

**Deed of Easement
(Agricultural Preservation)**

THIS DEED OF EASEMENT, made this _____ day of _____, 2004, by and between _____, _____, (hereinafter "Grantors"), and the COUNTY COMMISSIONERS OF FREDERICK COUNTY (also known as the "Board of County Commissioners of Frederick County, Maryland"), (hereinafter "Grantee"), and containing covenants intended to be real covenants running with the land.

WITNESSETH:

WHEREAS, by authority of Ordinance No. 02-01-297 approved by the Board of County Commissioners of Frederick County (the "Board") on January 15, 2002, effective February 1, 2002, as amended by Ordinance No. 02-20-316 approved on October 15, 2002 (together the "IPA Act"), the Grantee may purchase development rights from agricultural landowners by subjecting property to be purchased to an agricultural preservation easement restricting future development in perpetuity in the manner more specifically provided in the IPA Act; and

WHEREAS, Chapter 37 of the Laws of Maryland of 2003 (the "2003 Act") authorizes and empowers the County to borrow, from time to time, not more than \$101,000,000.00 in order to finance the cost of certain public facilities in Frederick County, and provides that such borrowing may be undertaken in the form of installment purchase obligations executed and delivered by the County for the purpose of acquiring agricultural land and woodland preservation easements; and

WHEREAS, Resolution No. 03-_____, passed by the Board on _____ authorizes County Commissioners of Frederick County (the "County") to purchase development rights in or to _____ acres of agricultural land from _____; and

WHEREAS, the Grantors are the fee simple owners of the hereinafter described tract or parcel of land located in Frederick County and desire to sell an agricultural preservation easement to restrict such land to agricultural use in accordance with the IPA Act and as hereinafter set forth; and

NOW, THEREFORE, in consideration of the sum Dollars (\$) _____) and other valuable consideration, the

receipt of which, is hereby acknowledged, the Grantors for the Grantors, the heirs, personal representatives, successors and assigns of Grantors, do grant and convey, to the Grantee, its successors and assigns, an agricultural preservation easement in, on and over the hereinafter described tract or parcel of land, subject to the covenants, conditions, limitations and restrictions hereinafter set forth, so as to constitute an equitable servitude thereon:

All those lots or parcels of land situate, lying and being in the
(#) Election District, in Frederick County, State of Maryland, and
which are more particularly described in Exhibit A attached).

The acreage intended to be encumbered hereby being _____ acres of
land, more or less (hereinafter sometimes referred to as the "property" or the
"land").

AND the Grantors covenant for and on behalf of the Grantors, the heirs, personal representatives, successors and assigns of the Grantors, with the Grantee, its successors and assigns, to do and refrain from doing upon the above described land all and any of the various acts hereinafter set forth, it being the intention of the parties that this land shall be preserved solely for agricultural use, and that the covenants, conditions, limitations and restrictions hereinafter set forth, are intended to limit the use of the above described land and are to be deemed and construed as real covenants running with the land.

COVENANTS, CONDITIONS, LIMITATIONS AND RESTRICTIONS

A. Subject to the reservations hereinafter contained, the Grantors covenant, grant and agree as follows:

- (1) (a) Except as otherwise provided in this instrument, the above described land may only be used for agricultural purposes and may not be developed or otherwise used for any industrial, commercial, or residential purpose.
- (b) (b) To maintain the land in agricultural use or properly managed so that it is available for continued agricultural use from the date that the easement is recorded in the Land Records of Frederick County.
- (c) (c) That the easement agreement creates an encumbrance upon the land and binds future owners, heirs, successors or assigns and precludes the subdivision and utilization of the land principally for

uses such as residential, institutional, commercial or industrial except as contained within this Deed of Easement approved by the Board. Any agricultural uses currently permitted would be allowed to continue under this agreement. The easement agreement shall not provide for public access to any privately owned land.

- (d) In addition to any other requirements, the construction of new buildings or structures on the land, other than farm buildings, is contingent upon the written application to and approval by the Frederick County, Maryland Planning & Zoning Department (the Department), subject to review by, and recommendation of, the Frederick County Agricultural Advisory Board.
- (e) The property shall be maintained in agriculture use. A landowner may request accessory, and compatible commercial uses to an agricultural use of the property, as permitted under the Frederick County Zoning Ordinance, provided that such use does not affect the agricultural integrity of the property, minimizes the use of productive agricultural land and fulfills the purpose and intent of this Easement.
 - (i.) Such a request shall be submitted to the Department and reviewed by the Advisory Board who shall make specific findings in each request as to the appropriateness of such use and the impact on the agricultural use of the property.
 - (ii.) (ii.) Accessory and compatible commercial uses must conform to existing regulations and ordinances.
- (f) As a personal covenant only, and one that is not intended to run with the land, the Grantee, on written application from the Grantors, shall release free of easement restrictions only for the Grantors who originally sold this easement, 2 acres or less for the purpose of constructing a dwelling house for the use

only of the Grantors or the Grantors' child, subject to the following conditions; provided however, the Grantors may elect to relinquish all childrens'/owners' lots in exchange for the right to convey one lot of 2 acres or less to a person or entity not a Grantor or child of a Grantor.

