MEMORANDUM

TO: The Prince George’s County Planning Board

FROM: Adrian R. Gardner, General Counsel
Carol S. Rubin, Associate General Counsel

RE: Historic Agricultural Resource Preservation Program (HAARPP): Purchase of Development Rights in Prince George’s County

Purpose. This memorandum is to recommend that the Planning Board:

1. Adopt Regulations for implementation of the “Historic Agricultural Resource Preservation Program” program or “HARPP,” which includes both the HARPP Purchase Contract and the HARPP Easement in forms approved by the General Counsel, and
2. Designate the Prince George’s County Soil Conservation District as the Program Administrator.

Background. As you may recall, the General Plan adopted in 2002 establishes protecting the rural tier from sprawl and intense development as one of several important policy goals for the regulation of land use in the County. The County Council has recently launched a series of legislative initiatives designed to protect the Rural Tier, including its enactment of CB-24-2007 (the “PDR Law”).

PDRs in a Nutshell. Generally speaking, a PDR program involves a government payment made to the owner of private property in exchange for a covenant or easement that legally restricts the future development potential of that property. For example, the government might pay some amount to a property owner who is entitled under the zoning ordinance to create a dozen buildable lots and the owner would, in turn, voluntarily give up the right to build those structures. The transaction is then recorded among the land records to facilitate enforcement of the restriction by giving public notice that it exists.
The Historic Agricultural Resource Preservation Program. The "Historic Agricultural Resource Preservation Program" program or "HARPP" will be a program out of the Prince George's County side of the Maryland-National Capital Park and Planning Commission to preserve agricultural areas located within the Rural Tier by making a payment to the owner of private property in exchange for an Historic Agricultural Resource Preservation Easement. The Easement will legally restrict the future development potential of that property by limiting the uses of the property to agricultural and commercial uses related to agriculture. HARPP will be operated in Prince George's County under your statutory authority under Article 28 at § 5-306 which provides, in relevant part, as follows:

The Board shall expend the amounts in the [Prince George's County Historic Property] Fund to provide grants to nonprofit organizations or foundations, and, in addition, in Prince George's County to political subdivisions, or individuals for the purpose of acquiring, preserving, restoring, or rehabilitating historic properties. The grant recipient shall convey a perpetual preservation easement to the Board at the time the grant is awarded.

As you can see, the Planning Board will implement a PDR program to preserve agricultural areas located within the Rural Tier. Based in part on the assessment by our historic resource professionals that agricultural areas and activities are vital elements for the history of Prince George's County and worthy of protection.

Enclosed are drafts of the proposed Regulations for implementation of the Historic Agricultural Resource Preservation Program, which includes both the HARPP Purchase Contract and the HARPP Easement in forms approved by the General Counsel to be used in the implementation of the program.

We invite public comment on the proposed Regulations, Purchase Contract and Easement in advance of the public hearing to be held before you on January 10, 2008. Written comments should be directed to Carol S. Rubin either by fax at 301-454-1670 or by email to carol.rubin@mnepc.org, with copies to Frances Guertin at 301-952-5074 or by email to frances.guertin@mnepc.org.

"Historic property" means a district, site, building, structure, or object significant in the history, upland and underwater archaeology, architecture, engineering, and culture of the State, including remains related to a district, site, building, structure, or object. Art. 28 at § 5-301(d).
1. Establishement of Program. The Historic Agricultural Resource Preservation Program ("HARPP") was established pursuant to CB-24-2007: to implement the policies of the Prince George's County General Plan and the Green Infrastructure Plan relating to the Rural Tier; preserve, protect and enhance properties that provide historic agricultural character, culture and practices; encourage others to preserve, protect and enhance properties that provide historic agricultural character, culture and practices; promote interest in and the study of historic properties and properties that provide historic agricultural character, culture and practices; and maintain historic rural character and way of life through the limitation of non-agricultural uses and the preservation of scenic viewsheds, vistas and related natural resources.

2. Scope of Regulations. These regulations shall apply to the acquisition by the Maryland-National Capital Park and Planning Commission ("MNCPPC") of historic agricultural resource preservation easements pursuant to the HARPP.

3. Eligibility. A parcel must meet the eligibility criteria set forth in Section 29-131 of the County Code. Additionally, no property shall be eligible for participation in the HARPP if it is already subject to a conservation easement pursuant to any County, State or Federal program which extinguished or transferred the development rights or permitted increased density on another property as a result of forest, woodland or open space mitigation. Parcels can be combined to meet the basic eligibility criteria, provided that an easement is recorded for each parcel enrolled, and that the potential for lot creation on the combined parcels is reduced in accordance with these regulations.

4. Applications. Applications for the Program shall be accepted and approved by the Prince George's County Planning Board or its designee on a rolling basis. The application materials to be provided to a property owner(s) shall include the application, a form Historic Agricultural Resource Preservation Easement Purchase Contract.

