

DEED OF AGRICULTURAL
PRESERVATION EASEMENT

19137 283

This Deed of Agricultural Preservation Easement¹ is sold, granted, and conveyed on this 7th day of May 2001 by Charles M. Beverley, also known of record as Charles M. Beverly, Charles E. Beverly, Patricia Beverly, Christine B. Shanholtzer, Phillip Shanholtzer, and Charles M. Beverley, Charles E. Beverly, and Christine B. Shanholtzer, Co-Personal Representatives for the Estate of Margaret K. Beverley, also known of record as Margaret K. Beverly, 5321 Woodlawn Avenue, Chevy Chase, Maryland 20815, hereinafter "Grantors to Montgomery County, Maryland, c/o Department of Economic Development, 101 Monroe Street, Rockville, Maryland 20850 (Grantee) for the purpose of forever preserving the agricultural production capability of the subject property, pursuant to Montgomery County Code 1994, as amended, Chapter 2B.

WITNESSETH:

By authority of Montgomery County Code 1994, as amended, Chapter 2B and Executive Regulation No. 66-91, the Grantee may purchase agricultural preservation easements to restrict land to agricultural use.

The Grantors are the sole owners in fee simple of the farm property (Property) described in Exhibit A, attached to and made part of this Easement, which consists of 535.36 acres of land, together with buildings and other improvements, and 106 Transferable Development Rights (TDR's) associated with the Property.

The Property is eligible land located in the Rural Density Transfer, Rural, or Rural Cluster Zone, or is an approved State or County agricultural preservation district.

The Grantors desire to sell an agricultural preservation easement to the Grantee to restrict the Property to agricultural use.

All holders of liens or other encumbrances upon the Property have agreed to release or subordinate their interests in the Property to this Deed of Agricultural Preservation Easement and to refrain forever from any action that would be inconsistent with its preservation purposes.

Now, therefore, for the reasons given, and in consideration of the sum of One million nine hundred fifty four thousand ninety dollars and thirty nine cents (\$1,954,090.39) paid by Grantee to Grantors, the sufficiency and receipt of which Grantors hereby acknowledge, and of their mutual covenants contained herein, the Grantors voluntarily sell, grant and convey to the Grantee, and the Grantee voluntarily accepts, a perpetual Agricultural Preservation Easement on the Property, pursuant to Montgomery County Code 1994, as amended, Chapter 2B, consisting of those rights described in this Easement, exclusively for the purpose of preserving and forever maintaining the agricultural production capacity of the Property. The Grantee's payment of the full amount of the consideration to Grantors under this Deed of Easement is subject to Grantors' compliance with requirements of Paragraph 5 "Soil, Water and Forestry Conservation Plans" and Addendum No. 1, which is attached to this Deed and made part hereof.

Mail to: David R. Podolsky, Esquire
255 N. Washington Street, #500
Rockville, MD 20850

¹ For purposes of this transaction an Agricultural Preservation Easement is deemed to include certain Transferable Development Rights (TDR's) associated with the Property which the Grantor, simultaneous herewith, shall convey to Grantee.

RECORDING FEE 0.00
RECORDATION 1 0.00
TR TAX STATE 0.00
TOTAL 0.00
Res 44008 RCF 14977777
MAY 19 2001 01:22 PM

FILED
MOLLY O. RUHL
CLERKS OFFICE
MONTGOMERY COUNTY, MD
2001 MAY 10 P 1:25

HEREBY CERTIFY THIS PROPERTY HAS BEEN REGISTERED
ON THE COUNTY ASSESSMENT BOOKS FOR
TDR INCLUSION

No CARD
TRANSFER CLERK, ASSESSMENT DEPARTMENT

MONTGOMERY COUNTY CLERK OF COURTS (Land Records) MQR 19137, p. 0283, MSA_CE63_19091. Date available 06/20/2005. Printed 06/14/2016.

NO FEE - MONTG. CO. MD.

