

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (“Agreement”), dated as of the _____ day of _____, _____ is made between _____ (“Sellers”) and the _____ (“Buyer” and _____, who joins in this Agreement for the purpose of agreeing to subordinate its mortgage to the Deed of Easement described herein, (“Mortgagee”).

RECITALS

1. The Sellers are the owners of that property located in _____ County, Maryland.
2. The Buyer desires to purchase a conservation easement from the Sellers over and across a portion of said Property of Seller on the terms and conditions set forth in this Agreement. A map showing the easement area is attached hereto in Exhibit ____ and is made a part hereof.
3. The Sellers are willing to grant to Buyer and/or its assigns for the hereinafter set price, a conservation easement in perpetuity, on, over, and across a portion of the property of the Sellers.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

SECTION 1. PURCHASE AND SALE.

Subject to the terms and conditions set forth in this Agreement, Seller hereby agrees to sell to Buyer and Buyer hereby agrees to purchase from Seller a conservation easement on, over and across the following described property (the “Property”):

SECTION 2. PURCHASE PRICE AND PAYMENT.

2.1. The purchase price to be paid for the Deed of Easement (as defined below) shall be _____ (\$_____.00), (the “Purchase Price”).

2.2. Concurrent with the execution hereof, Buyer shall deliver the sum of _____ (\$_____.00) in escrow with _____, as escrow agent (the “Deposit”) to be held in an interest bearing account. At closing (as defined below) the Deposit and any interest accrued thereon shall be delivered to Sellers and credited as partial payment of the Purchase Price.

2.3. At Closing (as defined below), the entire Purchase Price shall be made payable by Buyer to Seller by a check, that has been issued by of the Maryland Board of Public Works.

2.4. The payment of the Purchase Price for the Deed of Easement is complete payment for the status and quality of the title to the Property required to be conveyed under this Agreement.

SECTION 3. CLOSING.

The consummation of the transactions contemplated in this Agreement (“Closing”) shall take place on or before _____, _____ at a date, time and place agreed to by the parties hereto.

SECTION 4. CONVEYANCE OF THE DEED OF EASEMENT.

4.1. At Closing, Sellers shall convey to Buyer, and/or its assigns, a Deed of Conservation Easement (“Deed of Easement”) to the Property containing covenants of special warranty and further assurances in the same form and containing those restrictions and conditions set forth in the easement attached hereto as Exhibit____ and made a part hereof. Title shall be good and marketable and free and clear of any and all encumbrances, exceptions, limitations, leases and liens whatsoever, except that mortgage recorded in Liber____, folio _____ which the Mortgagee has agreed by its execution hereof to subordinate the Deed of Easement at Closing. In the event the Mortgagee fails to execute the required subordination at or prior to Closing to the satisfaction of the Buyer, the Buyer at its sole option, may terminate this Agreement and the parties shall have no further obligation to each other.

4.2. Sellers shall not mortgage, lease, encumber or otherwise dispose of the Property, or any part thereof, prior to Closing or the termination of this Agreement without first having obtained the prior written consent of the Buyer.

4.3. If prior to or through Closing, Seller terminates the Conservation Reserve Program Contract #_____ entered into between the Commodity Credit Corporation (“CCC”) and Sellers, the Buyer at its sole option may terminate this Agreement and the parties shall have no further obligation to each other.

4.4. A title search going back at least sixty years will be completed for this Deed of Easement. A title report is attached hereto as Exhibit____ and made a part hereof.

SECTION 5. CONDITION OF THE PROPERTY AND RISK OF LOSS.

5.1. If prior to or through Closing, all or a substantial part of the Property is destroyed or damages, without fault of the Buyer, then this Agreement, at the option of the Buyer, upon written notice to Sellers, shall be null and void and of no further effect and the parties shall have no further obligation to each other.

5.2 Sellers covenant that at Closing, the Property shall be in the following conditions:

No major alterations or construction that would be inconsistent with the terms of the Deed of Easement will be made to the Property from and after the effective date of this Agreement.

5.3. From and after the effective date of this Agreement, the Sellers grant permission to the Buyer and its contractors and subcontractors to enter upon the Property for the purpose of making tests, surveys and inspections of the Property and the improvements thereon. Without limiting the generality of the foregoing, Buyer shall have the right to inspect the Property, one or more times prior to Closing, for the purpose of determining whether the Property is in the condition, status and quality required under this Agreement.

5.4. The Sellers are responsible for the removal of dumps of materials including but not limited to soil, rock, other earth materials, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery or other material on the Property to the satisfaction of the Maryland Department of Natural Resources and _____ (co-holder).

SECTION 6. SELLERS' REPRESENTATIONS.

6.1. Sellers make the following representations and warranties as of the dates on which each of them respectively executes this Agreement and as of Closing.