- (i) The total number of childrens'/owners' lots allowed to be released under this paragraph may not exceed four (4) lots of two (2) acres or less at a maximum of not more than one (1) lot for each fifty (50) acres or portion thereof;
- (ii) The Grantors shall pay the Grantee for any acre or portion thereof released at the price per acre that the Grantee paid the Grantors for the easement provided that the Board upon a recommendation from the Frederick County Agricultural Preservation Advisory Board, shall have the right to approve the location and configuration of lot to be released; it being the intent that the agricultural use of the remaining property not be impaired by the proposed lot.
- (iii) Before any conveyance or release, the Grantors and the child, if there is a conveyance to a child, shall agree not to subdivide further any acreage allowed to be released; the agreement shall be recorded among the land records where the land is located and shall bind all future owners; and
- (iv) If, while the above described land was in a Maryland Agricultural Land Preservation district, the Grantee released free of the district's restrictions for a Grantor or child of a Grantor, an owner or a child's lot for the purpose of constructing a dwelling house for the use of the Grantor or the Grantor's child, the Grantee may not release hereunder an additional lot for the same Grantor or child; for each lot that the Grantors had excluded from the district's restrictions for this purpose, the number of lots that the Grantors otherwise

would be entitled to have released under paragraph A (1) (f) is reduced by one.

- (g) The Grantors may construct housing for tenants actively engaged in operation of the farm, but this construction may not exceed 1 tenant house per full 100 acres. The land on which a tenant house is constructed may not be subdivided or conveyed to any person, nor may the tenant house be conveyed separately from the original parcel unless conveyed as a permitted child's lot under Section A (1) (f). This request shall be submitted to the department for approval, subject to the review and recommendation of the Frederick County Agricultural Preservation Advisory Board.
- (h) The land subject to this Deed of Easement may not be subdivided for any purpose unless written approval first has been obtained from the Grantee.
- (i) No development rights from the property may be transferred to another area, or to another person, or to a political subdivision.
- (j) On request to the Grantee, the Grantors may exclude from the easement restrictions 1 acre per each single dwelling, which existed at the time of the sale of the easements by a land survey and recordation provided at the expense of the Grantors or Grantors' personal representatives, successors or assigns. However, before any exclusion is granted, the Grantors shall agree with the Grantee not to subdivide each acre excluded. This agreement shall be recorded among the land records where the land is located and shall bind all future owners.
- (k) No rights-of-way easements, oil, gas or mineral leases, or other similar servitude may be conveyed, or permitted to be established in the property without the Grantee's express permission.
- (l) Unless written approval is first obtained from the Grantee, no easement or other restriction may be

granted to any person, entity or agency (whether governmental or non-governmental) in land subject to this deed of easement.

- (2) Other than those specifically listed on exhibit B hereto, no signs, billboards, or outdoor advertising displays may be erected, displayed, placed or maintained on the property; provided, however, the Grantors reserve the right to erect signs not exceeding 4 feet x 4 feet for each of the following purposes:
 - (a) to state the name of the property and the name and address of the occupant;
 - (b) to advertise any home or ancillary occupation consistent with the purposes of this easement subject to the approval of the Grantee; and
 - (c) to advertise the property's sale or rental.
- (3) No ashes, sawdust, bark, trash, rubbish or any other material may be dumped on the property; provided, however, that the Grantors reserve the right to stockpile any material which is for regular agricultural use.

The Grantors reserve the right to use the property for any farm use, and to carry on all normal farming practices, including the operation at any time of any machinery used in farm production or the primary processing of any agricultural products; the right to conduct upon this land any agricultural operation which is in accordance with good husbandry practices and which does not cause bodily injury or directly endanger human health, including any operation directly relating to the processing, storage, or sale of farm, agricultural or woodland products produced on this land; and all other right and privileges not hereby relinquished, including the Grantors right of privacy.

B. And the parties, for themselves, their heirs, personal representatives, successors and assigns, further covenant and agree as follows:

- (1) The Grantors shall manage the property in accordance with sound agricultural soil and water conservation practices so as

to promote the agricultural capability of the land; and shall manage any woodland in accordance with sound forestry practices; provided, however, that the Grantors reserve the right to selectively harvest from time to time trees which will not alter the agricultural character of the land or diminish its productive capability; provided, however, if the property consists of 50% or more woodland, the cutting of trees shall be governed by an approved forest management plan.

