

DEED OF CONSERVATION EASEMENT AND AGREEMENT

THIS DEED OF CONSERVATION EASEMENT AND AGREEMENT is made this 14th day of May, 2002, by CRAB COVE, LLC, ("Crab Cove"), a limited liability company of the State of Maryland, KINGSFORT COMMUNITY ASSOCIATION, INC. ("Association"), a non-stock corporation of the State of Maryland, and the CITY OF ANNAPOLIS, a municipal corporation of the State of Maryland ("City").

WHEREAS, Crab Cove is fee simple owner of real property in the City of Annapolis, Maryland, more particularly described in a deed dated December 20, 1985 recorded among the Land Records of Anne Arundel County, Maryland in Liber 9564, folio 510 ("Property");

WHEREAS, Crab Cove has applied to the City for a grading permit related to the development of the Property as a residential community of 172 single family lots and multiple open space areas to be known as "Kingsport";

WHEREAS, one of the conditions of grading permit approval and approval of the Plat referenced below is the designation by Crab Cove of certain areas of the Property as permanent Conservation Easement Areas, and conveyance to the City of a perpetual easement interest in each Conservation Easement Area;

WHEREAS, each Conservation Easement Area is shown more particularly on a 20 page plat, referenced above, entitled "Record Plat of ~~Crab Cove~~ Kingsport" recorded as Plat No. 12808 through 12827 among the land records of Anne Arundel County, Maryland in Plat Book 245, pages 31 through 50 ("Plat");

WHEREAS, the parties intend that this Deed of Conservation Easement and 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, Crab Cove hereby grants and conveys to the City, a perpetual easement on, over, under, across, along and through each Conservation Easement Area as shown on the Site Plan and Plat in accordance with the terms set forth below.

1. Management.

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

(b) The City may, at reasonable times and in a reasonable manner, have its agents and employees enter upon each 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 to or approval by Crab Cove or the Association, 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 any Conservation Easement Area

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CITY OF ANNAPOLIS  
WATER DEPARTMENT  
WATER BILLS PAID TO  
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NO TAXES NECESSARY  
6/25/02 JAS  
CONTROLLER  
TRANSFER NECESSARY

6th Row 6-20-02  
RECEIVED FOR TRANSFER  
STATE DEPARTMENT OF  
ASSESSMENTS & TAXATION  
FOR ANNE ARUNDEL COUNTY  
WILLIAM F. SMOUSE

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 any Conservation Easement Area shall have the same right as the City to have its agents and employees enter upon any 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.

(c) The City will provide timely notice to Crab Cove of any Assignment pursuant to this Section.

3. Conveyance of Conservation Easement Areas

(a) Crab Cove shall convey the fee simple interest in each Conservation Easement Area to the Association at the time of or before the City gives final approval to the development of the Property in accordance with the approved grading permit plans.

4. Restrictions.

(a) Subject to Sections 5, 6, 7 and 8 below, the following restrictions shall apply to each Conservation Easement Area, unless the City and the Association agree otherwise in writing:

(1) 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 any Conservation Easement Area;

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

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

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

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

(6) 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 any Conservation Easement Area;

(7) 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;

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

(9) compliance with all laws pertaining to critical areas and wetlands if such laws affect any Conservation Easement Area.

5. Permitted Activities - City and Assigns.

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

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

(2) 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;

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

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

6. Permitted Activities - Crab Cove

(a) In connection with the development of the Property, including the utilization of the Conservation Easement Areas in furtherance thereof, Crab Cove may engage in the following activities, provided that they are conducted only in the specific Conservation Easement Areas shown on the Plat:

(1) grading and filling in areas adjacent to all public streets and roads as may be reasonably necessary for the original construction of such streets and roads, provided that there shall be no such grading and filling thereafter;

(2) establishing pedestrian pathways and cutting and removing existing vegetation which is directly associated with the establishment and maintenance of such pathways;

(3) grading and filling to install asphalt, concrete or other impervious or pervious materials associated with the original installation of a boardwalk, footbridge, bus shelter area and community pier, provided that there shall be no such grading and filling thereafter;

(4) placing benches and lights in the vicinity of pedestrian pathways and the boardwalk and community pier;

(5) placing recreation areas and recreational equipment, picnic tables, trash cans and playground areas and items directly associated therewith;

(6) removing lower limbs from existing trees in non-wooded areas to improve pedestrian vistas and safety;

(7) engaging in reforestation activities and to establish additional trees and vegetation;

(8) 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 Crab Cove shall restore all disturbed areas to the same or similar condition;

(9) bringing onto applicable Conservation Easement Areas all materials, equipment, vehicles, employees and independent contractors and their subcontractors as may be necessary for purposes of performing the activities set forth herein.