1. Prohibited Acts -- Grantors promise that they will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants enumerated below. They also authorize the Grantee to enforce these covenants in any manner permitted by law or equity. However, unless otherwise specified below, nothing in this Easement shall require the Grantors to take any action to restore the condition of the Property after any Act of God or other event over which they had no control. Grantors understand that nothing in this Easement relieves them of any obligation or restriction on the use of the Property imposed by law. 19137 284
2. Subdivision of Property -- The Grantors relinquish the right to subdivide the Property for industrial, commercial, or residential use or purpose except as provided below.
- a. The Grantor reserves as a personal covenant only and one not intended to run with the land, the right to subdivide and convey one acre, or the minimum lot size required by the zoning and health regulations, whichever is greater upon written application to the Grantee, to himself or to each of his children for the sole purpose of constructing a dwelling for his or that child's personal use.
 - b. The Grantor shall pay the Grantee, for the release of the easement on the lot used for constructing a dwelling for Grantor's or his child's use, the price per acre that the Grantee paid the Grantor for the grant of easement.
 - c. The Grantor may not create lots at a density greater than one per twenty-five (25) acres of the Property, nor may the total number of lots exceed six (6).
 - d. The Grantor retains the right to construct, subject to approval of the Grantee, houses for tenants fully engaged in the operation of the farm provided such construction does not exceed one tenant house per one hundred (100) acres. The land on which the tenant house is constructed may not be subdivided or conveyed to any persons and the tenant house may not be conveyed separately from the original parcel.
 - e. The Grantor shall obtain from the Grantee written approval prior to the subdivision of the Property in order that the Grantee may determine whether the proposed subdivision is in keeping with the agricultural purposes of this Deed of Easement and whether the proposed subdivision violates any of the covenants, conditions, limitations or restrictions contained herein.
3. 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.
- a. Fences - Fences for, or related to, agricultural production, may be built anywhere on the Property without limitation.

- b. Agricultural Buildings -- Buildings and other structures to be used solely for, or related to, agricultural production, including the sale of farm products raised primarily on the Property, but excepting any dwelling, may be built anywhere on the Property, without the permission of the Grantee.

19137 285

4. 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 farm during regular agricultural operations.
5. Soil, Water and Forestry Conservation Plans
- a. The Grantor shall within two (2) years of the settlement date cause the above described land to be managed in accordance with an approved agricultural soil and water conservation plan so as to promote the agricultural capability of the land; and shall within two (2) years of the settlement date manage any woodland in accordance with an approved Forest Resource Management Plan; provided, however, the Grantor reserves the right to selectively cut or clear cut from time to time trees in accordance with an approved Forest Resource Management Plan to insure that the agricultural character of the land will not be altered by diminishing its productive capability. (See addendum No. 1)
- b. The Grantor shall implement all soil conservation and water quality practices that are required within a soil conservation plan, within two years of the easement settlement date. The plan shall be implemented according to the schedule of implementation contained within the plan which exists at the time of easement settlement. The plan must be updated at least every ten (10) years. Revisions to the schedule of implementation may be made as approved by the Board of Supervisors of the local soil conservation district, however, the plan shall be fully implemented within five years of the easement settlement date. Exceptions may be considered by the Grantee on a case by case basis.
- c. All references to Plan approvals, means approval by the applicable government agencies.
- d. The Grantee's payment of that portion of the consideration under this Deed of Easement for the Soil Conservation and Forest Resource Management Plans (see Addendum I) shall not be made to the Grantors unless and until said plans are certified by the appropriate government agencies and are implemented by the Grantors.
6. 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, are prohibited without the advance written permission of the Grantee. The Grantee shall give such permission within a reasonable time, unless they determine that the proposed mining or extraction will diminish or impair the agricultural production capability of the Property. However, nothing in this Easement shall be interpreted to prevent Grantors or any third party holding

19137 286

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 mineral; provided however, any third party holding subsurface mineral rights shall take no action or otherwise cause the agricultural production capability of the Property to be diminished.

7. Transferable Development Rights (TDR's) -- Simultaneous with this transaction, by Deed of Transfer of Development Rights (TDR's) of even date herewith by and between the Grantor and Grantee recorded immediately subsequent hereto in the Land Records of Montgomery County, Maryland, the Grantors convey to the Grantee the TDR's associated with the subject Property. The Grantors shall forgo the right to convey to any third party any TDR's associated with the Property which they have retained. However the retained TDRs may be used to create the lots outlined in Paragraph 2.
8. Rights Retained by Grantors -- As owners of the Property, the Grantors retain the right to perform any act not specifically prohibited or limited by this Easement. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property to anyone they choose.

