

RESOLUTION NO. 005-22

HARFORD COUNTY, MARYLAND

RESOLUTION NO. 005-22

**Introduced by Council President Vincenti
at the request of the County Executive**

Legislative Session Day 22-001

January 4, 2022

RESOLUTION

A RESOLUTION to authorize the purchase by Harford County, Maryland (the “County”), pursuant to Article II of Chapter 60 of the Harford County Code, as amended (the “Agricultural Land Preservation Act”), of Development Rights and Family Conveyances (each as defined in the Agricultural Land Preservation Act) in approximately 49.19 acres, more or less, of agricultural land located at 3726 Smith Road, Darlington, Maryland 21034 within the County, containing approximately three (3) Development Rights and one (1) Family Conveyance, more or less, pursuant to a perpetual Development Rights Easement restricting use of such land to Agricultural Use from Frances J. McMillan, or any other owner thereof for an aggregate purchase price not to exceed \$319,748; provided however, that the actual amount of the purchase price shall be determined as provided herein pursuant to the Agricultural Land Preservation Act; authorizing the County Executive and Treasurer to make modifications to the agreement of sale under certain circumstances; providing for and determining various matters in connection therewith.

WHEREAS, the Agricultural Land Preservation Act provides that after review by the Harford County Agricultural Land Preservation Advisory Board in accordance with the County’s Easement Priority Ranking System (as such term is used in the Agricultural Land Preservation

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1 Act) and approval by the Harford County Board of Estimates, the County Council may approve
2 and provide for the acquisition of Development Rights and Family Conveyances in each
3 particular parcel of Agricultural Land and Woodland; and

4 WHEREAS, attached to this Resolution as Exhibit A is an application to sell a
5 Development Rights Easement signed by the owner(s) of the Agricultural Land that is the subject
6 of the Resolution; and

7 WHEREAS, attached to this Resolution as Exhibit B are records of The Harford County
8 Agricultural Advisory Board evaluating all applications to sell Development Right Easements to
9 the County, with each application ranked pursuant to the County's Easement Priority Ranking
10 System; and

11 WHEREAS, the County has now determined to enter into an agreement of sale with
12 Frances J. McMillan and/or any other person or entity that is or becomes the owner of all or any
13 portion of the following described land prior to execution and delivery of such agreement of sale
14 (the "Seller"), in order to acquire the Development Rights and Family Conveyance in
15 approximately 49.19 acres, more or less, of Agricultural Land located at 3726 Smith Road,
16 Darlington, Maryland 21034 within the County (the "Land"), containing approximately three (3)
17 Development Rights and one (1) Family Conveyances, more or less, for an aggregate purchase
18 price not to exceed \$319,748 (the "Maximum Purchase Price"); provided, however, that the
19 actual amount of the purchase price shall be determined in accordance with the Agricultural
20 Land Preservation Act and shall be equal to the lesser of (i) the Maximum Purchase Price or (ii)
21 \$6,500.00 multiplied by the actual number of acres in the Land, which latter amount represents
22 the least of the three amounts calculated as the purchase price on the basis of the following
23 factors: (i) the Maximum Easement Per Acre Value (as defined in the Agricultural Land

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1 Preservation Act), (ii) the Maximum Development Right Value (as defined in the Agricultural
2 Land Preservation Act) and (iii) Maximum Per Acre Value (as defined in the Agricultural Land
3 Preservation Act and also referred to therein as the “maximum per acre cap”).

4 NOW THEREFORE, BE IT RESOLVED by the County Council of Harford County,
5 Maryland:

6 Section 1. Harford County, Maryland (the “County”) shall enter into an agreement of sale
7 (the “Agreement of Sale”) with Frances J. McMillan and/or any other person or entity that is or
8 becomes the owner of all or any portion of the Land (hereinafter defined) prior to the execution
9 and delivery of the Agreement of Sale (the “Seller”) in order to acquire the Development Rights
10 and Family Conveyance on approximately 49.19 acres, more or less, of Agricultural Land
11 located at 3726 Smith Road, Darlington, Maryland 21034 within the County (the “Land”),
12 containing approximately three (3) Development Rights and one (1) Family Conveyance, more
13 or less, for an aggregate purchase price not to exceed \$319,748 (the “Maximum Purchase
14 Price”), provided, however, that the actual amount of the purchase price (the “Purchase Price”)
15 shall be determined in accordance with the Agricultural Land and Preservation Act and shall be
16 equal to the lesser of (i) the Maximum Purchase Price or (ii) \$6,500.00 multiplied by the actual
17 number of acres in the Land, which latter amount represents the least of the three amounts
18 calculated as the purchase price on the basis of the following factors: (i) the Maximum Easement
19 Per Acre Value (as defined in the Agricultural Land Preservation Act), (ii) the Maximum
20 Development Right Value (as defined in the Agricultural Land Preservation Act) and (iii)
21 Maximum Per Acre Value (as defined in the Agricultural Land Preservation Act and also
22 referred to therein as the “maximum per acre cap”). The Purchase Price shall be set forth in the
23 Agreement of Sale between the County and the Seller.

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1 Section 2. The Agreement of Sale shall be in substantially the form attached hereto as
2 Exhibit C and made a part hereof, and such form the Agreement of Sale is hereby approved as to
3 form and content. The Agreement of Sale shall be dated as of the date of its execution and
4 delivery by the County and the Seller (the “Closing Date”). The County Executive is authorized
5 to execute the Agreement of Sale and his signature shall be attested by the Director of
6 Administration. In the event that any officer whose signature shall appear on the Agreement of
7 Sale shall cease to be such officer before the delivery of the Agreement of Sale, such signature shall
8 nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in
9 office until delivery.

