AGRICULTURAL LAND PRESERVATION
INSTALLMENT PURCHASE AGREEMENT
(Agreement No. [__]-[___])

[_____] PROPERTY

THIS AGRICULTURAL LAND PRESERVATION INSTALLMENT PURCHASE AGREEMENT (this "Agreement") is made on [_____ __, 20__] between **[_____]** (the "Owner") and **FREDERICK COUNTY, MARYLAND**, a body politic and corporate and a political subdivision of the State of Maryland (the "County").

R E C I T A L S:

A. Pursuant to and in accordance with Ordinance No. 02-01-297, approved by the Board of County Commissioners of Frederick County (the "Board") on January 15, 2002, effective February 1, 2002, as amended by Ordinance No. 02-20-316, approved by the Board on October 15, 2002, effective October 15, 2002, as amended by Ordinance No. 06-32-428, approved by the Board on September 26, 2006, effective September 26, 2006, as amended by Ordinance No. 07-35-475, approved by the Board on November 27, 2007, effective November 28, 2007, as amended by Ordinance No. 14-23-678, approved by the Board on November 13, 2014, effective December 1, 2014, codified as Section 1-13-35 of the Frederick County Code (as so amended, the "IPA Act"), the County has established an agricultural land preservation installment purchase program and is authorized to enter into installment purchase agreements to acquire development rights in agricultural lands located within, and thereby preserve agricultural land in, the County for the purposes of accelerating land preservation easement purchases, preserving productive agricultural land and woodland within the County and protecting farmland and open space from the impacts of development.

B. Bill No. [__]-[__], enacted by the County Council of Frederick County (the "County Council") on [_____ __, 20__] (the "Bond Bill"), authorizes and empowers the County to borrow, from time to time, not more than $[_____] in order to finance the cost of certain public facilities in Frederick County. The Bond Bill provides that such borrowing may be undertaken in the form of installment purchase obligations executed and delivered by the County for the purpose of acquiring agricultural land and woodland preservation easements. As of the date hereof, the County has previously incurred $[_____] of indebtedness pursuant to the Bond Bill, leaving a balance of $[_____] of available borrowing authority under such Bill.

C. [The County intends to separately incur indebtedness on the date hereof pursuant to the Bond Bill under separate installment purchase agreements in the aggregate amount of $[_____], which, if adopted, would leave a balance of $[_____] of available borrowing authority under such Bill.]

D. The County Council approved and adopted Resolution No. [__]-[__] on [_____ __, 20__] (the "Authorizing Resolution") duly authorizing the execution and delivery of this Agreement.

E. The Land (as defined herein) meets all of the criteria set forth in Section 1-13-35(C) of the Frederick County Code to qualify for approval under the "Installment Purchase Program" within the meaning of the IPA Act.

F. The Owner has agreed to sell a development rights easement to the County, and the County has agreed to pay the Purchase Price (as defined herein) as set forth herein for such development rights easement on a deferred basis as more fully set forth below, and the Owner has agreed to the deferred payment plan set forth below.

AGREEMENT

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 Owner 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:

(a) *Business Day* – "Business Day" means a day on which (a) banks located in Frederick, Maryland, are not required or authorized by law or executive order to close for business, and (b) The New York Stock Exchange is not closed.

(b) *Code* – "Code" means the Internal Revenue Code of 1986, as amended. Each reference to the Code herein shall be deemed to include the United States Treasury Regulations promulgated thereunder in effect or proposed from time to time with respect thereto.

(c) *County* – "County" means Frederick County, Maryland, a body politic and corporate and a political subdivision created and existing under and by virtue of the Constitution and laws of the State, its successors and assigns.

(d) *Deed of Easement* – "Deed of Easement" means the Deed of Easement of even date herewith from the Owner to the County, which shall convey the Development Rights to the Land to the County in perpetuity. The Deed of Easement shall be substantially in the form attached hereto as Exhibit C and made a part hereof.

(e) *Development Rights* – "Development Rights" means the development rights which are to be restricted by the Deed of Easement in consideration for the execution and delivery of this Agreement.

(f) *Interest Payment Date* – "Interest Payment Date" means October 1 in each year, commencing October 1, 20[__].

(g) *Land* – "Land" means the tract of land located in Frederick County containing approximately [_____] acres, and more particularly described in Exhibit A attached to the Deed of Easement.