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("Purchase Contract"), a form Historic Agricultural Resource Preservation Easement
("Easement") and information about the HARPP. The application form shall require at a
minimum (1) the names of all of the owners of the parcel or parcels to be encumbered by
the Easement ("Parcel"); (2) the address of each owner; (3) the acreage of the Parcel; (4)
the tax identification number; (5) the zoning classification for the Parcel; (6) a list of all
of the encumbrances on the Parcel including the contact information for the holder of
any lien judgment, mortgage or deed of trust; (7) disclosure of any easements currently
encumbering the Parcel, including but not limited to, forest conservation, woodland
mitigation or conservation of any kind or description; and (8) a copy of the current deed.
The property owner(s) must sign and submit a "Lot Creation Disclaimer Form" at the
time of application. The Lot Creation Disclaimer Form will set forth with particularity
the remaining potential for lot creation on the Parcel.

5. Evaluation of Application by Program Administrator. The Planning Board shall
designate a Program Administrator who shall administer the daily activities of the
Program and serve as the central clearinghouse for all HARPP-related activities. The
Program Administrator shall promote the Program by providing educational materials to
the public, and if necessary, conduct informational meetings, pursue both public and
private resources to fund the Program, and maximize private participation. The Program
Administrator shall evaluate each application received within thirty (30) days to
determine whether the application is complete and whether the Parcel satisfies the
eligibility criteria set forth in Section 29-131 of the County Code. If the application is
incomplete, the Program Administrator shall notify the owner(s) in writing of the
information required to complete the application. The Program Administrator shall
provide a written recommendation on each application to the Planning Board. The
Program Administrator's recommendation shall at a minimum include a brief narrative
on the development potential of the Parcel, the proximity to other preserved properties,
the size of the Parcel, the number of home sites to remain on the Parcel after the
easement acquisition and ranking for the Parcel, its unique agricultural resources and
how it contributes to the historic agricultural character, culture and practices of the Rural
Tier, and what portions of the Parcel may not be appropriate for woodland conservation.
areas. The Program Administrator shall refer the application to the Historic Preservation Commission for its recommendation with respect to the Parcel’s unique agricultural resources and how it contributes to the historic agricultural character, culture and practices of the Rural Tier. The Program Administrator shall include in its written recommendation the recommendation of the Historic Preservation Commission.

6. **Evaluation and Ranking by the Planning Board.** On or before October 31st of each year, the Planning Board shall consider the applications and corresponding recommendations from the Program Administrator and the Historic Preservation Commission for that funding cycle. Based on those recommendations, the Planning Board shall determine the parcels on which offers to purchase Easements shall be made.

7. **Offers to Purchase Easements.** The Program Administrator shall send an offer to the owner(s) of each Parcel, based upon the value of the Easement as authorized by the Planning Board. Each offer letter shall set forth the amount of the offer, the time within which the offer must be accepted and describe with particularity the steps necessary to sell the conservation easement to the MNCPPC.

A. **Survey.** If the Program Administrator determines that a survey is necessary to verify the acreage and/or boundaries of the Property, MNCPPC shall pay the expense of such survey from funds specifically appropriated for the HARPP program.

8. **Supplement to Maryland Agricultural Land Preservation Foundation program (MALPF).** In the event that an offer is made under the MALPF program to purchase an easement on land in the County, which is less than the per acre price authorized to be paid pursuant to this Program, the Board may, upon recommendation of the Program Administrator and the Secretary-Treasurer, approve the payment to the owner(s) of the difference between the per acre MALPF offer and the HARPP price. The payment shall be paid to the owner(s) at the settlement of the MALPF easement as an incentive for participating in the State program. The owner(s) must execute a HARPP Easement for the benefit of MNCPPC, which is junior in right and priority to the MALPF easement.
9. **Right to Re-offer.** The Program Administrator, at its discretion, may reallocate funds from offers not accepted by owner(s) in the time or manner required in the offer letter to other Parcels that have been ranked eligible and approved by the Planning Board; provided that such offer in succession must be made according to the existing rank order and that, in the judgment of the Program Administrator, no intervening change in the condition of the alternative Parcel has occurred to materially affect its ranking.

10. **Ranking.** In order to effectuate the purposes of the HARPP, Parcels for which a HARPP Easement application has been received shall be ranked in accordance with the criteria and point values assigned as provided below. The Program Administrator shall make its recommendation to the Planning Board for a Parcel's inclusion in the Program based upon these rankings.

