

**SAMPLE DEED OF EASEMENT**  
**Maryland Agricultural Land Preservation Foundation**

- This document contains language for the FAMILY and the UNRESTRICTED LOT options, as well as alternate language for waiver of Lot Reservation. The landowner must choose the Family or Unrestricted Lot options at the time of easement application. Lot Waiver may be elected at the time of the Option Contract.
- Please note that counties can require additional language as a condition for county approval of easement applications to the Foundation.

Rev. 04/02/2007

***NOTICE TO TITLE EXAMINERS: THIS DEED OF EASEMENT CONTAINS COVENANTS THAT INCLUDE RESTRICTIONS ON THE USE, SUBDIVISION AND OFF-CONVEYANCE OF LAND.***

File #: \*\*\_\*\*\_\*\*

THIS DEED OF EASEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between \*\*\*\*\*, party of the first part, Grantor, \*\*\*\*\* and \*\*\*\*\*, Trustees and \*\*\*\*\*, Beneficiary parties of the second part, and the STATE OF MARYLAND, to the use of the Department of Agriculture on behalf of the Maryland Agricultural Land Preservation Foundation, party of the third part, Grantee, and containing covenants intended to be real covenants running with the land,

WITNESSETH:

WHEREAS, Subtitle 5 of Title 2 of the Agriculture Article, Annotated Code of Maryland, created the Maryland Agricultural Land Preservation Foundation for the purpose of preserving agricultural land and woodland; and

WHEREAS, by authority of Agriculture Article, Section 2-504(3), Annotated Code of Maryland, the Grantee may purchase agricultural preservation easements to restrict land to agricultural use; and

WHEREAS, the Grantor owns the hereinafter described tract(s) or parcel(s) of land (hereinafter referred to as "the land") located in an agricultural preservation district established pursuant to Agriculture Article, Section 2-509, Annotated Code of Maryland, and desires to sell an agricultural preservation easement to the Grantee to restrict the land to agricultural use.

NOW, THEREFORE, in consideration of the sum of \*\*\*\*\* Dollars (\$\*\*\*\*\* ) and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor for the Grantor, the successors, personal representatives and assigns of the Grantor, does grant and convey, to the State of Maryland, for the use of the Grantee, its successors and assigns, an agricultural preservation easement in, on and over the hereinafter described tract(s) or parcel(s) of land, subject to the covenants, conditions, limitations and restrictions hereinafter set forth, so as to constitute an equitable servitude thereon, that is to say:

All those certain tract(s) or parcel(s) of land, situate, lying and being in \*\*\*\*\* County, Maryland and being more particularly described as follows:

BEGINNING \*\*\*\*\*

BEING \*\*\*\*\*

AND the Grantor covenants for and on behalf of Grantor, the personal representatives, successors and assigns of the Grantor, 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 set forth, it being the intention of the parties that the said land shall be preserved solely for agricultural use in accordance with the provisions of the Agriculture Article, Title 2, Subtitle 5, Annotated Code of Maryland, and that the covenants, conditions, limitations and restrictions hereinafter set forth, are intended to limit the use of the land and are to be deemed and construed as real covenants running with the land.

## I. PURPOSE

It is the purpose of this Easement to enable the land to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural value, character, use and utility, and to prevent any use or condition of the land that would impair or interfere with its agricultural value, character, use or utility. To the extent that the preservation of open space of the land is consistent with such use, it is within the purpose of this easement to protect that open space.

## II. COVENANTS, CONDITIONS, LIMITATIONS AND RESTRICTIONS

Subject to the Reservations hereinafter contained, the Grantor for the Grantor, the heirs, personal representatives, successors and assigns of the Grantor, covenants and agrees as follows:

### A. Agricultural Use

1. Except as otherwise provided in this instrument, the land is restricted solely to

- agricultural use and may not be used for any commercial, industrial, or residential use or purpose, or for any use that temporarily or permanently impairs or interferes with the land's agricultural value, character, use or utility, unless prior approval is obtained from the Grantee.
2. No rights-of-way, easements, oil, gas or mineral leases, or other similar servitude may be conveyed, or permitted to be established on the land for any commercial, industrial or residential use, without the Grantee's express written permission.
  3. Unless written approval is first obtained from the Grantee, no easement or other restriction may be granted to any person or government agency in the land subject to this deed of easement.
  4. No signs, billboards, or outdoor advertising displays may be erected, displayed, placed or maintained on the land; provided, however, the Grantor reserves 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 land and the name and address of the occupant;
    - b. to advertise any home or ancillary occupations consistent with the purposes of this easement subject to the approval of the Grantee; and
    - c. to advertise the land's sale or rental, to forbid trespassing or hunting, to identify the land's protected status under this Deed of Easement, or to support a political candidate, all as further regulated by local laws.
  5. No ashes, sawdust, bark, trash, rubbish or any other material may be dumped on the land, except that used in normal agricultural practices.
  6. The land shall be managed in accordance with sound agricultural soil and water conservation practices so as to promote the agricultural capability of the land; also, woodland shall be managed in accordance with sound forestry practices; provided, however, the Grantor reserves the right to selectively cut or clear cut from time to time trees which will not alter the agricultural character of the land or diminish its productive capability.
  7. The Grantor shall implement all soil conservation and water quality practices that are contained within a soil 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 soil 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.
  8. The Grantor shall implement a Forest Stewardship Plan in accordance with the Management Practice Schedule of the Plan, if the land contains 25 acres or more of contiguous forest.
  9. During regular business hours, the Grantee or its authorized representative will have

the right to enter on the land from time to time for the sole purpose of inspection and enforcement of the easement, covenants, conditions, limitations and restrictions herein contained, provided, however, that the Grantee will have no right to inspect the interior of any structures on the land.

10. Upon sale or transfer of any interest in the land, including, but not limited to a leasehold interest, life estate, term of years, or remainder interest, the Grantor, his personal representatives, successors and assigns shall notify the Grantee in writing of the name and address of the party receiving the interest in the land.

#### B. No Subdivision or Development Rights Transfer

1. The division, partition or subdivision ("division") of the land for any purpose, including off conveyance and boundary line adjustment, is prohibited, unless written approval has first been obtained from the Grantee. Notwithstanding the fact that the land subject to this Deed of Easement may comprise existing subdivided parts (whether separately described parcels or government assigned tax parcels or accounts), it is the intent of the Grantor and the Grantee that the total of the parts remains in common ownership. To that end, the Grantor may not sell, transfer, off convey, devise, give, bequeath, donate, or otherwise divide, any existing or future subdivided part or parts separately from the total of the parts, whether voluntarily, involuntarily, or by reason of foreclosure or bankruptcy. However, the Grantee may approve a division of the total of the parts of the land and separate ownership of a part or parts of the land for reasons which the Grantee, in its sole discretion, deems sufficiently extraordinary to justify an exception to the prohibition against division. For purposes of this subparagraph, the terms, "divide" and "division" shall include the lease of any part or parts less than 100% of the total parts of the land for a term in excess of twenty (20) years.
2. Except as provided in Section IV herein, all development rights associated with the land are hereby extinguished. No development rights from the land may be transferred to another area, or to another person, or to a political subdivision, notwithstanding any prior agreement to the contrary; nor may the land be used for the purpose of calculating permissible lot yield of any other property. In addition, Grantor agrees that it shall not be permitted to develop the within described property based on any existing, retained, or after acquired Development Rights, except for that which the Grantee has given approval in accordance with Section IV herein.

#### III. RESERVATIONS IN THE GRANTOR

Provided that the Purpose of the Easement as specified under Section I is fulfilled, the Grantor reserves the right to use the land 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 the 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 the land.

#### IV. LOT RELEASE FROM EASEMENT

It is the purpose of this section to limit development rights to maximize the preservation of the agricultural land.