- (2) The Grantors shall implement all soil conservation and water quality practices that are contained within a soil and water conservation plan approved by the local soil conservation district, made or revised within the last ten years of the date of the application to sell an easement, which lists all soils conservation and water quality problem areas on the land. The plan shall be implemented according to the schedule of implementation contained within the plan which exists at the time of easement settlement. Revisions to the schedule of implementation may be made as approved by the Board of Supervisors of the local soil conservation district, however, the plan shall be fully implemented within ten years of the easement settlement date. Exceptions may be considered by the Grantee on a case by case basis. Such Plan shall be kept on file in the offices of the Department and the District office of the Soil Conservation Service.
- (3) The Grantors shall implement a forest management plan demonstrating proper forest management techniques if 50% or more of the acreage contained in the property consists of woodland.
- (4) The Grantee or its authorized representative shall have the right to enter on the property from time to time for the sole purposes of inspection and enforcement of the easement, covenants, conditions, limitations and restrictions herein contained; provided, however, that the Grantee shall have no right to inspect the interior of any structures on the property.
- (5) If the easement or any covenant, condition, limitation or restrictions herein contained is violated or breached, the Grantee may after due notice to the Grantors, the Grantors' heirs, personal representatives, successors or assigns, institute an action in equity to enjoin, by ex parte, temporary or

permanent injunction, such violation or breach; to require the restoration of the above described land to its condition prior to such violation or breach; to recover damages; and to take such other legal action as may be necessary to insure compliance with the easement and the covenants, conditions, limitations and restrictions herein contained.

- (6) If the Grantors have any doubt concerning the easement, covenants, conditions, limitations or restrictions herein contained with respect to any particular use of this land, the Grantors may submit a written request to the Grantee for consideration and approval of such use.
- (7) This easement does not grant the public any right of access or any right of use of the property.
- (8) Nothing herein contained shall relieve the Grantors, the Grantors' heirs, personal representatives, successors or assigns of the obligation to pay real estate taxes.
- (9) This easement shall be in perpetuity.
- (10) Grantee may assign any or all of its right, title or interest in this Deed of Easement to any entity which Grantee determines will continue the intent of the County's Agricultural Preservation Program including, without limitation, the State of Maryland and its Maryland Agricultural Land Preservation Foundation.

AND the Grantors further covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property interest hereby conveyed; and that the Grantors will execute such further assurances of the same as may be required.

Miscellaneous Provisions

- A. As used herein the singular form of a word includes both the singular and plural, the plural form of a word includes both plural and singular, and reference to words of certain gender includes reference to all genders.
- B. The provisions of this Deed of Easement shall be governed by the

laws of the State of Maryland and the parties hereby expressly agree that the courts of the State of Maryland shall have jurisdiction to decide any question arising hereunder after all administrative remedies have been exhausted.

- C. No determination by any court, governmental body or otherwise that any provision of this Deed of Easement is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

- D. Notwithstanding any provision herein to the contrary, the dwelling(s) existing as of the date of this Deed of Easement may be used for any lawful purpose (e.g. for residential purposes), unless otherwise prohibited by local zoning.

AS WITNESS, the hands and seals of the parties hereto.

WITNESS

(SEAL)

(SEAL)

GRANTORS

COUNTY COMMISSIONERS
OF FREDERICK COUNTY

(SEAL)

By:

Douglas D. Browning
County Manager

John L. Thompson, Jr.
President

Grantee

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 2004, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared

_____, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained, and in my presence signed and sealed the same.

WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires: _____

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 2004, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared John L. Thompson, Jr., President of the County Commissioners of Frederick County, a body corporate and politic of the State of Maryland, and that he, as such President and being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the body corporate and politic by himself as President.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires: _____

SUBORDINATION

Central Maryland Farm Credit, ACA, a body corporate, of the State of Maryland, hereby joins in the execution of this Deed of Easement for the sole purpose of agreeing to subordinate to this Deed of Easement, and hereby does subordinate the Purchase Money/Mortgage lien from Grantors dated _____ and recorded among the Land Records of Frederick County, Maryland in Liber _____, Folio _.

ATTEST:
CENTRAL MARYLAND FARM
CREDIT, ACA

CENTRAL MARYLAND FARM

_____(SEAL)

By: _____

STATE OF MARYLAND, _____ COUNTY, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 2003, before me, the undersigned officer, personally appeared _____, _____ behalf of Central Maryland Farm Credit, ACA, for the purposes therein contained, and in my presence signed and sealed the same.

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

Notary Public

My Commission Expires: _____

AFFIDAVIT OF CONSIDERATION

County Commissioners of Frederick County, Maryland, a body politic and corporate of the State of Maryland, hereby certifies under the penalties of perjury that the actual consideration paid or to be paid for the foregoing conveyance is in the sum total of \$_____.

ATTEST:

COUNTY COMMISSIONERS
OF FREDERICK COUNTY

By:_____ (SEAL)

Douglas D. Browning
County Manager

John L. Thompson, Jr.
President

I hereby certify that this Deed of Easement was prepared by or under my supervision, and I am an attorney duly admitted to practice before the Court of Appeals of Maryland.

Michael J. Chomel
Assistant County Attorney

Exhibit B

SIGNS

None