   A. **Preservation of Historical, Natural, Cultural and Scenic Resources.**
      1. The Parcel has historic agricultural, rural and natural qualities that are significant in the history, upland archaeology, architecture, engineering or culture of the County and/or State. 15 points
      2. The Parcel is a registered historical site or contains an object, building, structure or archaeology site significant in the history, upland and underwater archaeology, architecture, engineering, and culture of the County and/or State. 7 points
      3. The Parcel is in Chesapeake Bay critical area (for every twenty (20) Acres in the critical area) 5 points
      4. The Parcel adjoins a Maryland Scenic Byway. 10 points
      5. The Parcel is adjacent to a County road. 5 points

   B. **Historical Open-Space and Agricultural Resources.**
      1. The Parcel adjoins a Parcel permanently protected by a conservation easement, a national, state or local park. 15 points

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2. The Parcel is in the immediate vicinity of a property permanently protected by a conservation easement, a national, state or local park (within 1 mile). 7 points

3. The Parcel is a working family farm (including forestry), being defined as at least one member of the owner/seller’s family’s principal occupation and income (more than half) is farming. 5 points

4. The Parcel consists of forty (40) tillable acres or more. 5 points

5. The Parcel contains capability class I, II, III and IV for agricultural lands or ordination symbol 1 or 2 for forest land, based on federal natural resources conservation service classifications found in the United States Department of Agricultural Soil Survey of Prince George’s County, Maryland:

   5 points for each ten (10) acres containing such soils up to a maximum of twenty (20) points.

C. Size of Parcel.
   1. Parcel size is less than 35 acres. 0 points
   2. Parcel size is 35 acres or larger but less than 50 acres. 5 points
   3. Parcel size is 50 acres or larger but less than 100 acres. 10 points
   4. Parcel size is 100 acres or larger. 15 points

D. Carry-over Preference.
   1. Ranked Parcel for which insufficient funding was available during the funding cycle in which it was first eligible. 10 points
   2. Ranked Parcel for which insufficient funding was available during the second funding cycle from which it was first eligible. 20 points
   3. Ranked Parcel for which insufficient funding was available during the third funding cycle from which it was first eligible. 30 points
E. Development Threat

1. The Parcel is threatened with forced sale. 5 points
2. The Parcel is threatened with other hardship. 5 points

11. Historic Agricultural Resource Preservation Program Easement. Title to the Easement shall be good and marketable and shall be delivered free of all liens, encumbrances, judgments and other matters of title that could render the covenants in the Easement unenforceable. If the Property is encumbered by a mortgage or deed of trust, the property owner(s) shall be responsible for securing a subordination of such deed of trust of mortgage to the terms and conditions of the Easement. The owner(s) must execute an Easement in the form approved by the Planning Board’s General Counsel at the settlement of the purchase of the Easement. The Easement shall be recorded within fifteen (15) days of settlement. All expenses for examination of title and conveyancing shall be paid by MNCPPC. The Easement shall at a minimum include the following provisions:

A. Agricultural Use of the Property. The owner(s) shall limit the use of the Parcel to agricultural use and commercial uses related to agriculture. Within one (1) year of the date of the Easement, the owner(s) shall have a Soil Conservation and Water Quality Plan (the “Soil and Water Plan”) prepared and approved by the Prince George’s County Soil Conservation District which lists soil erosion and water quality problems on the land and shall include a schedule of implementation to address the problems identified. Revisions to the Soil and Water Plan, including the schedule of implementation, may be made by the owners(s) and the local Soil Conservation District as land use practices or management changes, however, the owner(s) shall be in full compliance with the Soil and Water Plan within six (6) years of the date of the Easement. Exceptions may be considered by the Planning Board on a case by case basis. The owner(s) shall provide a copy of the Soil and Water Plan and any revisions to the Soil and Water Plan to the Program Administrator.
B. **Restriction on further subdivision.** The Parcel shall be restricted from further subdivision to maintain an average lot size of fifty (50) acres except in the case of an interfamily conveyance as provided in Section 12.

C. **No buy-back option.** The owner(s) shall not have the option to reacquire any development rights extinguished by the HARPP Basement. However, this restriction does not limit the rights of the property owner(s) as to the owner(s) fee simple interest in the Property, and nothing herein shall be construed as a restraint on alienation.

D. **No Further Encumbrances.** The owner(s) shall not encumber or place any liens on the Parcel that further limits the use of the Property without the prior approval of the Planning Board; provided, however, that the Planning Board shall not approve any subsequent easement or other further encumbrance of a Parcel for a woodland, forest or other public conservation program unless the owner(s) has procured the prior written approval of such encumbrance by the Prince George’s County Soil Conservation District. This provision is not intended to limit the right of the owner(s) to refinance or mortgage the Property without such approval.

E. **Term of the Basement.** The Basement shall run with the land and bind successors in title in perpetuity.

F. **Other Restrictions.** The Parcel shall be subject to the standard restrictions customary for conservation easement for the uses and activities to be permitted on the property and shall include, but not be limited to, restrictions (i) against accumulation of trash and junk; (ii) grading, blasting, mining or earth removal; (iii) the number of residential buildings to be permitted; (iv) commercial activities allowed; and (v) monitoring of the easement.
12. Easement Valuation. For the first year of this Program, an amount equal to Nine Thousand Nine Hundred Dollars for each acre encumbered by the Easement shall be paid to the owner(s) at the settlement of the acquisition of the Easement. Thereafter, the Planning Board shall determine at least once annually the dollar value per acre to be paid for HARPP Easements being purchased. The Board shall base its valuation on the information and recommendations provided by the Program Administrator, with input from the Secretary-Treasurer and other Commission staff, as appropriate. The Program Administrator, at a minimum, shall provide the Board with the following information:

A. The amounts paid along with the formulas and valuation methodology used by the other Maryland counties having purchase of development rights (PDR's) and/or transfer development rights (TDR's) programs for the purchase of easements during the prior funding cycle.