7. Permitted Activities - Association

(a) Upon conveyance of the Conservation Easement Areas to the Association, the Association may engage in the following activities, provided that they are conducted only in the specific Conservation Easement Areas shown on the Plat:

(1) maintaining, repairing and replacing the boardwalk, footbridge, community pier, bus shelter, pedestrian pathways, benches, recreational and playground areas and, in connection therewith, cutting and removing existing vegetation which is reasonably required in order to complete such activities;

(2) removing lower limbs from existing trees in non-wooded areas to improve pedestrian vistas and safety;

(3) engaging in reforestation activities and establishing and maintaining landscaping and additional trees and vegetation within each Conservation Easement Area;

(4) bringing onto each Conservation Easement Area all materials, equipment, vehicles, employees and contractors as may be necessary or desirable for purposes of performing such activities.

8. Standards Applicable to All Permissible Activities

(a) Except for ordinary and routine maintenance of the boardwalk, footbridge, community pier, bus shelter, pedestrian pathways, lighting, benches, recreational and playground areas and storm water management ponds, all activities in each Conservation Easement Areas set forth above which are permitted pursuant to this Easement Agreement:

(1) are subject to the City's prior field or plan review and final approval;

(2) shall be exercised with the least amount of disruption to and disturbance in each Conservation Easement Area and only to the extent necessary to complete such activities;

(3) shall not be construed to allow any disturbance of any mature forest within any Conservation Easement Area, except that which may be reasonably necessary to complete such activities.

9. Applicability

(a) The Association 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) Crab Cove has transferred to the Association the fee simple interest in each common area in which a Conservation Easement Area is located;

(2) the Association is in good standing with the State Department of Assessments and Taxation;

(3) the Association has a membership of a majority of the building lot owners;

(4) the Association is functioning with officers and/or a board of directors and has held its first association meeting attended by a quorum of the members of the Association.

(b) Until such time, Crab Cove 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 9(d) below, after the Association assumes the obligations of this Easement Agreement, Crab Cove shall be jointly and severally liable with the Association for the obligations of this Easement Agreement and all liability caused by any violation or breach thereof by the Association, and all liability resulting from any enforcement action taken by the City pursuant to this Easement Agreement, and shall be a guarantor of the Association's obligations and liability imposed by this Easement Agreement if the Association's charter is forfeited or the Association is otherwise dissolved, voluntarily or involuntarily, or the Association otherwise becomes defunct, is no longer operating as a viable association or has otherwise become non-functional or is not fulfilling any of its obligations of this Agreement.

(d) Crab Cove shall serve as a guarantor and shall be jointly and severally liable as set forth in paragraph 9(c) above until all of the following have occurred:

(1) Crab Cove has, to the City's satisfaction and in the City's sole and 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 Crab Cove has posted in connection with the development of the Property;

(4) Crab Cove has transferred the fee simple interest in each of the building lots within the Property to homeowners.

(e) Once all of the events in Section (d) above have occurred, then Crab Cove shall have no further liability under this Agreement, except for such liability which it has already incurred prior thereto.

(f) At any time after Crab Cove has no further liability pursuant to this Easement Agreement and the Association's charter is forfeited or the Association is otherwise dissolved, voluntarily or involuntarily, or the Association otherwise becomes defunct, is no longer operating as a viable association or has otherwise become non-functional, 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.

10. Enforcement.

(a) The City shall have the right to enforce, by any proceeding at law or in equity, any violation or breach of this Deed of 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 Areas, shall give the offending party written notice thereof and a date by which it must be cured, such date to be not less than thirty days after the City's notice unless the continuation of the violation or breach for such thirty day period or any part thereof is likely, in the City's sole discretion, to cause an unreasonable risk to the safety of person or property, in which case the date for cure may be a date that is less than thirty days after the City's notice and which is consistent with the protection of person and property.