##### A. **Family Lot Release (option A)\***

The Grantee, on written application from the Grantor, shall release free of easement restrictions only for the Grantor who originally sold this easement, one (1) acre or less, except as provided under Section IV.F. herein, for the purpose of constructing a dwelling house for the use only of that Grantor or the Grantor's child, subject to the following conditions:

1. The total number of lots allowed to be released under this paragraph may not exceed
  - a. one (1) lot if the size of the Easement Property is 20 acres or more but fewer than 70 acres;
  - b. two (2) lots if the size of the Easement Property is 70 acres or more, but fewer than 120 acres; or
  - c. three (3) lots if the size of the Easement Property is 120 acres or more provided that the resulting density on the land does not exceed the density allowed under zoning of the land before the Grantee purchased the Easement. The right reserved to the Grantor under this subparagraph belongs only to the Grantor who originally sold this easement and may be exercised only by the Grantor named in the instrument, and is extinguished upon the death of the Grantor or a transfer of 100% of the Grantor's interest in the land.
2. The Grantor shall pay the Grantee for any acre or portion thereof released at the price per acre that the Grantee paid the Grantor for the easement, provided that the Maryland Agricultural Land Preservation Foundation's Board of Trustees has the right to approve the location and configuration of the parcel(s) so released from easement; it being the intent that the agricultural use of the land not be impaired by said partitions;
3. Before any release from easement, the Grantor, and/or the Grantor's child, if applicable, shall agree not to divide further any portion of the land 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
4. If, while the land was in an agricultural preservation district, the Foundation released

free of the district's restrictions for a person owning that land, one (1) acre or less for the purpose of constructing a dwelling house, the Grantee shall not release free of easement restrictions for the Grantor, an additional lot for the same purpose; for each lot that the Grantor had excluded from the district's restrictions, the number of lots that the Grantor otherwise would be entitled to have released under this Section IV.A. is reduced by one.

5. Regardless of the number of agricultural districts or easements encumbering land owned by the Grantor herein, if the Grantee released one (1) acre or less for the purpose of constructing a dwelling house for the use of the Grantor or the Grantor's child, under a separate Agricultural District, the Grantee shall not release free of easement restrictions for the Grantor or Grantor's child, an additional lot on the land for the same purpose; for each lot that the Grantor or Grantor's child had excluded from another district's restrictions for this purpose, the number of lots that the Grantor or Grantor's child otherwise would be entitled to have released under this Section IV.A. is reduced by one.
6. Regardless of how the property is titled, and subject to the requirements and conditions of this Section IV.A., the Grantor,

\_\_\_\_\_ (fill in all name(s) of title owners of record) agrees that the following individuals are the only family members eligible for release of a family lot:

\_\_\_\_\_ [fill in names of Grantors if individuals and "children of them," or, in the case of a family entity owner, its partners/ members/ shareholders as applicable, and "children of them." Note: Do not fill in children's names in case of after-born children].

**B. Application for Lot Release**

Before a lot may be released from an easement's restrictions for the construction of a dwelling house, under Section IV.A. above, the landowner and proposed lot owner shall submit an application to the Grantee that:

1. The landowner and proposed lot owner have signed;
2. Contains a declaration as to whether the lot and dwelling house are only for the use of the original Grantor or the original Grantor's child, whichever is the case;
3. Includes signed statements indicating approval of the release from the local agricultural land preservation advisory board and confirmation from the county planning and zoning department that the proposed lot appears to meet local zoning regulations;
4. Includes a description of the land to be excluded and affected by both the dwelling and access to that dwelling, so as to gauge the impact that the dwelling and any access to that dwelling will have on the agricultural operations of the farm; and
5. Includes a property outline indicating the location of the proposed lot.

C. Preliminary and Final Release

After certifying that the landowner and proposed lot owner have met the conditions provided herein, and a survey plat with metes and bounds description has been submitted to the Grantee, the Grantee shall issue a Preliminary Release which shall:

1. Become final when the Grantee receives and certifies a non-transferable building permit in the name of the proposed lot owner for the construction of a dwelling house; or
2. Become void upon the death of the person for whose benefit the release was intended if the Grantee has not yet received a building permit as provided herein.

Any preliminary or final release, building permit or other document issued or submitted in accordance with this section shall be recorded among the land records where the land is located at the landowner's expense and shall bind all future owners. Such release shall contain restrictions as specified in Agriculture Article, Section 2-513, Annotated Code of Maryland, as amended from time to time.