B. The amounts paid by the Maryland Agricultural Land Preservation Foundation for the acquisition of development rights during the prior funding cycle.

C. The average price paid for PDR's and for TDR's based on the foregoing documentation. The Program Administrator shall have the discretion to exclude from the calculation of the average price paid, payments made by other counties, which have the effect of "skewing" the average because they are either too high or too low in relation to the amounts paid by other counties.

D. A recommendation as to the value paid per acre.

13. Lot Creation. The owner(s) of record may, at any time after the Basement sale, request a two-acre or less lot exclusion for the limited purpose of residential use by the owner(s) or their children, provided however, nothing contained herein is intended to increase the density that would otherwise be allowed on the Property prior to the grant of the Basement. The owner shall be required to repay MNCPPC for each acre removed.
from the Easement in connection with the creation of a lot under this Section. The repayment amount shall be equal to the amount paid per acre by MNCPPC plus interest at the statutory rate for money judgments. Notwithstanding the foregoing, the total number of residential structures on a Parcel shall not exceed one residential structure per 25 acres. Applications for lot creation must be submitted to the Planning Board with a copy to the Planning Director to confirm that the lot meets the minimum criteria set forth in this Section. The rights created by this Section 12 are not assignable, and shall only apply to the initial grantor of the Easement.

14. The Program Administrator shall monitor HARPP Easements and inspect properties encumbered by such Easements to assure compliance with the terms and conditions of each Easement and on behalf of the MNCPPC seek appropriate remedies in the event of noncompliance.

15. The Planning Board shall periodically review the Program regulations and procedures, based upon reports and recommendations of the Program Administrator for changes needed to maintain the Program’s consistency with the Prince George’s County General Plan and the Green Infrastructure Plan relating to the Rural Tier.
HISTORIC AGRICULTURAL RESOURCE PRESERVATION PROGRAM EASEMENT PURCHASE CONTRACT

THIS HISTORIC AGRICULTURAL RESOURCE PRESERVATION PROGRAM EASEMENT PURCHASE CONTRACT (hereinafter the “Contract”) made this ___ day of ____________, 20__, by and between (insert Landowner’s Name and address) (hereinafter the “Seller”) The Maryland-National Capital Park and Planning Commission, 6611 Kenilworth Avenue, Riverdale, Maryland 20737 (hereinafter the “Purchaser”).

WHEREAS, the Seller is the owner of all that piece or parcel of property located in the ___ Election District, consisting of ___ acres more or less in tax account number ___ and described with particularity on Exhibit A (the “Property”), and

WHEREAS, the Purchaser administers an easement program dedicated to the preservation of historical agricultural resources in the Rural Tier pursuant to Prince George’s County Code (2003 Edition; 2006 Supplement), as amended, Subtitle 29; Division 9 and the Historic Agricultural Resource Preservation Program Regulations adopted ___ by the Prince George’s County Planning Board of the Maryland-National Capital Park and Planning Commission; and

WHEREAS, the Seller desires to sell an historic agricultural resource preservation program easement (“HARPP Easement” or “Easement”) to the Purchaser that will restrict the development of the Property and limit the use of the Property to agricultural uses and commercial uses related to agriculture.

In consideration of the mutual promises contained herein, the forgoing recitals which are incorporated as operative provisions of this Contract, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Purchasers agree to purchase and Seller agrees to sell a HARPP Easement subject to the following terms and conditions:

1. PURCHASE PRICE. The purchase price for said HARPP Easement shall be ___ Dollars ($___,00) based upon ___ Dollars ($___,00) per acre, payable in cash or certified funds at settlement pursuant to the terms of this Contract. It is understood and agreed the purchase price of the Property is to be adjusted upward or downward at the rate of ___ per acre for the actual acreage encumbered by the easement.

2. ADJUSTMENTS AND ASSESSMENTS. The Seller shall continue to pay the taxes, general and special subsequent to the easement sale to the Purchaser.

3. COSTS. The Purchaser shall pay all costs in connection with settlement except as otherwise provided herein. All transfer and recordation taxes payable in connection with the sale of the HARPP Easement shall be paid by Purchaser. In the event that any agricultural land transfer tax is assessed against the Property in connection with
this sale, the Seller shall pay such transfer tax or assessment. This provision shall
survive the execution and delivery of the Easement hereunder and shall not be merged
into the settlement hereof.