(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 each 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.

11. Recordation.

(a) This Easement Agreement shall be recorded among the land records of Anne Arundel County, Maryland at the expense of Crab Cove.

12. Conflicts.

(a) 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.

13. 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 Crab Cove, LLC at 69 West Street, Annapolis, Maryland 21401, Attn: Tom Howard, with a copy to Edgemore-Crab Cove, LLC, 3925 Old Lee Highway, Suite 100, Fairfax, Virginia 22030, Attn: President, and to Linowes and Blocher, LLP at 1010 Wayne Avenue, Suite 1000, Silver Spring, Maryland 20910, Attn: Roger D. Winston, Esq., and to the Association at 69 West Street, Annapolis, Maryland 21401, Attn: Tom Howard, and to the City at Department of Public Works, 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.

14. Binding Effect.

(a) This Easement Agreement and all covenants and conditions set forth herein shall run with the Property and each individual lot and Conservation Easement Area and be binding on and enforceable against the parties and their respective successors and assigns, 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.

15. Modification

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

16. Severability

(a) 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.

17. 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.

18. Integration

(a) 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.

19. Counsel

(a) 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.

20. Ratification

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

AS WITNESS the hands and seals of the parties.

CRAB COVE, LLC,  
a Maryland limited liability company

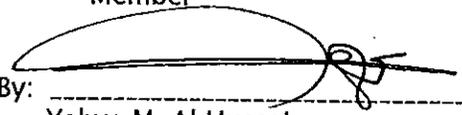
By: BASHEER/EDGEMOORE-CRAB COVE,  
L.L.C., a Virginia limited liability company,  
its Sole Member

By: BASHEER-CRAB COVE, L.L.C.,  
a Virginia limited liability company,  
Member

BY:   
Diane Cox Basheer, President

By: EDGEMOORE-CRAB COVE,  
L.L.C., a Virginia limited liability  
company, Member

By: Five Pillars, Inc., a Virginia  
corporation, Managing  
Member

By:   
Yahya M. Al-Hussain,  
Vice President

  
Witness

  
Witness

STATE OF Virginia, COUNTY OF Fauquier, to wit:

I HEREBY CERTIFY that on the 9th day of May, 2002, before the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Diane Cox Basheer, known to me or satisfactorily proven to be the person whose signature is above, and she has signed this Deed of Conservation Easement and Agreement in my presence and acknowledged that she is President of Basheer-Crab Cove, L.L.C., a Virginia limited liability company, Member of Basheer/Edgemoore-Crab Cove, L.L.C., a Virginia limited liability company, Sole Member of Crab Cove, LLC, a Maryland limited liability company, and that as such person, she is authorized to sign this Deed of Conservation Easement and Agreement on behalf of all such entities and to bind them thereby, and that it is her free and voluntary act made for the purposes set forth therein.

AS WITNESS my hand and Notarial Seal.

Jaqueline C. Bell  
Notary Public  
My Commission Expires: 12/31/03

STATE OF Virginia, COUNTY OF Fauquier, to wit:

I HEREBY CERTIFY that on the 9th day of May, 2002, before the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Yahya M. Al-Hussain, 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 Five Pillars, Inc., a Virginia corporation, Managing Member of Edgemoore-Crab Cove, L.L.C., a Virginia limited liability company, Member of Basheer/Edgemoore-Crab Cove, L.L.C., a Virginia limited liability company, Sole Member of Crab Cove, LLC, a Maryland limited liability company, and that as such person, he is authorized to sign this Deed of Conservation Easement and Agreement on behalf of all 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.

Jaqueline C. Bell  
Notary Public  
My Commission Expires: 12/31/03

ATTEST:

Deborah Heimbuch  
DEBORAH HEINBUCH, City Clerk

CITY OF ANNAPOLIS:

By: Ellen Moyer  
ELLEN O. MOYER, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

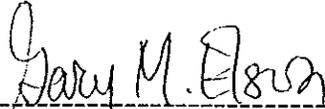


\_\_\_\_\_  
PAUL GARVEY GOETZKE,  
City Attorney

14 May 2002

\_\_\_\_\_  
Date

It is certified hereby that this Deed of Conservation Easement and Agreement was prepared 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