Conservation Easement Area to the Annapolis Conservancy Board, an agency of the City, or any other land trust or other entity that is either non profit or in the nature of a land conservancy.

(b) Any entity to whom the City may delegate or assign responsibility for the management of the Conservation Easement Area shall have the same right as the City to have its

IMP FD SURE \$ 5.00
RECORDING FEE 28.00
TOTAL 33.00
Not # 72014
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agents and employees enter upon the Conservation Easement Area to monitor and enforce compliance with the provisions of this Easement Agreement and for any other purpose which in any way is related to the management thereof, and such entity shall assume any obligations which this Easement Agreement may impose on the City.

3. Conveyance of Conservation Easement Area

August Woods shall convey the fee simple interest in the Conservation Easement Area to a homeowners association ("HOA"), which shall govern the homeowners of the 64 individual lots, at the time of conveyance of the first lot to a homeowner.

4. Restrictions

Subject to Sections 5, 6, and 7 below, the following restrictions shall apply to the Conservation Easement Area:

(a) there shall be no temporary or permanent residential, commercial or industrial improvements or any other structures of any type constructed, placed, kept or maintained on the Conservation Easement Area;

(b) there shall be no paving, excavation or topographic change of any type, whether by grading, drilling, filling or other such activities on the Conservation Easement Area;

(c) there shall be no materials, bulk materials, refuse or trash placed, kept or maintained on the Conservation Easement Area;

(d) there shall be no motor vehicles brought upon, parked, placed, kept or maintained on the Conservation Easement Area;

(e) there shall be no cutting, except for grass or lawn, in the Conservation Easement Area;

(f) there shall be no cutting or removal of trees, landscaping or other vegetation, except for fallen trees which are dead or dying, in any mature forest or wooded area of the Conservation Easement Area;

(g) there shall be no cutting or removal of trees, landscaping or other vegetation in non-wooded areas, except for that which is in a weakened state and creates a safety hazard, or that which is diseased, dead, or dying;

(h) there shall be no alteration of the general topography or the present natural state of the Conservation Easement Area;

(i) there shall be compliance with all laws pertaining to critical areas and wetlands if such laws affect the Conservation Easement Area.

5. Permitted Activities - City and Assigns.

The City, and any entity to whom it subsequently delegates or assigns responsibility for the management of the Conservation Easement Area, may engage in the following activities within the Conservation Easement Area:

(a) landscaping, forestry activities and public improvements in accordance with any plan approved by the City or the Annapolis Conservancy Board;

(b) all processes which may from time to time be reasonably necessary to inspect,

maintain, repair and replace existing and subsequently constructed utilities and appurtenances, including but not limited to utilities and appurtenances related to storm water management, water, sewer, electric and telephone appurtenances;

(c) to bring thereon all materials, equipment, vehicles, employees and independent contractors and their subcontractors for such processes;

(d) to engage in any monitoring and compliance activities associated with its management of the Conservation Easement Area.

6. Permitted Activities - August Woods, Its Successors and Assigns

In connection with the development of the Property, August Woods, its successors and assigns, may engage in the following activities within the Conservation Easement Area, as indicated in the PUD Approval on file with the City's Department of Planning and Zoning, and only in those locations within the Conservation Easement Area as shown on the Plat and PUD Approval site plan:

- (a) installing, maintaining and replacing pedestrian pathways;
- (b) installing, maintaining and replacing benches and lights in the vicinity of pedestrian pathways;
- (c) installing, maintaining and replacing concrete sidewalks;
- (d) installing, maintaining and replacing common use recreation areas and recreational equipment, picnic tables, trashcans and playground areas and items directly associated therewith;
- (e) installing, maintaining and replacing community signage;
- (f) installing, maintaining and replacing fencing along Primrose Road;
- (g) installing, maintaining and replacing community entry monuments at entrances to the community;
- (h) constructing, repairing, maintaining and replacing storm water management and storm drain facilities and appurtenances;
- (i) granting public or private utility companies easements for the installation, inspection, maintenance, repair and replacement of utility lines and appurtenant facilities necessary to serve the Property or any portion thereof, including water, sewer, electric, telephone, storm drain and storm water management facilities, provided that the initial and any subsequent placement of all such utility lines and appurtenant facilities is subject to prior permit approval by the City, that the initial and subsequent placement of such utility lines and appurtenant facilities and their inspection, maintenance, repair and replacement shall be completed with the least amount of disruption to and disturbance in each Conservation Easement Area and only to the extent necessary to complete such activities, and that August Woods, its successors or assigns, shall restore all disturbed areas to the same or similar condition;
- (j) cutting and removing existing vegetation which is directly associated with the establishment and maintenance of any of the permitted activities set forth above in this paragraph or in the PUD Approval;
- (k) engaging in reforestation activities and to establish additional trees and vegetation;

(l) bringing onto the Conservation Easement Area all materials, equipment, vehicles, employees and contractors as may be necessary for purposes of performing the activities set forth herein.