4. TITLE. Title to said HARPP Easement shall be free from all liens, encumbrances,
judgments and other matters affecting title. Title to the Property shall be good and
marketable of record and in fact and shall not be subject to anything that could render
the covenants in said Easement unenforceable. The expense of curing any issues of
title that could render the covenants in said Easement unenforceable shall be paid by
the Seller(s). In the event Seller(s) cannot deliver the Historic Agricultural Resource
Preservation Program Easement free of all such liens and encumbrances at the time of
settlement, Seller shall, at Purchaser's election have thirty (30) days in which to cure
any defect and deliver title satisfactory to Purchaser. If Seller either is unable or
unwilling to cure such defects in title, either party may cancel this Contract upon
written notice to the other. This provision shall survive the execution and delivery of
the Easement hereunder and shall not be merged into the settlement hereof.

ADD FOLLOWING LANGUAGE IF THE PROPERTY IS SUBJECT TO A
MORTGAGE OR DEED OF TRUST:

Lender Name, Contact and Address (Lender) holds a Deed of Trust/Mortgage lien
on the Property. Seller agrees that such lien shall be subordinate to this Easement,
and that Seller shall be responsible for securing such subordination from Lender.
Further, Seller agrees to comply with Lender's conditions of such subordination,
including, if required by Lender, assignment to Lender of all or a portion of the
proceeds from the sale of the Easement.

5. EASEMENT. The parties agree that the Easement conveyed shall be in substantially
the form attached hereto as Exhibit B and incorporated herein, as required pursuant to
Subtitle 29, Division 9, of the Prince George's County Code (2003 Edition, 2006
Supplement), as amended, and the Historic Agricultural Resource Preservation
Program Regulations adopted [DATE] by the Prince George's County Planning
Board of the Maryland-National Capital Park and Planning Commission.

6. SURVEY. If Purchaser determines that a survey is necessary to verify the acreage
and/or boundaries of the Property, Seller(s) shall provide access to Purchaser to
perform such survey; provided however, Purchaser shall pay the expense of such
survey. If the Purchaser does not elect to get a survey then the metes and bounds
description from the current owner(s) deed shall be used.

7. SETTLEMENT. Settlement shall occur as soon as possible, but not later than six (6)
months from the date of this Contract, unless a survey is requested by the Purchaser or
defect in title is discovered prior to such date. In that event, the last date for
settlement shall be extended by the number of days it takes Purchaser to obtain a
survey or for Seller to cure any defects in title. Settlement shall take place at the law
offices of the settlement agent selected by the Purchaser at a date and time mutually
convenient to the parties. The Easement purchased pursuant to this Contract shall be
recorded among the Land Records of Prince George's County, Maryland within 15
days of settlement. If the Settlement contemplated by this Contract is not
consummated within the 18 months from the date of this Contract, either party shall
have the right to terminate the Contract, and upon such termination the Contract shall become null and void and have no further force and effect.

8. COMMISSIONS. The parties acknowledge and agree that no broker’s commissions or finder’s fees are due and payable in connection with the Basement sale contemplated by this Contract.

9. ENVIRONMENTAL REPRESENTATIONS. The Seller represents that to the best of his/her/its reasonable knowledge, information and belief there has been no environmental damage on the Property from any past operations and past storage of any hazardous substances or wastes.

10. FINAL AGREEMENT. This Contract contains the final and entire agreement between the parties hereto, and neither they nor their agents shall be bound by any terms, conditions, or representations not expressly contained herein.

11. SUCCESSORS/ASSIGNS. The parties agree that this Contract shall be binding upon the parties hereto and their respective heirs, representatives, successors and assigns. Nothing herein shall be construed as a restraint on alienation.

12. NOTICES. It is hereby further understood and agreed that all notices to be given under this Contract will be given by U.S. certified mail, return receipt requested, or by reputable overnight delivery service as follows:

To the Seller(s):
(Insert Address(es))

To the Purchaser:
Prince George’s County Department of Parks and Recreation
Land Acquisition Specialist
6600 Kenilworth Avenue
Riverdale, Maryland 20737

Notices shall be deemed received on the date of actual receipt in the case of overnight delivery, or three (3) business days after deposit in the U.S. mail.

13. GOVERNING LAW AND SEVERABILITY. This Contract shall be governed by and construed in accordance with the laws of the State of Maryland. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent of such invalidating, illegality or unenforceability without invalidating the remainder of this Contract which shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed and delivered, the day and year first written above.

SELLER

________________________
Landowner’s name

________________________
Landowner’s Name

ATTEST: ____________________________

PURCHASER

By: ____________________________
Maryland-National Capital Park and Planning Commission
NAME
TITLE
Exhibit A

Legal Description of Property

Seller's Name

Part of that certain tract or parcel of land situate, lying and being in Election District ___,
Prince George's County, Maryland and being more particularly described in the land
records of Prince George's County as Liber: ______ Folio: _____ referring to _____
acres, more or less.

