

Tax Map No(s):
Prepared By: Delaware Agricultural Lands
Preservation Foundation
2320 S. DuPont Highway
Dover, DE 19901
Return To: Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904

AGRICULTURAL LANDS PRESERVATION EASEMENT

STATE OF DELAWARE
AGRICULTURAL LANDS PRESERVATION PROGRAM

THIS PRESERVATION EASEMENT, made, granted, assigned and conveyed this _____ day of _____, A.D. 2014, by _____, whose address is _____, and who are hereinafter referred to as "Grantor", and the **DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION**, a body politic and corporate constituting a public instrumentality of the State of Delaware, and which is hereinafter referred to as "Grantee" and/or "Foundation."

WHEREAS, Grantor is fee simple title holder of certain lands situated in _____, _____ County, Delaware, being of record in Deed Book _____, Page _____, at the Office of the Recorder of Deeds, in and for _____ County, Delaware, hereinafter referred to as the "Parcel" and more particularly described in Exhibit "A" (annexed hereto); and as shown on a plot entitled "Delaware Agricultural Lands Preservation Foundation – Lands of _____" as prepared by _____, dated _____ and recorded in the aforesaid Office of the Recorder of Deeds in Plot Book _____, Page _____.

WHEREAS, the General Assembly of the State of Delaware has declared that the preservation of the State's farmlands and forest lands is considered essential to maintaining agriculture as a viable industry and as an important contributor to Delaware's economy; and

WHEREAS, the General Assembly of the State of Delaware has recognized that a need exists to create sufficient economic incentives and benefits to encourage agricultural landowners to voluntarily place viable agricultural lands under protective restrictions through the creation of and participation in agricultural preservation districts and sale and/or donation of development rights;

WHEREAS, the Grantor desires to grant and convey to the Foundation an agricultural lands preservation easement as provided in Chapter 9, Title 3 of the Delaware Code Annotated.

NOW, THEREFORE, the Grantor, for and in consideration of the sum of _____ (\$_____), the receipt and sufficiency of which are hereby

acknowledged, and in consideration of the benefits conferred under 3 Del.C. Ch. 9, hereby grants and conveys to the Foundation, its successors and assigns, an agricultural lands preservation easement on and over the Parcel, and covenants and promises that the Parcel will be owned, used and conveyed subject to, and not in violation of, the following restrictions:

1. No rezoning or major subdivision of the real property shall be allowed.
2. Activities conducted on the real property shall be limited to agricultural and related uses as defined in 3 Del. C. Sections 902 and 909(a)(5). "Agricultural and related uses" does not include, among other things, such activities as:
 - (a) excavation, filling, borrow pits, extraction, processing and removal of sand, gravel, loam, rock or other minerals, unless such activities are currently required by or ancillary to any preparation for, or operation of any activities involving aquaculture, farm ponds, cranberry operations, manure handling facilities, and other activities directly related to agricultural production on the Parcel;
 - (b) acts, actions and neglect which are detrimental to drainage, flood control, water conservation, erosion control or soil conservation;
 - (c) acts, actions and neglect that negatively affect the continued agricultural use of the land.
 - (d) uses that are not directly and functionally related to the farming activities conducted on the Parcel, except as otherwise provided for in 3 Del. C. Section 909(a)(5).
3. The allowability of a general use, conditional use, special use or other use under any zoning law or ordinance shall not have any effect on the restrictions imposed on the Parcel under this easement.
4. The Parcel consists of _____ acres, of which _____ acres are usable for agricultural and related uses. Residential use of the Parcel shall therefore be limited to _____ (_____) acres. With respect to the acreage allowed for dwelling housing, there shall be a limit of three (3) dwelling houses for residential use placed on the allowable acreage at the three (3) locations designated on the Plot as "Residential Acreage". There are currently _____ dwelling houses located on the Property, and only _____ additional dwelling houses shall be allowed.
5. This easement shall be deemed a covenant which runs with and binds the Parcel permanently and in perpetuity as set forth in 3 Del.C. §909(c), the terms and conditions of which shall be subject to specific performance and other action allowed under 3 Del.C. §920, and shall be subject to release only under 3 Del.C. §917. This easement shall be binding upon the heirs, executors, administrators, successors and assigns of the Grantor. This easement may be managed, administered and enforced by the Grantee or the State of Delaware.

6. The provisions of Title 3, Chapter 9 of the Delaware Code Annotated and duly adopted regulations there under as such provisions relate to the Parcel shall govern this easement.

7. Notwithstanding anything stated herein to the contrary, the rights afforded Grantee under this Preservation Easement may only be assigned by Grantee to a “qualified organization” within the meaning of Section 170(h) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code and only with assurances that the purposes of this Preservation Easement, as described herein, will be maintained in perpetuity by such Assignee. If any such Assignee shall be dissolved or shall abandon this Preservation Easement or the rights and duties of enforcement herein set forth, the Preservation Easement and the rights of enforcement shall revert to the Grantee, and if the Grantee shall be dissolved and if the terms of the dissolution fail to provide a successor, then the State of Delaware, or its successors or assigns, shall appoint an appropriate successor as Grantee, and any such successor shall be a “qualified organization” within the meaning of Section 170(h) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code. No assignment may be made by the Grantee of its rights under this Preservation Easement unless the Grantee, as a condition of such Assignment, requires the Assignee to carry out the conservation purposes of this Preservation Easement, as described herein. Grantee agrees to hold this Preservation Easement exclusively for conservation purposes as defined in Section 170(h)(4)(A) of the Internal Revenue Code.

8. The Preservation Easement granted hereunder shall be perpetual. When a change in conditions takes place which makes impossible or impractical any continued use of the property as farm lands and/or forest lands, and the restrictions contained herein are extinguished by judicial proceedings pursuant to the provisions of 3 Del. Section 917, any proceeds received by the Grantee or any Assignee shall be used by the Grantee or the Assignee in a manner consistent with the conservation purposes described in the Preservation Easement, to wit, the preservation of farm lands and forest lands of the State of Delaware as more particularly described in Chapter 9, Title 3 of the Delaware Code Annotated.

SIGNATURE LINES APPEAR ON FOLLOWING PAGES

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seal the day and year first above written.

SIGNED AND DELIVERED
IN THE PRESENCE OF:

_____ (SEAL)

_____ (SEAL)

STATE OF DELAWARE)
) SS:
COUNTY OF KENT)

BE IT REMEMBERED that on this _____ day of _____, A.D. 2014, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, _____, parties to this Indenture, known to me personally to be such, and they acknowledged this Indenture to be their act and deed.

GIVEN under my hand and seal of office the day and year aforesaid.

Notary Public Signature

Notary Name – Typed or Printed

My Commission Expires: _____