(h) *Owner* – "Owner" means [_____] and [her/his/their] successors, assigns, heirs, personal representatives, executors, administrators and estate.

(i) *Person* – "Person" or "persons" means any natural person, firm, association, corporation, company, trust, partnership, public body or other entity.

(j) *Purchase Price* – "Purchase Price" means [_____] Dollars ($[_____]), the purchase price to be paid by the County to the Registered Owner in accordance with this Agreement.

(k) *Registered Owner* – "Registered Owner" means the registered owner of this Agreement and beneficiary of the representations of Section 2.2 hereof and as shown on the registration books maintained by the County and initially means the Owner.

(l) *State* – "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; PAYMENT OF PURCHASE PRICE

SECTION 2.1. Sale and Purchase of Development Rights. On the date hereof, the Owner has sold and transferred the Development Rights to the County, and the County has

purchased the Development Rights for the Purchase Price by its execution and delivery of this Agreement. The conveyance of the Development Rights by the Owner to the County is evidenced by the Deed of Easement to be recorded in the Land Records of Frederick County.

SECTION 2.2. Promise to Pay Purchase Price and Interest.

(a) The County is indebted to the Owner for the Purchase Price of [_____] Dollars ($[_____]). The County shall pay to the Owner [the Purchase Price, in the amount of [_____] Dollars ($[_____])]/[a portion of the Purchase Price, in the amount of [_____] Dollars ($[_____]), on the date hereof and shall pay the balance of the Purchase Price, in the amount of [_____] Dollars ($[_____])], together with any accrued and unpaid interest thereon, on May 15, 20[__] (the "Principal Payment Date").

(b) Interest on the unpaid balance of the Purchase Price shall accrue from the date hereof and shall be payable to the Registered Owner annually on each Interest Payment Date. Interest shall accrue at the rate of [_____]% per annum and shall be calculated on the basis of a 360-day year of twelve 30-day months.

(c) Payment of the Purchase Price and the interest on the unpaid balance thereof are payable in lawful money of the United States of America, at the time of payment.

(d) The County shall pay all interest payments and the Purchase Price to the person appearing on the books of the County as the Registered Owner, by wire transfer, check or draft mailed to the Registered Owner at the address of the Registered Owner as it appears on such registration books on the tenth day before the applicable Interest Payment Date or Principal Payment Date, or if such tenth day is not a Business Day, the Business Day next preceding such day. The Purchase Price shall be paid by the County to the Registered Owner upon presentation and surrender of this Agreement to the County.

(e) The County's obligation to make payments of the Purchase Price hereunder and to pay interest on the unpaid balance of the Purchase Price is a general obligation of the County, and the full faith and credit and unlimited taxing power of the County are irrevocably pledged to the payment of the Purchase Price and the interest on the unpaid balance of the Purchase Price as and when the same respectively become due and payable.

SECTION 2.3. Registration and Transfer of this Agreement.

(a) Until the Purchase Price and all interest thereon have been paid in full, the County, acting through its Director of Finance or any other department or employee of the County or any bank or trust company having corporate trust powers hereinafter designated and appointed by the County, shall maintain and keep at its offices, registration books for the registration and transfer of this Agreement. The Owner is the original Registered Owner.

(b) The ownership of this Agreement may only be transferred or assigned either (i) upon the death of the original Owner or if the original Owner is deemed by a court of competent

jurisdiction to be mentally incompetent or (ii) with the approval of the County, which approval shall not be unreasonably withheld and shall be evidenced by the County's registration of such transfer upon the registration books maintained by the County. No other transfers shall be permitted. A Person constituting a part of the Owner shall be deemed an "Owner" for purposes of this subsection (b).

(c) If this Agreement (or any interest herein) is permitted to be transferred or assigned in accordance with subsection (b), then the ownership of this Agreement may be transferred or amended, at the written request of the Registered Owner as then shown on such registration books or their attorney duly authorized in writing, upon presentation and surrender thereof, together with a written instrument of transfer substantially in the form attached hereto as Exhibit A, or as may otherwise be satisfactory to and approved by the County in writing, duly executed by the Registered Owner or her attorney duly authorized in writing. Upon the surrender for transfer of this Agreement, the County shall complete the Schedule of Transferees attached hereto as Exhibit B. The Schedule of Transferees shall contain the name, address and tax identification number of the transferee Registered Owner, the date of the transfer and the outstanding principal balance of the Purchase Price as of the date of transfer. If there is any conflict between the information set forth in Exhibit B hereto and the registration books maintained by the County, the information shown on such registration books shall control.