Property Tax Account No.
Exhibit B
Form of
Historic Agricultural Resource Preservation Program Easement
Exhibit B
HISTORIC AGRICULTURAL RESOURCE
PRESERVATION PROGRAM DEED OF EASEMENT

THIS HISTORIC AGRICULTURAL RESOURCE PRESERVATION PROGRAM DEED OF EASEMENT (hereinafter the “Easement”) is hereby granted and conveyed on this ______ day of _______ 20____ by [Name and Address of Grantors] (“Grantor”) to the Prince George’s Planning Board of The Maryland-National Capital Park and Planning Commission, 6611 Kenilworth Avenue, Riverdale, Maryland 20737, a body corporate and politic (“Grantee”) for the purpose of restricting, in perpetuity, development on the subject property in order to protect historic viewsheds, vistas, rural culture and character, and preserve the agricultural character of the subject property; pursuant to Prince George’s County Code (2003 Edition, 2006 Supplement), as amended, Subtitle 29. The [Name and Address of Subordinating Lender(s)] (“Mortgagee”), which is the present owner and holder of the Deed of Trust secured by the Grantor’s subject property, joins in this Easement to subordinate its Deed of Trust to the Easement granted herein.

WITNESSETH:

WHEREAS, the Grantor is the sole owner in fee simple of all that tract or parcel of land located in the _______ Election District of Prince George’s County and known as [Insert Street Address] (hereinafter “Property”), and

WHEREAS, the Grantee administers an easement program dedicated to the preservation of historical agricultural resources in the Rural Tier of Prince George’s County pursuant to Prince George’s County Code (2003 Edition, 2006 Supplement), as amended, Subtitle 29, Division 9 and the Historic Agricultural Resource Preservation Program Regulations adopted January 31, 2008 by the Prince George’s County Planning Board of The Maryland-National Capital Park and Planning Commission (“Planning Commission”); and

WHEREAS, the Grantor desires to sell an historic agricultural resource preservation easement to the Grantee to restrict the development of the Property and to limit the use of the property, to agricultural uses and commercial uses related to agriculture; and

WHEREAS, all holders of liens superior to this Easement have agreed to release or subordinate their interests in the Property to the operation and effect of this Easement, and to refrain forever from any action that would be inconsistent with its preservation purposes; and

WHEREAS, the parties desire to protect in perpetuity the agricultural character and resources of the Property and to set forth the rights and obligations of in relation thereto; and

WHEREAS, it is a condition precedent to this Easement that the Deed(s) of Trust securing the Property shall unconditionally be and remain at all times subordinated to the Easement; and
WHEREAS, [Subordinating Lender(s)] joins in the execution of this Deed of Easement to subordinate its interest in the Property under the Deed of Trust recorded in Liber [____], at folio [____] to the operation and effect of this Easement; and

WITNESSETH: that in consideration of the sum of $[____] , receipt of which is hereby acknowledged, and which the Grantor certifies under the penalties of perjury as the actual consideration paid or to be paid, including the amount of any mortgage or deed of trust outstanding, the said Grantor does grant and convey unto the Grantee, their successors and assigns, an easement in gross to restrict the development and use of the Property in perpetuity.

1. Property. The Property encumbered by this Easement is located in the [____] Election District of Prince George's County, Maryland and known as [Insert Street Address], Parcel [____], Tax Map [____], Grid [____] and described with particularity in Exhibit A, attached hereto and incorporated by reference.

   Tax Account Number(s): [____] [____]

2. Permitted Uses. Grantor will limit the use of the Property to agricultural uses and commercial uses related to agriculture as hereinafter provided.

3. Prohibited Acts. Grantor will not use the Property for any industrial or non-agricultural uses. Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the restrictions enumerated herein or for any use that temporarily or permanently impairs or interferes with the Property’s agricultural value, character, use or utility, provided however, unless otherwise specified herein, nothing in this Easement shall be construed to require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Grantor understands that nothing in this Easement relieves it of any obligation or restriction on the use of the Property imposed by law or regulation.

   a. No rights-of-way, easements, oil, gas or mineral leases, or other servitude may be conveyed, or permitted to be established on the Property for any commercial, industrial or residential use, unless for residential uses appurtenant to the Property or otherwise permitted under the terms of this instrument.

   b. Grantor shall not have the option to reacquire any right to develop the property extinguished by operation of this Easement except as specifically provided by this instrument.

   c. Grantor shall not encumber or place any liens on the Property that further limits the use of the Property without the prior approval of the Purchaser; provided, however, that the Purchaser shall not approve any subsequent easement or other further encumbrance of the Property for a woodland, forest or other public conservation program unless the owner(s) has procured the
prior written approval of such encumbrance by the Prince George's County Soil Conservation District. The Purchaser may refuse to consent to the placement of woodland conservation easements on such portions of the Property that are prime agricultural land intended to be preserved to maintain the agricultural character of the Property. This provision is not intended to limit the right of the owner(s) to refinance or mortgage the Property without such approval.