10 Section 3. The County Executive and the Treasurer are hereby authorized, prior to
11 execution and delivery of the Agreement of Sale, to make such changes or modifications in the form
12 of the Agreement of Sale attached hereto as Exhibit C as may be required or deemed appropriate by
13 them in order to accomplish the purpose of the transactions authorized herein; provided that such
14 changes shall be within the scope of the transactions authorized herein and the execution of the
15 Agreement of Sale by the County Executive shall be conclusive evidence of the approval by the
16 County Executive and the Treasurer of all changes or modifications in the form of the Agreement of
17 Sale and shall thereupon become binding upon the County in accordance with its terms.

18 Section 4. The County Executive, the Director of Administration, the Treasurer, the
19 County Attorney and other officials of the County are hereby authorized and empowered to do
20 all such acts and things and to execute, acknowledge, seal and deliver such documents and
21 certificates as may be necessary or appropriate to complete the purchase of the development
22 rights easement.

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1 Section 5. This Resolution shall become effective immediately upon adoption by the
2 County Council.

3 ADOPTED this _____ day of _____, 2022.

4 ATTEST:

5 _____
6 Mylia Dixon
7 Administrator, County Council
8 of Harford County, Maryland

Patrick S. Vincenti
President, County Council of
Harford County, Maryland

AS Introduced

1
2
3
4
5
6

EXHIBIT A

Application

As Introduced

BARRY GLASSMAN
HARFORD COUNTY EXECUTIVE



JENNY B. JARKOWSKI
DIRECTOR OF PLANNING & ZONING

COMMITMENT LETTER

November 10, 2021

Frances J. McMillan
3726 Smith Road
Darlington, MD 21034

RE: Placement of a Harford County Land Preservation Easement on approximately 44.72 acres of land.

Dear, Mrs. McMillan:

Harford County, Maryland (the "County") is pleased to extend to Frances J. McMillan ("you" or the "Seller"), pursuant to this commitment letter ("this Commitment" or "this Commitment Letter"), an offer to purchase all Development Rights and Family Conveyances applicable to your farm in consideration for the placement of a conservation easement (referred to as a Development Rights Easement in Chapter 60 (defined below)) (the "Deed of Easement") on your entire farm in the Land Records of the County in perpetuity (the "Transaction"). The farm consists of approximately 44.72 acres located at 3726 Smith Road Darlington, MD 21034 (the "Land"), subject to verification before the Settlement Date (as defined in paragraph 12 below) by the Survey (as defined in paragraph 4(d) below) and recorded plat. Capitalized terms used in this Commitment Letter and not defined shall have the meanings given to those terms in Chapter 60 of the Harford County Code ("Chapter 60").

In accordance with your application, the terms of payment under this offer will consist of a cash payment of 100% of the Purchase Price (defined in paragraph 1 below) made on the Settlement Date.

The County's offer described herein is subject to the following terms and conditions:

1. **Purchase Price:** The County offers to purchase, pursuant to Chapter 60, the Development Rights from the Seller for a purchase price of **\$6,500.00 dollars per acres for approximately \$290,680.00 dollars** (the "Purchase Price") based on 44.72 (approximate) acres and the purchase/surrender of 3 residential Development Rights and 1 Family Conveyance. The Purchase Price is based on the estimated acreage of

the Land and associated Development Rights and will be adjusted using the Survey-confirmed acreage. The Purchase Price is calculated using **the least of** (i) the Maximum Easement Per Acre Value, (ii) the Maximum Development Right Value and (iii) Maximum Per Acre Value (also referred to in Chapter 60 as the “maximum per acre cap”). Your Maximum Easement Per Acre Value is \$6,723.75; your Maximum Development Right Value is \$100,000 per Development Right for the first six (6) Development Rights and \$50,000 for each additional Development Right above six (6) and the **Maximum Per Acre Value is \$6,500.00**. Payment of the Purchase Price will be made pursuant to the terms of an agreement of sale as summarized above. The Seller shall not be paid for any excluded acreage.

2. Documentation: You acknowledge and agree that this Commitment Letter does not constitute the final and definitive agreement between you and the County respecting the Transaction, but that the terms of the Transaction will be governed by the final documents, as and when executed by the parties. You agree to cooperate with the County in order to conclude at the earliest practicable Settlement Date. The terms of the agreements, instruments and documents necessary or desirable to evidence the Transaction shall be subject to approval as to form and substance by the County, the County Attorney and Miles & Stockbridge P.C. (“Bond Counsel”). The County Attorney or designee, as well as Bond Counsel, shall prepare the Deed of Easement, an agreement of sale and miscellaneous documents and certificates necessary, convenient or desirable to close the Transaction in accordance with this Commitment Letter. In addition to those items specifically set forth in this Commitment Letter, you shall promptly furnish to the County, prior to the Settlement Date, any other documents or materials as the County may require in order to close the Transaction.

3. Title and Survey Requirements:
 - (a) This Commitment Letter has been issued to you as the named addressee(s) based upon the County’s current understanding that you[, and all of you, collectively,] are the owner of the Land, in fee simple, of record and in fact, and that you[, and all of you, collectively,] represent all of the parties whose interests are required to be accounted for in order to render the Deed of Easement effective in accordance with its terms. If the County’s examination of title and the Survey discloses that a joinder of one or more additional parties is required in order to make the Deed of Easement effective, then you shall be responsible for obtaining the joinder and consent to this Commitment by such additional parties. Any such joinder and consent will not affect the Purchase Price to be paid by the County.

 - (b) Title to the interests in the Land to be sold to the County and evidenced by the Deed of Easement shall be effectively conveyed to the County on the Settlement Date and shall constitute an equitable right and interest prior and superior to the rights or claims of all persons holding a fee simple interest in the Land, as well as any other possessory or non-possessory right or interest, as well as the interests of any person holding a right to or claim against the Land under or by

virtue of any deed of trust, mortgage, land installment contract or other similar agreement.