Further, the Grantor retains the right to use the above described land for any farm use, and to carry on all normal farming practices, including the operation at any time of any machinery used in farm production or the primary processing of any agricultural products; the right to conduct upon the said land any agricultural operation which is in accordance with good husbandry practices and which does not cause bodily injury or directly endanger human health, including any operation directly relating to the processing, storage, or sale of farm, agricultural or woodland products produced on the said Property above described.
9. Responsibilities of Grantors Not Affected -- Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any existing obligation of the Grantors as owners of the Property. The Grantors shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. The Grantors shall continue to be solely responsible for the upkeep and maintenance of the Property, or assume any liability for personal injury or property damage occurring on the Property. The Grantors hold the Grantee harmless from and shall defend the Grantee against any claim, loss, damage costs including reasonable attorney's fees, injury, death, property damage or other matter relating to or arising from or occurring on or about the Property.
10. Enforcement -- The Grantee shall have the right and responsibility to prevent and correct violations of the terms of this Deed. With reasonable advance notice to the Grantors, the Grantee may enter the Property for the purpose of inspecting for violations. If the Grantee finds what they believe is a violation, they may at their discretion take appropriate legal action. Except when an imminent violation could irreversibly diminish or impair the agricultural production capability of the Property, the Grantee shall give the Grantors written notice of the violation and thirty (30) days to correct it, before filing any legal action. The Grantee may take legal action, including but not limited to, obtaining injunctive relief requiring the

19137 287

Grantors to cease and desist activity in violation of the terms of this Deed of Easement and return the Property to its condition prior to any violation. If the Grantee prevails, the Grantors shall pay all costs and expenses associated with the enforcement action, including but not limited to, reasonable attorney's fees. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar them from doing so at a later time.

11. Termination of Easement -- If, at least twenty-five (25) years after the date of this Easement, the Grantee determines that conditions on or surrounding the Property have changed so much that it is no longer suitable for the Property to be used for agricultural production, as provided by Montgomery County Code 1994, as amended, Chapter 2B-13, (Bill No. 56-87 enacted February 16, 1988) the Grantee may, upon payment by the Grantors to Grantee of a sum equal to the difference between the fair market value of the property without an easement and the value with the easement at that time, terminate the easement created by this Deed. If this Easement is terminated through the exercise of eminent domain by governmental authority, the Grantee shall be entitled to compensation therefore in an amount equal to the present value of this Easement at the time of condemnation.
12. Interpretation -- This Deed shall be interpreted under the laws of the State of Maryland and Montgomery County, Maryland resolving any ambiguities and questions of the validity of specific provisions so as 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 land, he may submit a written request to the Grantee for consideration and approval of such use.
13. Perpetual Duration - The Easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to the Grantors or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors in interest.
14. Gender -- Any masculine term used in this Easement shall include the female gender.
15. Remedies -- Grantee may enforce this easement using any remedies available at law or in equity, including but not limited to specific enforcement and injunctive relief.
16. Severability -- If any portion of this Easement is declared unlawful or invalid, the remainder of the Easement shall remain in full force and effect.

To Have and To Hold, this Deed of Agricultural Preservation Easement unto the Grantee, their successors and assigns, forever. 19137 288

In Witness Whereof, the Grantors and Grantee intending to legally bind themselves, have set their hands and seals on the date first written above.

WITNESS:

E. Julie Eads

Natalie Greer

Natalie Greer

E. Julie Eads

E. Julie Eads

E. Julie Eads

Natalie Greer

E. Julie Eads

GRANTORS:

Charles M. Beverley
Charles M. Beverley, also known of record as, Charles M. Beverley, Grantor

Charles E. Beverley
Charles E. Beverley, Grantor

Patricia Beverly
Patricia Beverly, Grantor

Christine B. Shanholtzer
Christine B. Shanholtzer, Grantor

Phillip Shanholtzer
Phillip Shanholtzer, Grantor

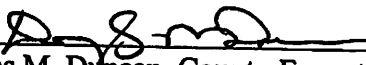
Charles M. Beverley
Charles M. Beverley, Co-Personal Representative for the Estate of Margaret K. Beverley, also known of record as, Margaret K. Beverley, Grantor

Charles E. Beverley
Charles E. Beverley, Co-Personal Representative for the Estate of Margaret K. Beverley, also known of record as, Margaret K. Beverley, Grantor

Christine B. Shanholtzer
Christine B. Shanholtzer, Co-Personal Representative for the Estate of Margaret K. Beverley, also known of record as, Margaret K. Beverley, Grantor

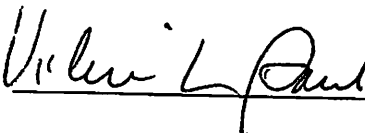
19137 289

GRANTEE:


Douglas M. Duncan, County Executive
Montgomery County, Maryland, Grantee

THE UNDERSIGNED, a member of the Bar of the Court of Appeals of Maryland, hereby certifies that the foregoing instrument was prepared by or under the supervision of the undersigned.