6.2. Sellers represent and warrant that:

i) no hazardous material of any kind, nor storage tanks have been deposited, stored, treated, disposed of, managed, generated, manufactures, produced, released, emitted or discharges on, onto, in, into, from or under the Property by the Sellers, their agents, employees, officers, invitees, contractors, subcontractors, and any person in possession or use of the Property under them, and to the best of their knowledge, information and belief, and other person, which could expose a landowner to liability under federal law,

ii) neither Sellers nor any of their agents, employees, officers, invitees, contractors, subcontractors, and any person in possession or use of the Property under them, and to the best of their knowledge, information and belief, any other person, have brought to the Property as materials or waste materials, or used on the Property or generated therein as a product or by-product of activities on the Property, or otherwise placed, handled, stored, or released on the Property any (1) polychlorinated biphenyls ("PCBs"), (2) asbestos, (3) lead paint, (4) petroleum products, distillates, or by-products, (5) radioactive materials, chemicals known to cause cancer or reproductive toxicity, (6) waste, materials, or substances which would qualify as hazardous waste, hazardous substances, hazardous materials, toxic waste, toxic materials or toxic

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substances under any “Environmental Laws,” which shall mean under the following: the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act, the Toxic Substance Control Act, the Superfund Amendments and Reauthorization Act, the Occupational Safety and Health Act, the Consumer Product Safety Act, the Federal Water Pollution Control Act, the Clean Water Act, the Clean Air Act, the National Environmental Policy Act, or any amendments thereto, or any similar or successor laws, whether federal, state, or local, or any regulations adopted or incorporated thereunder (Hereinafter referred to collectively as “Environmental Laws”),

iii) as of Closing, the status and condition of the Property or any portion thereof, including by way of example, the soil, paint or tiles, although then not in violation of the Environmental Laws is such that disturbance, removal or relocation thereof shall not create or result in a condition or status which is, or with the passage of time may become, unlawful under the Environmental Laws,

iv) no government or private action, suit or proceeding to enforce or impose liability under any Environmental Laws has been instituted or threatened concerning the Property and no lien has been created under any applicable Environmental Laws,

v) Sellers have no notice or knowledge of conditions or circumstances at the Property which pose a risk to the environment or to the health and safety of persons,

vi) no work shall have been done or materials for or about any of the Property within one hundred eighty (180) days ending on the day of the Closing or which the person performing the work or providing the materials has not acknowledged in writing that it has been paid in full at or before Closing.

6.3. The Sellers’ representations and warranties set forth above shall not merge with or into the Deed of Easement and shall survive the delivery of the Deed of Easement at Closing.

SECTION 7. OBLIGATIONS OF SELLER AT CLOSING.

7.1. At Closing, Sellers shall execute and deliver the Deed of Easement to the Buyer.

7.2. At Closing, Sellers shall execute and deliver to the Buyer’s a title examination and writings usually requested from a seller in connection with the settlement of like property.

SECTION 8. OBLIGATIONS OF BUYER AT CLOSING.

At Closing, Buyer shall deliver the Purchase Price in accordance with the terms and conditions of this Agreement.

SECTION 9. DEFAULT.

9.1. In the event that Sellers cannot convey to Buyer title to the Property as required under this Agreement, Buyer shall:

- i) permit Sellers to take any action necessary to perfect its title and remove any and all legal, equitable and beneficial grounds of objection to or defect of the title,
- ii) extend Closing until such action is completed, but no longer than ninety (90) days from the Sellers receipt of notice from Buyer of such defect(s) to the title.

In the event that Sellers fail to cure the defect(s) to title within that ninety (90) day period, then and only then shall Sellers be in default of its obligations to convey title to the Property under this Agreement.

9.2. Subject to Section 10.1, in the event that Sellers default in any of the terms, provisions, covenants or agreements to be performed by the Sellers under this Agreement, Buyer shall be entitled after such default to:

- i) waive any failure to perform in writing
- ii) terminate this Agreement, in which event the parties hereto shall thereafter be relieved of any and all further rights, liabilities and obligation under or pertaining to this Agreement, other than those which by the express terms of this Agreement are intended to survive termination,
- iii) exercise any and all rights and seek any and all remedies which Buyer may have or to which Buyer may be entitled at law or in equity, including, without limitation, seeking damages or specific performance.

9.3. In the event Buyer defaults in any of the terms, provisions, covenants or agreement to be performed by Buyer under this Agreement, Sellers shall be entitled, after such default, to:

- i) waive any failure of performance in writing,
- ii) terminate this Agreement in entirety, in which event the parties hereto shall thereafter be relieved of any and all further rights, liabilities and obligations, other than those, which by the express terms of this Agreement are intended to survive such termination.

SECTION 10. GENERAL PROVISIONS.

10.1. This Agreement is the full agreement among the parties on the matters set forth herein. This Agreement can only be amended by written amendment executed by the parties hereto.

10.2. The Sellers and Buyers acknowledge and agree that the Buyer may and intends to assign its interest in Agreement to the State of Maryland to the use of the Department of Natural Resources (the "State"). In the event of said assignment to the State it is anticipated that title to the Deed of Easement will be held in the name of the Maryland Department of natural Resources as co-holder with _____.

10.3. The parties hereto further agree that this Agreement is expressly contingent upon

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the Maryland State Board of Public Works accepting an assignment of this Agreement. In the event the Board of Public Works fails to accept an assignment of this Agreement the Buyer, at its sole option, may terminate this Agreement by written notice to Sellers, and the parties shall have no further obligation to each other.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered, the day and year first written above.

Witness: _____ SELLERS _____(Seal)

_____ (Seal)

_____ MORTGAGEE
By: _____(Seal)

_____ BUYER _____(Seal)