- (c) Not less than fourteen (14) days prior to the Settlement Date, the Seller shall furnish to the County, a subordination agreement in recordable form from each mortgagee and other lienholder having a lien on all or any portion of the Land, which shall subordinate the interest of each mortgagee or other lienholder to the rights of the County under the Deed of Easement. Each subordination agreement shall be satisfactory in all respects to the County. The County will see to the preparation of any and all subordination agreements required and the provision thereof to affected mortgagees and lienholder(s).
 - (d) The Seller shall provide an updated boundary line survey with a metes and bounds description of the Land (the "Survey"), completed by a Maryland Professional Land Surveyor, with all to be recorded in the Harford County Land Records, at the expense of the Seller at least fourteen (14) days prior to the Settlement Date. The Survey shall be satisfactory to the County in all respects and certified to (i) the title company providing the title insurance described below, (ii) the Seller and (iii) the County and shall show dimensions and locations of all improvements, easements, rights-of-way, adjoining sites, absence of any encroachment, acreage and such other details as the County may require.
 - (e) If the land to be placed under easement consists of more than one (1) parcel or lot, the Seller shall ensure all applicable subdivision requirements have been completed in order to legally consolidate all pieces of land into one (1) recognized parcel and/or unrecord any and all recorded lots as may be required by the County. All applicable consolidation work shall be completed not less than fourteen (14) days prior to the Settlement Date.
 - (f) The County shall receive at least seven (7) days prior to the Settlement Date a title insurance binder or commitment to issue a title insurance policy, insuring the ownership by the County of the Development Rights and Family Conveyances applicable to the Land, subject only to those exceptions to title as are approved by the County and its counsel, and with affirmative insurance on such matters as the County may require, all in the sole discretion of the County. The Seller shall be responsible for the removal of all exceptions unacceptable to the County. In the event that the Seller cannot deliver title acceptable to the County in all respects, this Commitment shall terminate and be null and void and the County shall have no liability whatsoever to the Seller hereunder.
4. Fees and Expenses: The County shall pay (i) all costs relating to the drafting and recording of the Deed of Easement, (ii) all title examinations charges, (iii) the premium for the title insurance policy, and (iv) fees and out-of-pocket expenses of Bond Counsel for a reasonable number of hours of time expended on the Transaction, including the drafting of documents and consultation with legal, financial and/or other advisors of the Seller. The Seller shall pay (i) the fees and expenses of its own

counsel, accountants and other professionals engaged by Seller, (ii) costs for the recordation of any subordination agreements and (iii) the cost of the Survey.

5. Termination by County: This Commitment is being made in reliance upon information supplied and representations made by the Seller to the County in connection with the Transaction. If the County, acting in good faith, should determine that any such information or representations are false, inaccurate, incomplete or misleading in any material respect, the County may rescind and cancel this Commitment.
6. Brokerage: The County shall pay no fee or commission to any broker or agent in connection with the Transaction, and the Seller hereby agrees to indemnify and hold harmless the County against all claims for brokerage fees and commissions.
7. Acknowledgment of Seller with regard to Tax Consequences of Transaction: The Seller acknowledges that the Seller has made an independent investigation and has consulted with attorneys, accountants and others selected by the Seller with respect to all tax considerations related to the Transaction, and the Seller certifies that the Seller has not and will not look to or rely upon the County or any of its officials, agents or employees, or to Bond Counsel, with respect to any of such matters.
8. Assignment Prohibited: This Commitment may not be assigned, or in any way transferred, by the Seller without prior written approval of the County.
9. Entire Agreement: No statements, agreements or representations, oral or written, which may have been made to the Seller or to any employee or agent of the Seller, either by the County or by any employee, agent or broker acting on the Seller's behalf, with respect to the Transaction, shall be of any force or effect, except to the extent stated in this Commitment Letter, and all prior statements, agreements and representations with respect to the Transaction are merged herein. This Commitment Letter may not be changed except by written agreement signed by the Seller and the County.
10. County Approval: The Transaction must be approved through the enactment by the County Council of a legislative bill, which will be subject to being petitioned to referendum. No assurance can be given that the County Council will enact a bill approving the Transaction or that any such bill once enacted will become effective. Failure by the County Council to enact a bill approving the Transaction or failure of any such bill to become effective will result in the immediate cancellation and termination of this Commitment, even if accepted by the Seller, and the County shall have no liability whatsoever to the Seller hereunder.
11. Settlement Date; Survival: The Transaction may be closed no earlier than sixty (60) calendar days after an enacted bill approving the Transaction becomes law, provided all conditions precedent to closing have been met. In any event, as provided in Section 60-12(O)(1) of Chapter 60, the Transaction must be fully settled within one

hundred and twenty (120) business days from such enactment, time being of the essence; provided, however, that in the case of extreme delay and upon the written request of the Seller or the County within such 120-day period, the County, in its sole discretion, may grant a sixty (60) day extension during which settlement must occur. The term "Settlement Date" shall be used in this Commitment Letter to refer to any of the dates described above on which the Transaction is closed. In the event that the Settlement Date does not occur as described above this Commitment Letter is automatically terminated and the County shall have no liability whatsoever to the Seller hereunder. The terms of this Commitment shall supersede in full, any prior commitment issued by the County in connection with the Transaction; and this Commitment shall not survive settlement.

The County is pleased to make this opportunity available to you. Please indicate your acceptance of this Commitment by signing and returning to us the executed original of this Commitment Letter.

Yours truly,

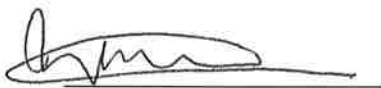


William D. Amoss
Agricultural Land Preservation
Harford County Department of Planning & Zoning

THE TERMS AND CONDITIONS COMMITMENT LETTER ARE HEREBY AGREED TO AND ACCEPTED THIS 10th DAY OF NOVEMBER 2021. FAILURE BY THE SELLER TO EXECUTE THIS COMMITMENT LETTER AND RETURN THE SAME TO THE COUNTY AS DIRECTED BELOW BY DECEMBER 1ST, 2021 SHALL RENDER THIS COMMITMENT NULL AND VOID AND OF NO FURTHER EFFECT.