Approved For Form And Legality
Office Of The County Attorney
By: 
Assistant County Attorney



Date: 4/24/01

ACKNOWLEDGEMENTS

STATE OF MARYLAND

*

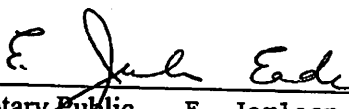
*

COUNTY OF MONTGOMERY

*

ON THIS 17th day of April 2001, before me, the undersigned officer, personally appeared **Charles M. Beverley, also known of record as, Charles M. Beverly,** known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same as his act for the purposes therein contained.

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


Notary Public E. Jerlean Eader

My Commission Expires: 7/1/2004

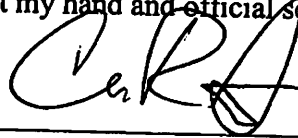
STATE OF MARYLAND

COUNTY OF MONTGOMERY

19137 290

ON THIS 20th day of APRIL 2001, before me, the undersigned officer, personally appeared Charles E. Beverly, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same as his act for the purposes therein contained.

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



Notary Public

My Commission Expires: 3/16/04

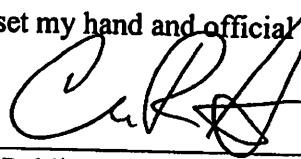
STATE OF MARYLAND

COUNTY OF MONTGOMERY

*
* **Craig R. Smith**
* NOTARY PUBLIC, MONTGOMERY COUNTY, MD
* MY COMMISSION EXPIRES MAR. 16, 2004

ON THIS 20th day of APRIL 2001, before me, the undersigned officer, personally appeared Patricia Beverly, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same as her act for the purposes therein contained.

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



Notary Public

My Commission Expires: 3/16/04

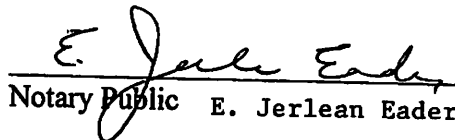
STATE OF MARYLAND

COUNTY OF MONTGOMERY

*
* **Craig R. Smith**
* NOTARY PUBLIC, MONTGOMERY COUNTY, MD
* MY COMMISSION EXPIRES MAR. 16, 2004

ON THIS 17th day of April 2001, before me, the undersigned officer, personally appeared Christine Shanholtzer, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same as her act for the purposes therein contained.

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



Notary Public E. Jerlean Eader

My Commission Expires: 7/1/2004

STATE OF MARYLAND

*

19137 291

COUNTY OF MONTGOMERY

*

*

ON THIS 17th day of April 2001, before me, the undersigned officer, personally appeared Phillip Shanholtzer, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same as his act for the purposes therein contained.

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

E. Jerlean Eader
Notary Public E. Jerlean Eader

My Commission Expires: 7/1/2004

STATE OF MARYLAND

*

*

COUNTY OF MONTGOMERY

*

ON THIS 17th day of April 2001, before me, the undersigned officer, personally appeared Charles M. Beverley, Co-Personal Representative for the Estate of Margaret K. Beverley, also known of record as Margaret K. Beverly, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same as his act for the purposes therein contained.

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

E. Jerlean Eader
Notary Public E. Jerlean Eader

My Commission Expires: 7/1/2004

STATE OF MARYLAND

*

*

COUNTY OF MONTGOMERY

*

ON THIS 20th day of April 2001, before me, the undersigned officer, personally appeared Charles E. Beverly, Co-Personal Representative for the Estate of Margaret K. Beverley, also known of record as Margaret K. Beverly, known to me (or satisfactorily proven) to be the person whose names are subscribed to the within instrument and acknowledged that he executed the same as his act for the purposes therein contained in his capacity as Co-Personal Representative.

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

Craig R. Smith
Notary Public

My Commission Expires: 3/16/04

STATE OF MARYLAND

*
*
*

19137 292

COUNTY OF MONTGOMERY

ON THIS 17th day of April 2001, before me, the undersigned officer, personally appeared **Christine Shanholtzer, Co-Personal Representative for the Estate of Margaret K. Beverley, also known of record as Margaret K. Beverly**, known to me (or satisfactorily proven) to be the person whose names are subscribed to the within instrument and acknowledged that she executed the same as her act for the purposes therein contained in her capacity as Co-Personal Representative.