(d) The County may deem and treat the person in whose name this Agreement is registered upon the books of the County as the absolute owner of this Agreement, whether any payments hereunder shall be overdue or not, for the purpose of receiving payment of, or on account of, the Purchase Price and interest thereon and for all other purposes. All such payments made to any such Registered Owner, or upon their order, shall be valid and effectual to satisfy and discharge the liability upon this Agreement to the extent of the sum or sums so paid. Any notice to the contrary shall not affect the County.

(e) For every registration of transfer of this Agreement, the County may make a charge sufficient to reimburse itself for any tax or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of registering such transfer.

SECTION 2.4. Mutilated, Lost, Stolen or Destroyed Agreement. In the event that this Agreement is mutilated, lost, stolen or destroyed, the County and the Registered Owner (as then shown on the registration books maintained by the County) shall execute a substitute for this Agreement having the same terms as that of this Agreement mutilated, lost, stolen or destroyed. In the case of any mutilated Agreement, such mutilated Agreement shall first be surrendered to the County. In the case of any lost, stolen or destroyed Agreement, there shall be first furnished to the County evidence of such loss, theft or destruction satisfactory to the County, together with indemnity satisfactory to the County in its sole discretion. The County may charge the Registered Owner requesting such new Agreement its expenses and reasonable fees, if any, in this connection. If after the delivery of such substitute Agreement, a bona fide purchaser of the original Agreement (in lieu of which such substitute Agreement was issued) presents for payment such original Agreement, the County shall be entitled to recover such

substitute Agreement from the person to whom it was delivered or any other person who receives delivery thereof, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor or otherwise to the extent of any loss, damage, cost or expense incurred by the County in connection therewith.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

SECTION 3.1. 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, 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 3.2. Representations and Warranties of the Original Owner. The original Owner makes the following representations and warranties with respect to herself, but not with respect to any transferee Registered Owner:

(a) The Owner has full power and authority to execute and deliver this Agreement and the Deed of Easement and the Development Rights to be conveyed thereunder 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 Owner, constitute valid and legally binding obligations of the Owner, and are fully enforceable against the Owner in accordance with their respective terms.

(c) There is no litigation or proceeding pending or, so far as the Owner knows, threatened before any court or administrative agency which, in the opinion of the Owner, will

materially adversely affect the authority of the Owner to enter into, or the validity or enforceability of, this Agreement or the Deed of Easement.

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

(e) The Taxpayer Identification Number of [OWNER] is _____. The Owner shall, upon the request of the County, execute Treasury Form W-9 and deliver the same to the County for filing.

(f) There is (i) no provision of any existing mortgage, indenture, contract or agreement binding on the Owner or affecting the Land, and (ii) to the knowledge of the Owner, no provision of law or order of court binding upon the Owner 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 execution, delivery or performance, or for which adequate consents, waivers or, if necessary, subordinations, have not been obtained.

(g) There exist no liens or security interests on or with respect to the Land (other than those which have been subordinated pursuant to the Deed of Easement).

(h) All information furnished to the County with respect to the Owner and the Land in connection with this Agreement, including without limitation the application submitted by the Owner to the County for the inclusion of the Land in the Installment Purchase Program (as defined in the IPA Act) and all instruments, documents and other data furnished to the County in connection therewith, was, at the time the same were so furnished, and is on the date hereof, true, correct and complete in all material respects. No fact is known by the Owner that would adversely affect the qualification of the Land for inclusion in the Installment Purchase Program or the consummation of the transactions contemplated hereby.

(i) The representations in this Section 3.2 are true and correct in all material respects, and the information contained therein may be disclosed by the County to the Internal Revenue Service.