Seller and Landowner:

Witness:



Frances J. McMillan

Please date, sign and return this Commitment Letter by **December 1st, 2021** to:

William D. Amoss
Agricultural Land Preservation
Harford County Department of Planning & Zoning
220 South Main Street
Bel Air, MD 21014

I. APPLICANT (i.e., the owner of the land). Indicate the portion owned by each owner.

A. Correct legal name: Frances Jean McMillan
own 100% of farm

B. Contact person: Michael J. McMillan (Son)
443-252-0695

C. Property address & mailing address if different:
3728 Smith Road - reside at
Darlington, MD 21034
3726 Smith Road - property address

D. Telephone No. 410-457-5389 e-mail _____

E. Social Security Number or Tax Identification Number for each owner.
(can wait until offer is made for ID security reasons)

F. Type of legal entity:
 individual
 corporation incorporated in the State of _____
 general partnership created in the State of _____
 limited partnership created in the State of _____
 limited liability company created in the State of _____

G. Description of Applicant's business and percentage of income attributed to agricultural production: Retired 83 year old widow
13.75% of my income comes from
the rent Ed Grimmel pays me.

H. Legal Counsel representing Applicant in proposed transaction:

1. Name: Laura Henninger
2. Address: 224 E. Broadway
Bel Air, Md. 21014
3. Telephone No. 410-836-5300 e-mail _____

I. Surveyor representing applicant

1. Name: pending
2. Address: _____

3. Telephone No. _____ Fax No. _____

J. Information concerning ownership (attach copy of deed(s) for all parcels).

Please list below all information for each parcel contained in this easement purchase.

1. Date of acquisition; recording reference; tax account; tax map and parcel number; acres; development rights, family conveyances or easement restriction applied to each parcel.

684/396 Map 20; Grid 2B; parcel 275

#tax 05-026466 approx. 44.72 Ac.

No easement restrictions

- K. List mortgagees or deeds of trust or other encumbrances (including leases). Lien holders will be required to subordinate their mortgage or deed of trust to the easement of the County so please discuss with them.

None

- L. Describe all uses currently made of the land and by whom:
Agricultural

30 acres in soy beans, leased to
Ed Grimmel of Grimmel Farm Partners

Non-Agricultural

14.72 acres: 7 acres woods,
5 acres pasture, 3 acres homestead

- M. Family history of the property including cultural or historic aspects and importance in preserving.

My husband, John McMillan and
I bought the farm in 1965. John
worked hard clearing the land of
wild floral rose bushes and old fence
rows and a lot of rock so crops
could be grown. I would like it to
be preserved for future generations.

- N. Identify family conveyance members and address if applicable.

<u>Name</u>	<u>Address</u>
<u>Michael J. McMillan</u> <u>(Son)</u>	<u>41 Deer Trail</u> <u>Conowingo, MD 21918</u>

- O. Identify all residences and buildings on the land with sq. footage of each.

Old Farm House 847 sq. ft., Barn 1844 sq. ft.
Prenary 280 sq. ft., Carriage House 192 sq. ft.

Double wide home 1248 sq. ft.

P. Identify all soil and/or water conservation plans in effect concerning the land and if all practices are applied (forward copy of SCS plan). Bmps in place.

Q. Environmental and water quality highlights of farm.

Spring fed pond 1/4 acre
at the back of the woods,
which John had put in.

R. Farm land breakdown

Cropland acres 30 acres

Pasture acres 5 acres

Woodland acres 7 acres

Homestead acres 3 acres

Other _____

S. Innovative farming practices on farm including value adding.

Ed Grimmel does no till
farming.

Indicate whether you will take Installment Purchase option or lump sum payment.

Lump sum

II. EXECUTION

It is understood that the above information is submitted in good faith, based on present expectations of the Applicant, to aid the Agricultural Land Preservation Advisory Board of Harford County, Maryland in its consideration of this application for the sale of a development rights easement to Harford County, Maryland.

The information in this application and supporting exhibits is true and complete to the best of my/our knowledge and is submitted for the purpose of the sale of my residential development rights and the placement of a conservation easement on my property to be held by Harford County, Maryland. I/We authorize Harford County to conduct whatever investigation it feels is necessary to properly evaluate and process this application. I/We understand that this application is subject to review and approval by the Agricultural Land Preservation Advisory Board, County Executive and by the County Council of Harford County, Maryland. We also understand this is only an application and does not commit the landowner to accept an offer.

Dated at Bel Air, Md., on 10/20, 2021.
(City) (State)

Francis J. McMillan

EXHIBIT B

HARFORD COUNTY AGRICULTURAL PRESERVATION PROGRAM

OCTOBER 2021 RANKING

Rank	Name	Ranking Score
1	Grimmel Farms, LLC	245.39
2	Harkins, Herbert & Patricia	219.85
3	Baltimore Area Council BSA	218.86
4	Fender Farm LLC St Marys/165	210.39
5	Fender Farm LLC- Parcel 36	205.76
6	McMillan, Frances	196.53
7	Klair, Dianne	187.36
8	Davis, William G.	186.79
9	Schmitt, Zachary & Andrea	186.66
10	Schmitt, Luke	181.45
11	Taylor, James & Melissa/Estate of Mary Ruth Jones	175
12	Toole, Donna Brokaw	172.91
13	Martin, Mendola, Stanley	171.25
14	Schleupner, Michael & Tiffany	169.25
15	Michie, Matthew	161.63
16	Stampone, Gary & Jerilyn	160.03
17	Maranto, Daniel V.	145.33
18	Hill, Susan A.	144.25
19	Welsh, Earnest & Karen	143.75
20	Michie, Matthew & Adele Michie	121.62

EXHIBIT C

Form of Agreement of Sale

As Introduced

FRANCES J. McMILLAN

and

HARFORD COUNTY, MARYLAND

AGREEMENT OF SALE

AGREEMENT OF SALE

THIS AGREEMENT OF SALE is made this ____ day of _____, 202_, by and between FRANCES J. McMILLAN (hereinafter referred to as the "Seller") and HARFORD COUNTY, MARYLAND, a Maryland body politic and corporate (hereinafter referred to as the "County").