4. **Subdivision of Property.** Grantor relinquishes the right to subdivide the Property into less than 50-acre parcels. However, such subdivision will not create, and Grantor does not retain any rights of development on any such parcels, except as provided below, which rights hereunder are not assignable, and only apply to the initial Grantor of this Easement.

a. The Grantor may request, subject to approval of the Grantee, to retain the right to a two-acre or less lot exclusion from the Easement for the limited purpose of a dwelling for use by the Grantor or Grantor's lineal descendants, provided however, nothing in this Easement is intended to increase the density that would otherwise be allowed on the Property. Such request will include a metes and bounds description and drawing of the land delineating the location of the area to be excluded and affected by both the dwelling and access to that dwelling, prepared by a surveyor licensed by the State of Maryland, in order to gauge the impact that the dwelling and any access to that dwelling will have on the agricultural operations of the Property. The Grantor will be required to repay the Purchaser for each acre, or fraction thereof, released from the Easement in connection with the creation of a lot under this Section. The repayment amount will be equal to the amount paid per acre by the Grantee plus interest at the statutory rate for money judgments. Notwithstanding the forgoing, the total number of dwellings on a parcel shall not exceed one dwelling per 25 acres.

b. If the Property does not have existing dwellings at the time this Easement is recorded, the Grantor shall be entitled to one (1) development right that shall run with the Property. The development right shall allow the construction of a residential structure on the Property provided that no other residential structures exist on the Property. The development right shall be in addition to intra-family transfer rights specified in Paragraph 4(a) above. The development right shall convey to subsequent owners of the Property if it has not been exercised by the Grantor. Once the development right is exercised, the affected area of the Property shall not be subdivided from the Property. The development right cannot be sold or transferred to any other property. Notwithstanding anything in this Section 4(b), nothing in this Section or Easement is intended to increase the density that would otherwise be allowed on the Property.
5. **Construction of Buildings and Other Structures.** The construction or reconstruction of any building or other structure, except those existing on the date of this Easement or previously approved by the Grantee, is permitted only in accordance with this Paragraph 5 and in accordance with State and local laws and regulations.

   a. **Fences.** Fences for, or related to, agricultural uses and commercial uses related to agriculture, may be built anywhere on the Property without limitation.

   b. **Agricultural Buildings.** Buildings and other structures to be used solely for agricultural uses and commercial uses related to agriculture, including the sale of farm products, may be built or relocated anywhere on the Property without the permission of the Grantee.

   c. **Agricultural Ponds.** Construction of agricultural ponds shall be permitted.

   d. **Remodeling.** Remodeling of both residential and agricultural improvements existing at the time of the Easement shall be permitted.

6. **Dumping Material.** The Grantor will not dump ashes, sawdust, bark, trash, rubbish or any other material on the Property; however, the Grantor reserves the right to dump any material which is generated on the Property during regular agricultural operations or is used to support such agricultural operations, in accordance with State and local laws and regulations.

7. **Mining.** The mining or extraction of soil, sand, gravel, rock, fossil fuels or any other mineral substance, using any method that disturbs the surface of the land, is prohibited without the advance, written permission of the Grantee. The Grantee will give such permission within a reasonable time, unless it determines that the proposed mining or extraction will diminish or impair the agricultural character of the Property. However, nothing in this Easement will be interpreted to prevent Grantor or any third party holding subsurface mineral rights to remove such minerals, including coal, oil and gas, by methods that do not disturb the surface of the land, and to construct facilities necessary for the removal of such minerals, provided however, any third party holding subsurface mineral rights will take no action or otherwise cause the agricultural character of the Property to be diminished.

8. **Rights Retained by Grantor.** Nothing in this Easement shall be construed as a restraint or alienation. Further, although this easement is in gross and will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. The Grantor retains the exclusive right to such access and use of the Property, subject to the terms hereof.

   a. Further, the Grantor retains the right to use the Property for any agricultural uses or commercial uses related to agriculture, 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 Property any agricultural operation, including any operation directly relating to the processing, storage, or sale of farm, agricultural or woodland products produced on the Property.

b. Commercial timber harvesting shall be in accord with a forest management plan approved by the Maryland Department of Natural Resources.

c. The Grantor shall retain the right to do forest conservation on the Property in accordance with the woodland conservation policies of Prince George's County, Maryland and the State of Maryland (see generally Section 25-117 of the Prince George's County Code, Title 5, Subtitle 16 of the Natural Resources Article of the Annotated Code of Maryland, and Title 08, Subtitle 19, of the Code of Maryland Regulations.

9. Soil Conservation and Water Quality Plan. Within one (1) year of the date of this Easement, Grantor shall have a Soil Conservation and Water Quality Plan (the "Soil and Water Plan") prepared and approved by the local Soil Conservation District which lists soil erosion and water quality problems on the Property and shall include a schedule of implementation to address the problems identified. Revisions to the Soil and Water Plan, including the schedule of implementation, may be made by Grantor and the local Soil Conservation District as land use practices or management changes, however, Grantor shall be in full compliance with the Soil and Water Plan within six (6) years of the date of this Easement. Exceptions may be considered by Grantee on a case by case basis. Grantor shall provide a copy of the Soil and Water Plan and any revisions to the Soil and Water Plan to Grantee.