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

E. Jerlean Eader
Notary Public E. Jerlean Eader

My Commission Expires: 2/1/2004

STATE OF MARYLAND

*
*
*

COUNTY OF MONTGOMERY

I hereby certify that on this 8th day of May 2001, before me, a Notary Public of the State and County aforesaid, personally appeared **Douglas M. Duncan**, known to me (or satisfactory proven) to be the person whose name is subscribed to the foregoing Deed of Agricultural Preservation Easement, and acknowledged that he is the County Executive of Montgomery County, Maryland and that the execution of this of Deed of Agricultural Preservation Easement is his free act as County Executive with Authority of the County pursuant to Montgomery County Code 1994, as amended, Chapter 2B.

J. Anne Poore
Notary Public
My commission expires: June 1, 2002

Exhibit A Attached
Addendum 1 Attached

Exhibit A
 Legal Description of Property
 Subject to Agricultural Preservation Easement
 Conveyed by

19137 293

Charles M. Beverley, also known of record as, Charles M. Beverly, Grantor
Charles E. Beverly, Grantor
Patricia Beverly, Grantor
Christine B. Shanholtzer, Grantor
Phillip Shanholtzer, Grantor
Charles M. Beverley, Charles E. Beverly, and Christine B. Shanholtzer, Co-Personal
Representatives for the Estate of Margaret K. Beverley, also known of record as, Margaret
K. Beverly, Grantor
 To Montgomery County
 c/o Department of Economic Development,
 Grantee

All that certain tract or parcel of land situate, lying and being in Election District 3, Montgomery County, Maryland and being more particularly described in the land records of Montgomery County.

Property Tax Account No.	Liber/Folio No.	Acreage	Number of TDR's
38401	5262/0056	386.63	77
1874304	1390/0026	127.30	25
1874315	5406/0093	21.43	<u>4</u>
			106

Number of TDR's to be conveyed to Montgomery County (Grantee)	<u>100</u>
TDR Serial No.s from <u>17-6469</u> to <u>17-6568</u>	
Number of TDR's to be retained by Grantor	<u>6</u>
Total TDR's	<u>106</u>

ADDENDUM NO. 1

19137 294

Subject to Agricultural Preservation Easement

Conveyed by

Charles M. Beverley, also known of record as, Charles M. Beverly, Grantor

Charles E. Beverly, Grantor

Patricia Beverly, Grantor

Christine B. Shanholtzer, Grantor

Phillip Shanholtzer, Grantor

Charles M. Beverley, Charles E. Beverly, and Christine B. Shanholtzer, Co-Personal Representatives for the Estate of Margaret K. Beverley, also known of record as, Margaret

K. Beverly, Grantor

To Montgomery County

The purchase price for said Agricultural Preservation Easement shall be \$3,656.88 per acre for 535.36 acres totaling \$1,954,090.39. One acre is conveyed to the County at no cost because of the existence of a dwelling. The purchase price per acre shall be allocated as \$3,576.88 per acre towards the Easement Value and \$80.00 per acre for implementing the Soil Conservation/Forest Resource Management Plan. The terms of payment will consist of installments which are as follows:

1. Payment or Distribution on settlement date totaling. \$1,601,139.76
2. Payment or Distribution to Mortgage/Lien Holders on settlement date: \$310,201.83
3. Payment to Landowners/Sellers for Soil Conservation District Certification that the Soil Conservation and Water Quality Plan has been implemented for the tillable farmland, including, if applicable, the certification that a Forest Resource Management Plan has been implemented for the woodland. In the event that certification is received prior to settlement, the payment shall be made on the settlement date. In the event that certification is made after settlement, payment shall be made upon receipt by seller of said certification. ANY PAYMENT PROVIDED FOR IN THIS PARAGRAPH 4 IS CONTINGENT UPON RECEIPT OF SAID CERTIFICATION WITHIN 24 MONTHS OF SETTLEMENT DATE. \$42,748.80

Total Purchase Price \$1,954,090.39



19137 295

OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

May 7, 2001

Molly Q. Ruhl, Clerk
Circuit Court for Montgomery County, Maryland
Courthouse
Rockville, Maryland 20850

Dear Ms. Ruhl:

Please record the attached document on behalf of Montgomery County, Maryland, and waive the usual recording fee.

Thank you for your attention to this matter.

Sincerely,

CHARLES W. THOMPSON, JR.
COUNTY ATTORNEY

Vickie L. Gaul
Assistant County Attorney

I:\GJ\GEMPES\settlements-l-clerk-rec. letter.wpd