RECITALS

A. Pursuant to and in accordance with Article II of Chapter 60 of the Harford County Code, as amended (the "Authorizing Act"), the County is authorized to preserve productive agricultural land and woodland in Harford County, Maryland by purchasing from the owners thereof the Development Rights and the Family Conveyance (each as defined in the Authorizing Act) in Agricultural Land and Woodland (each as defined as defined in the Authorizing Act) located within the County.

B. The Seller is the owner in fee simple of certain Agricultural Land and Woodland located in Harford County, Maryland and more particularly described in Exhibit A to the Deed of Easement (hereinafter defined) (the "Land"). The Seller has offered to sell to the County the Development Rights and a Family Conveyance in the Land and the County has accepted such offer, all upon and subject to the conditions set forth in this Agreement.

C. The County will receive the Seller's Development Rights and Family Conveyance in the Land for the purposes set forth in the Authorizing Act.

D. Except for the limited transferability described herein and in the Deed of Easement, the transfer by the Seller of the Seller's Development Rights and Family Conveyance in the Land pursuant to the Deed of Easement shall be in perpetuity.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Seller and the County hereby agree as follows:

**ARTICLE I
DEFINITIONS**

SECTION 1.1. Definitions. As used in this Agreement, the following terms have the following meanings, unless the context clearly indicates a different meaning:

"Authorizing Act" has the meaning given to that term in the Recitals of this Agreement.

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“Building Lot” means an Owner’s Lot or a Child’s Lot.

“Business Day” or “business day” means a day on which (a) banks located in each of the cities in which the principal office of the County or the Registrar is located are not required or authorized by law or executive order to close for business, and (b) The New York Stock Exchange is not closed.

“Child’s Lot” has the meaning given to that term in the Authorizing Act.

“Closing Date” means _____, the date of execution and delivery of this Agreement by the parties.

“County” means Harford County, Maryland, a body corporate and politic created and existing under and by virtue of the Constitution and laws of the State, its successors and assigns.

“County Council” means the County Council of the County.

“County Executive” means the County Executive of the County.

“Deed of Easement” means the Deed of Easement dated _____, from the Seller to the County, which shall convey the Development Rights and Family Conveyance to the County in perpetuity, substantially in form attached hereto as Exhibit A and made a part hereof.

“Development Right” has the meaning given to that term in the Authorizing Act.

“Enabling Legislation” means, collectively, (1) Section 524 of the Harford County Charter, (2) the Authorizing Act, (3) Bill No. 11-07 enacted by the County Council on April 5, 2011, approved by the County Executive on April 12, 2011, and effective on June 13, 2011, and (4) Resolution No. _____, enacted by the County Council on _____.

“Family Conveyance” has the meaning given to that term in the Authorizing Act.

“Land” means the tract of land located in Harford County, Maryland, containing _____ acres, more or less, and more particularly described in Exhibit A attached to the Deed of Easement; provided, however, that if (a) a Building Lot is released by the County from the Deed of Easement, such Building Lot so released shall not thereafter be considered to be part of the Land.

“Owner’s Lot” has the meaning given to that term in the Authorizing Act.

“Permitted Encumbrances” means the encumbrances listed on Exhibit B attached hereto and made a part hereof and any encumbrances on or with respect to the Land or any portion thereof hereafter approved by the County.

“Person” or “person” means any natural person, firm, association, corporation, company, trust, partnership, public body or other entity.

“Purchase Price” has the meaning given to that term in Section 2.1.

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“Seller” means Frances J. McMillan, her heirs and personal representatives and assigns.

“State” means the State of Maryland.

SECTION 1.2. Rules of Construction. The words “hereof,” “herein,” “hereunder,” “hereto,” and other words of similar import refer to this Agreement in its entirety.

The terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants.”

References to Articles, Sections, and other subdivisions of this Agreement are to the designated Articles, Sections, and other subdivisions of this Agreement.

The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

All references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

ARTICLE II

SALE AND PURCHASE OF DEVELOPMENT RIGHTS AND FAMILY CONVEYANCE

SECTION 2.1. Agreement to Sell and Purchase Development Rights. The Seller agrees to sell all of the Development Rights and Family Conveyance in the Land to the County and the County agrees to purchase all of the Development Rights and the Family Conveyance in the Land from the Seller on the Closing Date for the purchase price of \$_____ (the “Purchase Price”). The Purchase Price is equal to \$_____ multiplied by _____ acres, the actual number of acres in the Land, and represents the least of the three amounts calculated as the Purchase Price on the basis of the following factors: (i) the Maximum Easement Per Acre Value (as defined in the Authorizing Act), (ii) the Maximum Development Right Value (as defined in the Authorizing Act) and (iii) Maximum Per Acre Value (as defined in the Authorizing Act and also referred to therein as the “maximum per acre cap”).

SECTION 2.2. Delivery of Deed of Easement. In order to evidence the sale of all of the Development Rights and a Family Conveyance in the Land to the County, the Seller shall execute and deliver the Deed of Easement to the County on the Closing Date. The Deed of Easement shall be recorded among the Land Records of Harford County, Maryland on or about the Closing Date as determined by the County.

ARTICLE III

PAYMENT OF PURCHASE PRICE

SECTION 3.1. Payment of Purchase Price; Incentive Payment.

(a) The County has paid on the Closing Date the Purchase Price in the amount of \$_____ to the Seller in cash or cash equivalent.

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ARTICLE IV REPRESENTATIONS AND WARRANTIES

SECTION 4.1. Representations and Warranties of the County. The County makes the following representations and warranties:

(a) The County is a body corporate and politic and a political subdivision of the State.

(b) The County has the necessary power and authority to acquire the Development Rights and the Family Conveyance in the Land, to enter into this Agreement, to perform and observe the covenants and agreements on its part contained in this Agreement and to carry out and consummate all transactions contemplated hereby. By proper action, the County has duly authorized the execution and delivery of this Agreement.