ARTICLE IV

PROVISIONS RELATING TO EXCLUSION OF INTEREST FROM INCOME FOR FEDERAL INCOME TAXATION

SECTION 4.1. Intent of County and Tax Covenant of County. The County intends that the interest payable under this Agreement shall be excludable from the gross income of the Registered Owner for purposes of federal income taxation pursuant to Section 103 of the Code. Accordingly, the County shall not knowingly take or permit to be taken any other action or actions or omit or fail to take any action, which would cause this Agreement to be an "arbitrage bond" within the meaning of Section 148 of the Code, or which would otherwise cause interest

payable under this Agreement to become includable in the gross income of any Registered Owner for purposes of federal income taxation pursuant to Section 148 of the Code.

SECTION 4.2. Acknowledgment of Owner with Regard to Tax Consequences of Transaction. The Owner has received an opinion from McGuireWoods LLP, Bond Counsel, dated the date hereof, to the effect that under existing laws, regulations, rulings and decisions, interest payable under this Agreement is excludable from the gross income of the Owner for federal income tax purposes. This opinion assumes continuous compliance with certain covenants in the Tax Certificate to be executed and delivered by the County on the date of delivery of this Agreement and is otherwise limited in accordance with its terms. The Owner acknowledges that she has had the opportunity to make her own independent investigation with respect to all other tax considerations related to the transaction contemplated hereby (including, but not limited to, installment sales treatment under Section 453 of the Code, charitable contribution deductions under Section 170 of the Code, and federal estate tax implications). This investigation included the opportunity to consult with attorneys, accountants and others selected by the Owner in the Owner's sole discretion. The Owner certifies that the Owner has not looked to or relied upon the County or any of its officials, agents or employees, or to Bond Counsel, with respect to any of such other matters.

SECTION 4.3. Information Reporting. Interest paid on tax exempt obligations after December 1, 2005 is subject to information reporting for federal income tax purposes in a manner similar to taxable obligations. The County will prepare an annual 1099-INT form to report the tax-exempt interest paid under this Agreement to the Owner. This reporting requirement does not in and of itself affect or alter the excludability of such interest from gross income for federal tax purposes or any other federal tax consequences of purchasing, holding or selling tax-exempt obligations.

ARTICLE V

MISCELLANEOUS

SECTION 5.1. Successors of County. In the event of the dissolution of the County, all of the covenants, stipulations, promises and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the County, the Owner, and any other Registered Owner, shall bind or inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the County shall be transferred.

SECTION 5.2. 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, the Owner, and any other Registered Owner any right, remedy or claim under or by reason of this Agreement. This Agreement is intended to be for the sole and exclusive benefit of the County, the Owner and any other Registered Owner from time to time of this Agreement.

SECTION 5.3. 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, including, without limitation, any Registered Owner from time to time of this Agreement.

SECTION 5.4. 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 5.5. 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 then Registered Owner. An executed counterpart of any such amendment shall be attached to this Agreement and shall be binding upon such Registered Owner and any successor Registered Owner.

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, 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. Notices. Except as otherwise provided in this Agreement, all notices 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 or other communication is to be given, at the address for such person designated below:

County:	Director of Finance Winchester Hall – 12 East Church Street Frederick, Maryland 21701
with a copy to:	Bryon C. Black, Esquire County Attorney for Frederick County Winchester Hall – 12 East Church Street Frederick, Maryland 21701
Owner:	[OWNER] [ADDRESS] [ADDRESS]

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.

SECTION 5.9. Authority of County Officials. Any provision of this Agreement authorizing any official or officer of the County to exercise authority or perform duties shall extend to any person duly exercising the duties of such official or officer on an acting or temporary basis.

SECTION 5.10. Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Agreement, shall not be a Business Day, such payment may, unless otherwise provided in this Agreement, be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Agreement, and, in the case of payment, no interest shall accrue for the period after such nominal date.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

FREDERICK COUNTY, MARYLAND

By: _____
County Executive

[S E A L]

Attest:

_____
Chief Administrative Officer

Witness:

_____ _____(SEAL)
[OWNER]

EXHIBIT A

ASSIGNMENT AND TRANSFER
ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ (Tax Identification or Social Security No. _____) the within Agreement and all rights thereunder, and does hereby constitute and appoint _____ attorney to transfer the within Agreement on the books kept for the registration thereof, with full power of substitution in the premises.

Dated:

Witness:

_____ _____

_____
(Signature of Registered Owner)

EXHIBIT B

SCHEDULE OF TRANSFEREES

Name	Address	Tax ID No.	Date of Transfer	Purchase Price as of Date of Transfer

EXHIBIT C

DEED OF EASEMENT