D. Existing Dwelling

On written request to the Grantee, a landowner, may exclude from the easement restrictions one (1) acre or less surrounding each single dwelling house, which existed as of the date of this Deed of Easement as a Family lot to which the Grantor was eligible under Section IV.A. above, by a land survey and recordation provided at the expense of the landowner or landowner's personal representatives, successors or assigns. However, before any exclusion is granted, the landowner shall agree with the Grantee not to subdivide further any acreage to be released and said agreement shall be recorded among the land records where the land is located and shall bind all future owners.

OR

A. **Unrestricted Lot Release (option B)\***

The Grantor, or subsequent landowner, has the right to apply at any time for release of one (1) unrestricted lot from this easement, to be retained by the Grantor or subsequent landowner, or conveyed to anyone, to construct one (1) residential dwelling, subject to the following conditions:

1. The resulting density on the property shall be less than the density allowed under zoning of the property before the Foundation purchased the Easement;
2. The size of an unrestricted lot shall be one (1) acre or less except as provided under Section IV.F. herein;
3. The Grantor or subsequent landowner shall agree not to subdivide further for residential purposes any acreage allowed to be released, and the agreement shall be

recorded among the Land Records where the Land is located and shall bind all future owners;

4. The right to the lot has been taken into consideration in the appraisal of fair market value and determination of easement value;
5. The Grantor or subsequent landowner shall pay the Grantee for any acre or portion thereof released at the price per acre that the Grantee paid the Grantor for the easement;
6. The location of the lot to be subdivided is subject to the approval of the local agricultural advisory board and the Foundation; and
7. The Grantor or subsequent landowner has not previously excluded land from the Easement.
8. If, while the land was in an agricultural preservation district, the Foundation released free of the district's restrictions one (1) acre or less for the purpose of constructing a dwelling house for the use of the Grantor or Grantor's child, or for conveyance to a third party, the Grantee shall not release free of easement restrictions for the Grantor or subsequent landowner, an additional lot for the same purpose; the lot that the Grantor had excluded from the district's restrictions shall be the only release of a lot to which the Grantor or subsequent landowner is entitled.

B. Application for Lot Release

Before a lot may be released from an easement's restrictions for the construction of a dwelling house, under Section IV.A. above, the landowner and proposed lot owner shall submit an application to the Grantee that:

1. The landowner and proposed lot owner have signed;
2. Includes signed statements indicating approval of the release from the local agricultural land preservation advisory board and confirmation from the county planning and zoning department that the proposed lot appears to meet local zoning regulations;
3. Includes a description of the land to be excluded and affected by both the dwelling and access to that dwelling, so as to gauge the impact that the dwelling and any access to that dwelling will have on the agricultural operations of the farm; and
4. Includes a property outline indicating the location of the proposed lot.

C. Final Release

After certifying that the landowner and proposed lot owner have met the conditions provided herein, and a survey plat with metes and bounds description has been submitted to the Grantee, the Grantee shall issue a Final Release which shall be recorded among the land records where the land is located at the landowner's expense and shall bind all future owners. Such release shall contain restrictions as specified in Agriculture Article, Section 2-513,

Annotated Code of Maryland, as amended from time to time.

D. Existing Dwelling

On written request to the Grantee, a landowner, may exclude from the easement restrictions one (1) acre or less surrounding a single dwelling house, which existed as of the date of this Deed of Easement as an Unrestricted Lot to which the Grantor or subsequent landowner is eligible under Section IV.A. above, by a land survey and recordation provided at the expense of the landowner or landowner's personal representatives, successors or assigns. However, before any exclusion is granted, the landowner shall agree with the Grantee not to subdivide further any acreage to be released and said agreement shall be recorded among the land records where the land is located and shall bind all future owners.

OR

A. Lot Release Waiver (option C)\*

The Grantor hereby waives the right to release of 1 acre lots for the Grantor and the Grantor's children to which the Grantor is otherwise entitled under Agriculture Article Section 2-513, Annotated Code of Maryland, including the right to exclude 1 acre surrounding each existing dwelling and the right to release of a 1 acre unrestricted lot, both as further provided in the referenced Code Section.