(c) This Agreement has been duly and properly authorized, executed, sealed and delivered by the County, constitutes the valid and legally binding obligation of the County, and is enforceable against the County in accordance with its terms.

(d) There are no proceedings pending or, to the knowledge of the County, threatened before any court or administrative agency which may affect the authority of the County to enter into this Agreement.

SECTION 4.2. Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller has full power and authority to execute and deliver this Agreement and the Deed of Easement, and to incur and perform the obligations provided for herein and therein. No consent or approval of any person or public authority or regulatory body is required as a condition to the validity or enforceability of this Agreement or the Deed of Easement, or, if required, the same has been duly obtained.

(b) This Agreement and the Deed of Easement have been duly and properly executed by the Seller, constitute valid and legally binding obligations of the Seller, and are fully enforceable against the Seller in accordance with their respective terms.

(c) There is no litigation or proceeding pending or, so far as the Seller knows, threatened before any court or administrative agency which, in the opinion of the Seller, would materially adversely affect the authority of the Seller to enter into, or the validity or enforceability of, this Agreement or the Deed of Easement.

(d) There is (i) no provision of any existing mortgage, indenture, contract or agreement binding on the Seller or affecting the Land, and (ii) to the knowledge of the Seller, no provision of law or order of court binding upon the Seller or affecting the Land, which would conflict with or in any way prevent the execution, delivery, or performance of the terms of this Agreement or the Deed of Easement, or which would be in default or violated as a result of such

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execution, delivery or performance, or for which adequate consents, waivers or, if necessary, subordinations, have not been obtained.

(e) There exist no liens or security interests on or with respect to the Land (other than Permitted Encumbrances).

(f) The Seller is not a nonresident alien of the United States of America for purposes of federal income taxation.

(g) By a separate, non-public document, the Seller shall disclose the Seller's Social Security Number to the County. The Seller shall, upon request of the County, execute U.S. Treasury Form W-9 and deliver the same to the County for filing.

The representations in subsections (f) and (g) above are made under penalties of perjury and the information contained therein may be disclosed by the County to the Internal Revenue Service. The Seller acknowledges that any false statement in such subsections or the documents referred to therein could be punished by fine, imprisonment or both.

ARTICLE V MISCELLANEOUS

SECTION 5.1. Parties in Interest. Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation, other than the County and the Seller, any right, remedy or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Seller.

SECTION 5.2. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns.

SECTION 5.3. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

SECTION 5.4. Prior Agreements Canceled; No Merger. This Agreement shall completely and fully supersede all other prior agreements, both written and oral, between the County and the Seller relating to the acquisition of the Development Rights and the Family Conveyance. Neither the County nor the Seller shall hereafter have any rights under such prior agreements but shall look solely to this Agreement and the Deed of Easement for definitions and determination of all of their respective rights, liabilities and responsibilities relating to the Land, the Development Rights, and the Family Conveyance and the payment for the Development Rights and the Family Conveyance. In addition, this Agreement shall survive the execution and recording of the Deed of Easement in all respects and shall not be merged therein.

SECTION 5.5. Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated except by an agreement in writing between the County and the Seller.

SECTION 5.6. No Personal Liability of County Officials. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official,

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officer, agent or employee of the County in his or her individual capacity, and neither the officers or employees of the County, nor any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 5.7. Governing Law. The laws of the State shall govern the construction and enforcement of this Agreement.

SECTION 5.8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

SECTION 5.9. Notices. Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals, certificates or other communications required under this Agreement to be in writing shall be sufficiently given and shall be deemed to have been properly given three Business Days after the same is mailed by certified mail, postage prepaid, return receipt requested, addressed to the person to whom any such notice, demand, request, approval, certificate or other communication is to be given, at the address for such person designated below:

County: Harford County, Maryland
Administrative Offices
220 South Main Street
Bel Air, Maryland 21014
Attention: Treasurer

with a copy to: Melissa L. Lambert, Esquire
County Attorney
Administrative Offices
220 South Main Street
Bel Air, Maryland 21014

Seller Frances J. McMillan
3726 Smith Road
Darlington, Maryland 21034

Registrar: Robert F. Sandlass
Treasurer
Administrative Offices
220 South Main Street
Bel Air, Maryland 21014

Any of the foregoing may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, demands, requests, consents, approvals, certificates or other communications shall be sent hereunder.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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WITNESS the signatures and seals of the parties hereto as of the date first above written.

HARFORD COUNTY, MARYLAND

[COUNTY'S SEAL]

By: _____
Barry Glassman
County Executive

ATTEST:

Ben Lloyd
Director of Administration

WITNESS:

SELLER:

_____ By: _____ (SEAL)
FRANCES J. McMILLAN

As Introduced

RESOLUTION NO. 005-22

**EXHIBIT A
TO AGREEMENT OF SALE**

FORM OF DEED OF EASEMENT

THIS DEED OF EASEMENT made this ____ day of _____ 202_, by and between FRANCES J. McMILLAN, party of the first part, Grantor (the “Grantor”), and HARFORD COUNTY, MARYLAND, party of the second part, Grantee (the “Grantee” or the “County”).

Explanatory Statement

A. Pursuant to Article II of Chapter 60 of the Harford County Code, as amended (the “Act”), the County Council of Harford County, Maryland (the “County Council”) created the Agricultural Land Preservation and Purchase of Development Rights Program to preserve productive Agricultural Land and Woodland (each as defined in the Act), which provide for the continued production of food and fiber for the citizens of the County.

B. By authority of the Act, the Grantee may purchase Development Rights and Family Conveyances (each as defined in the Act) from agricultural landowners by subjecting the subject property to a Development Rights Easement (as defined in the Act) in perpetuity in the manner more specifically provided in the Act.