7. Standards Applicable to All Permissible Activities

(a) Except for ordinary and routine maintenance and repair of the pedestrian pathways, lighting, benches, fencing, entry monuments, recreational and playground areas, storm water management and storm drain facilities and appurtenances, all activities in the Conservation Easement Area which are permitted pursuant to this Easement Agreement are subject to the City's prior field or plan review and final approval.

(b) All permissible activities shall be exercised with the least amount of disruption to and disturbance in the Conservation Easement Area and only to the extent necessary to complete such activities.

(c) There shall be no disturbance of any mature forest within the Conservation Easement Area, except that which may be reasonably necessary to complete permissible activities.

8. Applicability

(a) The HOA shall assume the obligations of this Easement Agreement and be subject to its provisions and liable for any violation or breach thereof, and all liability resulting from any enforcement action taken by the City pursuant to this Easement Agreement, after all of the following have occurred:

- (1) August Woods has transferred to the HOA the fee simple interest in the Conservation Easement Area;
- (2) the HOA is in good standing with the State Department of Assessments and Taxation;
- (3) the HOA has a membership of a majority of the building lot owners;
- (4) the HOA is functioning with officers and/or a board of directors and has held its first HOA meeting attended by a quorum of the members of the HOA.

(b) Until such time, August Woods, its successors or assigns, shall have sole liability for the obligations of this Easement Agreement and any violation or breach thereof, and all liability resulting from any enforcement action taken pursuant to this Easement Agreement.

(c) Subject to paragraph 8(d) below, after the HOA assumes the obligations of this Easement Agreement, August Woods shall be jointly and severally liable with the HOA for the obligations of this Easement Agreement and all liability caused by any violation or breach thereof by the HOA, and all liability resulting from any enforcement action taken by the City pursuant to this Easement Agreement, and shall be a guarantor of the HOA's obligations and liability imposed by this Easement Agreement if the HOA's charter is forfeited, the HOA is dissolved, voluntarily or involuntarily, the HOA otherwise becomes defunct, is no longer operating as a viable HOA or has become non-functional or is not fulfilling any of its obligations of this Easement Agreement.

(d) August Woods shall serve as a guarantor and shall be jointly and severally liable as set forth in paragraph 8(c) above until all of the following have occurred, at which time August Woods responsibilities under this Easement Agreement shall be deemed terminated, except for previously incurred obligations or liabilities under this Easement Agreement:

(1) August Woods has, to the City's satisfaction and in the City's sole but reasonable discretion, completed the development of the Property in accordance with the approved grading permit plans;

(2) the City has accepted as-built drawings of the development of the Property in accordance with the approved grading permit plans as being complete and accurate;

(3) the City has released the full amount of any bond or other security August Woods has posted in connection with the development of the Property;

(4) August Woods no longer owns a fee simple interest in any of the building lots within the Property.

(e) At any time after August Woods has no further liability pursuant to this Easement Agreement and the HOA's charter is forfeited or the HOA is dissolved, voluntarily or involuntarily, or the HOA otherwise becomes defunct, is no longer operating as a viable HOA or has become non-functional or is not fulfilling any of its obligations of this Easement Agreement, successor owners of each Lot of the Property, in accordance with Section 14 below, shall be subject to the provisions of this Easement Agreement and jointly and severally liable for violations or breaches thereof and for all liability resulting from any enforcement actions taken by the City pursuant to this Easement Agreement.

9. Enforcement.

(a) The City shall have the right to enforce, by any proceeding at law or in equity, any violation or breach of this Easement Agreement.

(b) If any violation or breach occurs, then the City, or any entity to which the City may have delegated or assigned responsibility for management of the Conservation Easement Area, shall give the offending party written notice thereof and a date by which it must be cured.

(c) If the offending party after notice fails to cure such violation or breach within the time set forth in the City's notice, then the City shall have the right to enter onto the Property and the Conservation Easement Area and engage in all activities required to cure the violation or breach.

(d) If the City is required to take enforcement action because of a violation or breach of this Easement Agreement, the offending party shall be responsible for all expenses of enforcement, including but not limited to labor and materials, and other expenses incurred by the City, including but not limited to reasonable attorney fees and costs related to all enforcement efforts both prior to the inception of litigation and in the course of litigation, including post judgment collection procedures.