10. Maintenance. Other than as may be specifically provided herein, this Easement is not intended to impose any legal duty or other responsibility on the Grantee. The Grantor, as the owner of the Property shall be solely responsible for any maintenance of the current agricultural practices, residential and, or agricultural improvements now existing, or as may be constructed in the future, if any.

11. Inspection and Enforcement. Grantor authorizes the Grantee, upon prior written notice to Grantor at the address listed below, to enter upon the Property once each year to inspect the Property for compliance with the terms and conditions of this Easement. Grantor further authorizes the Grantee to enforce the covenants contained in this Easement in any manner permitted by law or equity, including but not limited to, obtaining injunctive relief requiring the Grantor to cease and desist activity in violation of the terms of this Easement and to return the Property to its condition prior to any violation. Except when an imminent violation could irreversibly diminish or impair the agricultural production capability of the Property, the Grantee will give the Grantor written notice of the violation and thirty (30) days to correct it, before filing any legal action. In the event legal action is pursued, each party shall be responsible for payment of their own legal fees.

13. Eminent Domain. If this Easement is terminated in gross through the exercise of eminent domain by governmental authority, the Grantee will be entitled to compensation therefore in an amount equal to the present market value of this Easement at the time of condemnation.

14. Interpretation. This Easement will be interpreted under the laws of the State of Maryland and Prince George's County, Maryland in a manner designed to resolve any ambiguities and questions of the validity of specific provisions to give maximum effect to its preservation purpose. If the Grantor has any doubt concerning the Easement, covenants, conditions, limitations or restrictions herein contained with respect to any particular use of the said Property, they may submit a written request to the Grantee for consideration and approval of such use.

15. Perpetual Duration. This Easement will be a servitude running with the land in perpetuity. Every provision of this Easement that applies to the Grantor or Grantee, unless specifically stated otherwise, will also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors in interest.

16. Assignment. Grantee may transfer or assign this Easement to another entity with the demonstrated ability to monitor easements of this nature and subject to applicable law.

17. Notices. It is hereby further understood and agreed that all notices to be given under this Easement will be given by U.S. certified mail, return receipt requested, or by reputable overnight delivery service as follows:

To the Seller:
[Insert Seller's Mailing Address]

To the Purchaser:
Prince George's County Department of Parks and Recreation
M-NCCPC
Land Acquisition Specialist
6600 Kenilworth Avenue
Riverdale, Maryland 20737

Notice shall be deemed received on the date of actual receipt in the case of overnight delivery, or three (3) business days after deposit in the U.S. mail.

18. **Severability.** If any portion of this Easement is declared unlawful or invalid, the remainder of the Easement will remain in full force and effect.

19. **Recitals.** The recitals of this Easement are incorporated herein by reference as though fully set out in the body of this Easement.

In Witness whereof, the Grantor intending to legally bind itself has set its hands and seals on the date first written above.

Witness: ______________________

Witness: ______________________

Witness: ______________________

GRANTOR

Landowner's Name, Grantor

GRANTOR

Landowner's Name, Grantor

GRANTOR

Landowner's Name, Grantor

SUBORDINATOR

By: ______________________

Its: ______________________
COUNTY OF PRINCE GEORGE'S
STATE OF MARYLAND, SS:

I hereby certify that on this day of 20__, before me, a Notary
Public of the State and County aforesaid, personally appeared __________ known to
me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing Historic
Agricultural Resource Preservation Program Easement, and acknowledged that all material
statements of fact in the foregoing Historic Agricultural Resource Preservation Program
Easement are true to the best of his/her knowledge and belief, and that the execution of said
Easement is his/her free act.

__________________________
Notary Public
My commission expires:

STATE OF __________ SS:

COUNTY OF __________ SS:

I hereby certify that on this day of 20__, before me, a Notary
Public of the State and County aforesaid, personally appeared __________ known to
me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing Historic
Agricultural Resource Preservation Program Easement, and acknowledged that all material
statements of fact in the foregoing Historic Agricultural Resource Preservation Program
Easement are true to the best of his/her knowledge and belief, and that the execution of said
Easement is his/her free act.

__________________________
Notary Public
My commission expires:

I HEREBY CERTIFY that this deed was prepared by or under the supervision of the
undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

__________________________
AFTER RECORDATION, PLEASE RETURN TO:

Maryland-National Capital Park and Planning Commission
Department of Parks and Recreation
6600 Kenilworth Avenue
Riverdale, Maryland 20737
Attn: Land Acquisition Supervisor
Exhibit A
Legal Description of Property
Subject to Historic Agricultural Resource Preservation Easement
Conveyed by
[Landowner's Name] (Grantor)
Tax Map ___, Grid ___, Parcel ___
____ Election District
Prince George's County, Maryland

(Insert the surveyor's descriptions)