C. The Grantor is the fee simple owner of the hereafter described parcel(s) of Agricultural Land (as defined in the Act) located in the County and desires to sell and convey to the Grantee a Development Rights Easement to restrict the use of such land to Agricultural Use (as defined in the Act) in accordance with the Act and as hereinafter set forth.

D. Resolution No. _____, enacted by the County Council on _____, authorizes the County to purchase from the Grantor the Development Rights and a Family Conveyance in certain Agricultural Land owned by the Grantor and containing not to exceed ____ acres.

NOW, THEREFORE, in consideration of the sum of _____ Thousand Dollars (\$_____) and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey to Harford County, Maryland, as Grantee, its successors and assigns, a Development Rights Easement, in perpetuity, together with and subject to the covenants, conditions, limitations and restrictions hereafter set forth so as to constitute and equitable servitude thereon, in, under and over the parcel(s) of land situate in the _____ Election District of Harford County, Maryland and being more particularly described in Exhibit A attached hereto (the “Land”).

AND FURTHER, together with all Development Rights [and all Family Conveyances] (with the exception of the right reserved to the Grantor and successors and assigns to maintain an owner residence and/or Tenant House (as defined in the Act), in either case, situate on the Land on the date hereof).

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AND FURTHER, if no such owner residence and/or Tenant House exists on the Land on the date hereof, there is reserved to the Grantor and successors and assigns, subject to the provisions of Section E of "Covenants, Conditions, Limitations and Restrictions" below, the right to construct one owner residence and/or Tenant House on the Land, and after execution of this Deed of Easement, such owner residence and/or Tenant House, as the case may be, if approved pursuant to Section E, shall not be subdivided off of the Land.

AND, FURTHER, the Grantor covenants for herself, and for her respective heirs, personal representatives and assigns, with the Grantee, its successors and assigns, to do and refrain from doing upon the Land all and any of the various acts hereafter set forth, it being the intention of the parties that the Land shall be preserved solely for the Agricultural Use as defined in and in accordance with the provisions of the Act, and that all and any of the various acts hereafter set forth are intended to limit the use of the Land and are deemed to be and shall be construed as covenants running with the Land.

COVENANTS, CONDITIONS, LIMITATIONS AND RESTRICTIONS

Subject to the reservations hereinafter contained and except as otherwise provided herein, the Grantor, for herself and her respective heirs, personal representatives and assigns, covenants and agrees with Grantee as follows:

A. The Land may not be developed or otherwise used for other than Agricultural Use.

B. The Land shall be maintained in Agricultural Use or properly managed so that it is available for continued Agricultural Use from the date of the recording of this Deed of Easement among the Land Records of the County.

C. At the time of establishment of the easement hereby granted, a soil and water conservation plan as prepared by the Soil Conservation District shall be implemented and maintained with respect to the Land.

D. The Grantor will not allow any type of residential subdivision, other than that outlined in this Deed of Easement and permitted by the Act with respect to an Owner's Lot and a Child's Lot (each as defined in the Act).

E. The construction of new buildings or structures on the Land, including, without limitation, any owner residence or Tenant House on a non-subdividable parcel, but excluding farm buildings that did not exist at the time of the establishment of the easement hereby granted, is contingent upon the written application to and approval by the Department of Planning and Zoning, subject to review by and recommendation of the Agricultural Land Preservation Advisory Board.

F. Subject to the provisions of paragraphs G and H hereof:

1. The Grantor may at any time hereafter request a two (2) acre or less lot exclusion for the exclusive residential use of the Grantor. Such request (a) must be made by

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letter provided to the Department of Planning and Zoning of the County verifying the Grantor's intention to live in a dwelling situate within any lot so excluded and (b) shall be subject to review and recommendation of the Agricultural Land Preservation Advisory Board of the County. In addition, the use and occupancy permit must be in the name of the Grantor; and the Owner's Lot may not be sold or transferred for a period of five (5) years from the date of issuance of the use and occupancy permit except in the event of the death or legal incompetence of the Grantor or if the lot is part of bankruptcy proceedings; or with approval of the Department of Planning and Zoning, subject to review and recommendation of the Agricultural Land Preservation Advisory Board. Upon such request and recommendation of the Agricultural Land Preservation Advisory Board, the Grantee shall execute and deliver to the Grantor, his/her personal representatives, successors and assigns, an instrument in recordable form releasing such lot from the force and effect of this Deed of Easement and all covenants, conditions, limitations and restrictions herein set forth.

2. The Grantor may at any time hereafter request the right to construct, use and occupy a tenant home on the Land in accordance with the conditions established within Section 267-27(D)(5) of the Harford County Code, as amended. Such request (a) must be made by letter provided to the Department of Planning and Zoning and (b) shall be subject to review and recommendation of the Agricultural Land Preservation Advisory Board. The tenant house shall not be subdivided off of the Land.

3. The Grantor may at any time hereafter request in writing to the Department of Planning and Zoning a two (2) acre or less lot exclusion for the exclusive residential use of a Child (as defined in the Act). Such request (a) must be from both Grantor and the Child verifying the intention of the Child to live in a dwelling situate within the lot so excluded and (b) shall be subject to the review and recommendation of the Agricultural Land Preservation Advisory Board. In addition, the building permit and the owner occupancy permit must be in the Child's name. The Child's Lot may not be sold or transferred for a period of five (5) years from the date of issuance of the use and occupancy permit except in the event of the death or the legal incompetence of the Child or if the Child's Lot is part of bankruptcy proceedings; or with approval of the Department of Planning and Zoning, subject to review and recommendation of the Agricultural Land Preservation Advisory Board. Upon such request and recommendation of the Agricultural Land Preservation Advisory Board, the Grantee shall execute and deliver to the Child, his/her personal representatives, successors and assigns, an instrument in recordable form releasing the Child's Lot from the force and effect of this Deed of Easement and all covenants, conditions, limitations and restrictions herein set forth.