10. Recordation.

This Easement Agreement shall be recorded among the land records of Anne Arundel County, Maryland at the expense of August Woods.

11. Conflicts.

If this Easement Agreement conflicts in substance with the terms of any other document, whether or not recorded, unless the City gives its written consent, this Easement Agreement shall have superceding effect.

12. Notices

(a) Unless the parties agree otherwise, or unless this Easement Agreement

specifically requires a written form of notice, notices between the parties regarding this Easement Agreement may be verbal or by e-mail, fax or regular mail.

(b) All written notices between the parties may be hand delivered or sent to August Woods, LLC and the HOA c/o Pulte Home Corp 1501 S. Edgewood Street, Suite K, Baltimore, MD 21227, and to the City at Department of Planning and Zoning, 160 Duke of Gloucester Street, Annapolis, Maryland 21401, Attn: Director.

(c) Verbal notice or notice by hand delivery shall be deemed given when received.

(d) Notice by regular or certified mail shall be deemed given three days after mailing.

(e) Notice by overnight delivery in any form shall be deemed given the day after mailing.

(f) The parties shall be responsible for notifying each other of address changes.

13. Binding Effect.

This Easement Agreement and all covenants and conditions set forth herein shall run with the Property and each individual lot and the Conservation Easement Area and be binding on and enforceable against the parties and their respective successors and assigns, including the HOA, and shall inure to the benefit of the City and any entity to whom the City may subsequently delegate or assign responsibility for the management of any Conservation Easement Areas.

14. Modification

This Agreement shall not be modified except by a written instrument signed and notarized by the parties.

15. Severability

Invalidation of any provision of this Easement Agreement by a court of competent jurisdiction shall in no manner effect any other provision hereof, and each such remaining provision shall remain in full force and effect.

16. Governing Law

(a) The construction of this Easement Agreement is governed by the laws of the State of Maryland.

(b) The venue of any action brought pursuant to this Easement Agreement shall be in the courts of Anne Arundel County, Maryland.

17. Integration

This Easement Agreement is the final and entire agreement of the parties pertaining to the matters which are the subject of this Easement Agreement. There are no other representations, conditions or terms, oral or written, pertaining thereto.

18. Counsel

The parties acknowledge that, prior to execution of this Easement Agreement, they have had an opportunity to review it for any purpose with legal counsel of their own selection.

19. Ratification

The parties acknowledge that they have read and understand this Easement Agreement and hereby voluntarily and knowingly ratify its terms.

20. Liability

Each party shall be responsible for their own negligent or intentional acts or omissions which occur within the Conservation Easement Area.

AS WITNESS the hands and seals of the parties.

August Woods, LLC:

BY: Wil Corporation, a Michigan Corporation
Sole Member

Shirley McRutt
Witness

BY: George Schulmeyer
George Schulmeyer, Vice President

STATE OF Maryland, COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on the 4 day of June, 2002, before the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared George Schulmeyer, known to me or satisfactorily proven to be the person whose signature is above, and he has signed this Deed of Conservation Easement and Agreement in my presence and acknowledged that he is Vice-President of Wil Corporation, a corporation of the State of Michigan, sole member of August Woods, LLC, a limited liability company of the State of Maryland, and that as such person, he is authorized to sign this Deed of Conservation Easement and Agreement on behalf of both such entities and to bind them thereby, and that it is his free and voluntary act made for the purposes set forth therein.

AS WITNESS my hand and Notarial Seal.

Amy E. Fagan
Notary Public
My Commission Expires:

AMY E. FAGAN
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires July 2, 2002

ATTEST:

CITY OF ANNAPOLIS:

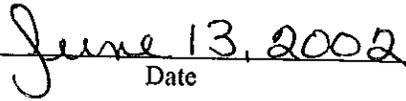
Deborah Heimbuch
DEBORAH HEINBUCH, City Clerk

By: Ellen O. Moyer
ELLEN O. MOYER, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

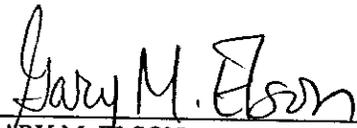


PAUL GARVEY GOETZKE,
City Attorney



Date

It is certified hereby that this Deed of Conservation Easement and Agreement was pre-pared by or under the supervision of the undersigned, an attorney admitted to practice before the Court of Appeals of Maryland.



GARY M. ELSON

Return to: Gary M. Elson
150 South Street, Suite 200A
Annapolis, MD 21401

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