E. Tenant Houses

1. Subject to the Grantee's approval and the provisions of COMAR 15.15.03 ("Tenant House Requirements"), the Grantor, or its successors and assigns in the fee ownership of the land (hereinafter referred to as the "landowner"), may construct housing for tenants fully engaged in operation of the farm, but this construction may not exceed one (1) tenant house per full 100 acres (for example, one (1) tenant house for 100-199 acres; two (2) tenant houses for 200-299 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 land, as governed by Section II.B.1. herein. The land under and surrounding the tenant house shall not be released from the Easement, it being understood that the tenant house is an accessory structure to the agricultural use of the farm and as such its use is intended to be consistent with the Purpose stated herein.
2. The Landowner shall make written application to the Grantee that
  - a) the landowner has signed;
  - b) contains a declaration that the tenant house is necessary for the operation of the farm and is only for the use of tenants fully engaged in operation of the farm;

- c) is accompanied by evidence that demonstrates the need for a full-time tenant for the operation of the farm;
  - d) includes signed statements from the local agricultural land preservation advisory board that the tenant house is necessary for the operation of the farm and confirmation from the county planning and zoning department that the proposed tenant house appears to meet local zoning regulations;
  - e) includes a description of the land to be affected by both the tenant house and access to that tenant house, so as to gauge the impact that both will have on the agricultural operations of the farm;
  - f) Includes a scaled plan for the tenant house, and accompanying outbuildings, including the square footage thereof; and
  - g) includes a map showing the location of the proposed tenant house.
3. For purposes of this subparagraph, the terms below are defined as follows:
- a) "Tenant" shall be defined as a natural person or persons fully engaged in operation of the farm, and who are not the landowner, and/or who do not have a financial interest in the landowner, including a shareholder interest, partnership interest or membership interest, full, limited, or otherwise.
  - b) "Tenant house" shall be an accessory structure consisting of no more than 2000 square feet, calculated by first multiplying the exterior footprint of the portions of the structure with multiple stories by the number of stories with windows and then adding the exterior footprint of any portions of the structure with one story, but excluding basements, attics, porches not used as a living space, garages, and unenclosed decks, in which the tenant resides.

#### F. Lot Size

If circumstances described on Maryland Annotated Code Agricultural Article Section 2-513(b)(6) exist, a released lot may be two (2) acres or less.

#### V. TERM

This easement shall be in perpetuity.

#### VI. BREACH

If the easement or any covenant, condition, limitation, restriction or other provisions herein contained is violated or breached, the Grantee may after due notice to the Grantor, the Grantor's 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 (including, but not limited to, re-conveyance of title to land conveyed in violation of

covenants herein); 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 or other provisions herein contained.

## VII. MISCELLANEOUS PROVISIONS

- A. If the Grantor has any doubts concerning the easement, covenants conditions, limitations or restrictions herein contained with respect to any particular use of the said land, the Grantor may submit a written request to the Grantee for consideration and approval of such use.
- B. This easement does not grant the public any right to access or any right of use of the above described land.
- C. Nothing herein contained shall relieve the Grantor, the Grantor's personal representatives, successors or assigns of the obligation to pay real estate taxes.
- D. 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.
- E. 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.
- F. 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 (1) any other such provision, or (2) 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.
- G. 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.

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

SUBORDINATION PROVISIONS

Deed of Trust

(Insert name of Trustee) and (insert name of trustee), in their capacity as Trustees under a Deed of Trust dated (insert date of Deed of Trust) and recorded among the aforesaid Land Records in Liber No. \_\_\_\_\_, folio \_\_\_\_\_, hereby join in the execution of this Deed of Easement together with (insert name of Lender), Beneficiary named in said Deed of Trust for the sole purpose of agreeing to subordinate and do hereby subordinate to this Deed of Easement the Deed of Trust Lien from Grantor.

OR

Mortgage

(Insert name of lender) 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 to this Deed of Easement the mortgage lien from Grantor dated \_\_\_\_\_ and recorded among the aforesaid Land Records in Liber No. \_\_\_\_\_, folio \_\_\_\_\_.

[Signature pages and notary blocks will follow.]

\* The choice for the family lot or unrestricted lot option must be made at time of easement application. Lot waiver may be elected at time of Option Contract.