G. The exclusion of lots pursuant to the provisions of paragraph F above from the force and effect of this Deed of Easement and all covenants, conditions, limitations and restrictions herein set forth shall be subject to the following conditions:

1. The total number of such lot exclusions may not exceed one (1) lot for each twenty-five (25) acres contained within the Land or four (4) lots per easement property, whichever is less; and

2. The maximum size of any lot so excluded may not exceed a maximum lot area of two (2) acres, including within such area all County right-of-way requirements unless

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waived by the Department of Planning and Zoning, with the review and recommendation of the Agricultural Land Preservation Advisory Board; and

3. The Grantor requesting a lot exclusion shall be required to repay the County for each lot so excluded in an amount equal to the amount paid per acre by the County to the Grantor to acquire the Land, plus all costs associated with the establishment of such lot.

H. The rights reserved to the Grantor under paragraph F to request a lot exclusion shall be deemed a personal covenant only, and one that is not intended to run with the Land and shall belong only to, and may be exercised only, by the Grantor named in this Deed of Easement.

I. Notwithstanding anything to the contrary herein contained, the exclusion of any Child's Lot or Owner's Lot from the encumbrance of this Deed of Easement shall become void upon the earlier to occur of (i) the death of the Child or Landowner (as applicable) for whose benefit the exclusion was granted if the Grantee has not received a use and occupancy permit therefor at the time of the Child's or Landowner's death (as applicable) and (ii) the fifth anniversary of the date the Grantee granted the exclusion if a use and occupancy permit in the name of the Child or Landowner (as applicable) has not been received by the Grantee by such fifth anniversary. In the event that the exclusion of a Child's Lot or Owner's Lot (as applicable) becomes void as provided above, the Grantor shall promptly execute and deliver, or promptly cause to be executed and delivered, to the Grantee an instrument in recordable form subjecting the Child's Lot or Owner's Lot (as applicable) to this Deed of Easement and all covenants, conditions, limitations and restrictions herein set forth.

J. The Grantor and all future landowners of the Land reserve the right to use the Land for any Agricultural Use and further reserve all other rights, privileges and incidents to the ownership of the fee simple estate in the Land that have not been conveyed hereby or otherwise limited by the covenants, conditions, limitations and restrictions herein set forth.

K. This instrument shall not be deemed to provide for or permit public access to any privately owned land except for periodic inspections by the Grantee.

L. No conveyances, oil, gas or mineral leases, or similar servitude, no rights of way or easements for utilities or roadways or any other restrictions, including other conservation easements such as forest easements and wetland easements, may be granted to any person or government agency in, on, over or under the Land without the prior written approval of the Grantee, which may condition its approval in accordance with its regulations.

M. The Grantee, its employees and agents shall have the right to enter the Land at all reasonable times for the purpose of inspecting and surveying the Land to determine whether the Grantor is complying with the provisions of this Deed of Easement. The Grantor specifically grants permission to the Grantee to photograph and record the Land, structures and activities being conducted upon the Land. The Grantee shall provide prior notice to Grantor at the Grantor's last known address, unless the Grantee determines that immediate entry is required to prevent, terminate, or mitigate an alleged or actual violation of this Deed of Easement. In the course of such inspection, the Grantee may not inspect the interior of any structure. However, if the Grantee has a reason to believe that a structure (for example, a barn) has been converted to a

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dwelling or a structure has been built to contain a dwelling without the Grantee's approval, written notice of a suspected violation will be provided to the Grantor, including the reasons for suspicion. The Grantor shall be provided a reasonable period of time to cure the violation or prevent the threatened violation. Subsequently, the Grantee shall schedule another inspection and may enter the interior of the structure in question.

N. The easement conveyed to the Grantee on the Land is based upon _____ acres and _____ Development Rights and ___ Family Conveyances.

The Grantor is a Landowner (as defined in the Act).

Pursuant to Treasury Regulation Section 1.170A-14(g)(6), the Grantor hereby acknowledges and agrees that the Grantee shall have a vested property right at least equal to the proportionate value of the Development Rights Easement granted herein as it bears to the value of the Land as a whole in accordance with the aforementioned Income Tax Regulation Section.

Upon any breach of a provision of this Deed of Easement by the Grantor, and after due notice to the Grantor, the Grantee may institute suit to enjoin any such breach or enforce any provision by temporary, *ex parte* and/or permanent injunction, either prohibitive or mandatory, including a temporary restraining order, whether by *in rem*, *quasi in rem* or *in personam* jurisdiction; and require that the Land be restored promptly to the condition required by this Deed of Easement at the expense of the Grantor (including, but not limited to, re-conveyance of title to land conveyed in violation of provisions herein); to recover damages; to impose civil penalties; and to take such other legal action as may be necessary to ensure compliance with this Deed of Easement and the covenants, conditions, limitations and restrictions and other provisions herein contained. The Grantee's remedies shall be cumulative and shall be in addition to all appropriate legal proceedings and any other rights and remedies available to Grantee at law or equity. No failure or delay on the part of the Grantee to enforce any provision of this Deed of Easement shall constitute a waiver or otherwise discharge or invalidate any provision of this Deed of Easement or affect the right of the Grantee to enforce this Deed of Easement.

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 Grantor will warrant specially the property interest hereby conveyed; and the Grantor will execute such further assurances of the same as may be required.

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 the words of certain gender includes reference to all genders.

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

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fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

As Introduced

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WITNESS THE HAND AND SEAL of the undersigned.

WITNESS:

GRANTOR:

_____ (SEAL)
FRANCES J. McMILLAN

STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 20__, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Frances J. McMillan, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and she acknowledged that she executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires: _____

As Introduced

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I HEREBY CERTIFY that the foregoing Deed of Easement was prepared on behalf of and at the request of Harford County, Maryland by or under the supervision of a member of the Bar of the Court of Appeals of Maryland.

Cody S. Weinberg

AS Introduced

EXHIBIT A
TO DEED OF EASEMENT
Description of Land

As Introduced

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PERMITTED ENCUMBRANCES

As Introduced