

15/59

Parcel I.D. No. 05-00249466

## DEED OF EASEMENT

THIS DEED OF EASEMENT (the "Deed") is granted as of this 21<sup>st</sup> day of May 2005, by MARTHA R. LANGAN (the "Grantor") to and for the benefit of MONTGOMERY COUNTY, MARYLAND, a body corporate and politic (the "Grantee").

### WITNESSETH:

WHEREAS, the Grantor is the owner of certain real property known as 2708 Spencerville Road, Burtonsville, Maryland 20866 and as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Real Estate") which consists of a parcel of land approximately two (2) acres in size (the "Property"), upon which certain improvements have been developed (the "Improvements"); and

WHEREAS, the Real Estate is designated by Montgomery County as an historic site on the *Master Plan for Historic Preservation* as approved and adopted by the Maryland-National Capital Park and Planning Commission, which designation will promote the conservation, preservation and protection of the Real Estate but does not preclude subdivision or development of the underlying Property pursuant to relevant portions of the Montgomery County Code; and

WHEREAS, Grantee is a body corporate and politic and has established laws whose purpose is generally to protect, preserve and enhance sites, structures with their appurtenances and environmental settings, and districts of historic, archeological, architectural or cultural value, all as is more particularly provided for by law; and

WHEREAS, this Deed will promote the conservation and preservation of the substantial historic, architectural, cultural and scenic character of the Real Estate; and

WHEREAS, the Grantor hereby expresses her desire to retain and preserve all of the Property as a single parcel in furtherance of her wishes to prohibit any residential subdivision on the Property so as to maintain an appropriate environmental, cultural and historic setting for the Improvements located thereon; and

WHEREAS, Grantee is possessed with the power and duty to accept and hold this Deed; and

WHEREAS, the Historic Preservation Commission of Montgomery County, Maryland (the "Historic Preservation Commission") is possessed with the power and duty to administer this Deed; and

WHEREAS, Grantee has determined that this Deed is exclusively for conservation and preservation purposes.

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Grantor hereby grants and conveys to Grantee with Special Warranty of Title an easement (the "Easement") in the Property which is all of that certain parcel of land known as 2708 Spencerville Road, Burtonsville, Maryland 20866, together with all of the rights and interests thereto belonging, which is situate, lying and being in Montgomery County, State of Maryland, and which is more particularly set forth in Exhibit A.

2. The definitions of the words "Real Estate," "Property" and "Improvements" set forth in the Recitals are incorporated herein by reference.

3. The terms of the Easement are as follows:

(A) Duration and Nature of the Easement. The Easement shall be perpetual in duration. The parties agree that the Easement is and shall be considered an easement in gross and as such is inheritable and assignable and runs with the land as an incorporeal property interest in the Property enforceable by Grantee and its successors, transferees and assigns with respect to the Property and against Grantors and Grantor's heirs, successors, transferees and assigns. The Easement is subject to any and all presently existing valid encumbrances, easements and rights-of-way upon the Property.

(B) Subdivision Prohibited. Grantor, on behalf of herself and her successors, transferees and assigns, agrees that she shall not cause, permit or suffer any subdivision or resubdivision of the Property for any purpose whatsoever. Division of the Property into two or more parcels of land, for any purpose, is prohibited. The Property shall remain a single lot. Subdivision to convert the Property into one recorded lot is permitted.

(C) Development of the Property. Notwithstanding anything herein to the contrary, the Grantor reserves the right to construct on or otherwise develop, renovate or alter the Property with any improvement including, but not limited to, an addition to any existing structure currently on, or subsequent to the date hereof constructed on, the Property; or, a fence or other barrier separating the Property from any adjacent or contiguous property. Provided, however, that in all events any such construction, development, renovation, alteration or improvement, shall be developed, planned and implemented in accordance with the applicable rules and regulations of and approved by the Historic Preservation Commission and any other governmental or quasi-governmental agency having authority over the development of the Property.

(D) Inspection. Grantee shall have the right to enter the Property on reasonable notice to the Grantor for the purpose of inspecting the Property to determine whether there is compliance by the Grantor with the terms of this Deed. Grantor and Grantee agree that they shall be governed by Chapter 24A of the Montgomery County Code and that all renovations

and alterations made to the Improvements shall be reviewed and approved by the Historic Preservation Commission.

(E) Enforcement. Upon any breach of any of the material terms, conditions or restrictions contained in the Easement by the Grantor, the Grantee may exercise any or all of the following remedies, but only after fifteen (15) days prior written notice and opportunity to cure such breach:

- (i) institute a suit to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction;
- (ii) demand that the Property be restored promptly to the condition required by the Easement; and
- (iii) correct any breach, and hold Grantor responsible for the resulting cost.

Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantee at law or equity. If the Grantor is found to have breached any of her obligations under the Easement, Grantor shall reimburse Grantee for any reasonable costs or expenses incurred by Grantee, including, but not limited to, court costs and reasonable attorneys' fees.

(F) Waiver. No failure on the part of Grantee to enforce any covenant or provision herein nor the waiver of any right hereunder by Grantee shall discharge or invalidate such covenant or provision or any other covenant, condition, or provision hereof, or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

(G) Notice. Any notice required to be given hereunder shall be in writing and shall be given by certified or registered mail, with postage prepaid and return receipt requested, if to the Grantor, addressed to the Grantor as follows:

Martha R. Lanigan  
14420 Basingstoke Lane  
Silver Spring, MD 20905

or to the Grantor at such other address as the Grantor may from time to time designate by notice to the Historic Preservation Commission, or, if to the Grantee, addressed to the Grantee as follows:

Chairperson  
Historic Preservation Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

or to the Grantee at such other address as the Chairperson of the Historic Preservation Commission may from time to time designate by notice to the Grantor. Any notice given in the foregoing manner shall be deemed to have been given upon receipt thereof, which shall be presumed to be two (2) days after the day notice has been deposited with the United States Post Office.

(H) Construction. The Easement is for the purpose of promoting and shall be construed to promote the purposes of Chapter 24A of the Montgomery County Code and of Section 2-118 of the Real Property Article of the Annotated Code of Maryland and to preserve the historic, architectural, cultural and scenic character of the Real Estate.

(I) Subsequent Conveyance. The Grantor agrees that the restrictions set forth in this Deed will be inserted, verbatim or by express reference, in any subsequent deed or other legal instrument by which the Grantor's fee simple title to the Real Estate or any other possessory interest in the Real Estate, or any part thereof, is divested or conveyed.

(J) Transfer of Ownership. The Grantor agrees to notify the Grantee in writing of the names and addresses of any party to whom the Real Estate, or any part thereof, is being transferred before or within thirty (30) days of the time the transfer is consummated.

(K) Conservation Purposes. Grantee agrees that it will hold this Deed exclusively for conservation purposes, i.e., that it will not transfer this Deed whether or not for consideration. However, subject to the provisions of any applicable federal law, Grantee may assign or transfer its interest in this Deed to a governmental unit or organization which qualifies at the time of the transfer as an eligible donee of this Deed under any pertinent provisions of federal law including, but not limited to, the Maryland Historical Trust, which will continue to hold this Deed exclusively for conservation purposes.

(L) Property Right. Grantor agrees that the donation of this Deed gives rise to a property right, immediately vested in the Grantee, with a fair market value equal to the proportionate value that this Deed at the time of the donation bears to the value of the Property as a whole.

(M) Extinguishment. This Easement may be extinguished by a judicial proceeding if an unexpected change in the conditions applicable to the Real Estate including, but not limited to, a casualty which substantially destroys the Improvements, makes it impossible or impractical to continue the use of the Easement for conservation purposes. In the event of such judicial extinguishment of this Easement, and upon a subsequent sale, exchange or involuntary conversion of the Real Estate, or any portion thereof, Grantee shall be entitled to a portion of the proceeds of the sale, exchange or involuntary conversion which are allocated to the Property (as defined herein and which does not include the value of any improvements) equal to the proportionate value that the Easement, at the time of its donation, bore to the value of the Property as a whole at that time, but which in no event shall be less than five percent (5%) of the value allocated to the Property at the time of such sale, exchange or involuntary conversion, and

any and all compensation so received by the Grantee shall be used by the Grantee in a manner for conservation purposes consistent with this Easement.

(N) 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 historic preservation purpose.

(O) 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 Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors in interest.

(P) 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 Grantor as owner of the Real Estate.

To have and To Hold, this Deed of Easement unto the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee intending to legally bind themselves have set their hands and seals on the date first written above.

Witness:

Shirley T. Thompson

By: Martha R. Lanning  
Martha R. Lanning

Johnna Facke Dyls  
Douglas M. Duncan, County Executive  
Montgomery County, Maryland

APPROVED AS TO FORM AND LEGALITY

Michael Paul 5/24/05  
Office of the County Attorney



ACKNOWLEDGMENTS

STATE OF MARYLAND )  
 ) SS:  
COUNTY OF MONTGOMERY )

I hereby certify that on this 23<sup>rd</sup> day of May, 2005, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me MARTHA R. LANIGAN and acknowledged the foregoing instrument to be her act and deed and that she executed the same for the purposes therein contained.

IN TESTIMONY WHEREOF, I have affixed my official seal.

Charmaine M. D'Monte  
Notary Public



My commission expires: \_\_\_\_\_

CHARMAINE M. D'MONTE  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires February 27, 2006

STATE OF MARYLAND )  
 ) SS:  
COUNTY OF MONTGOMERY )

I hereby certify that on this 24<sup>th</sup> day of May, 2005, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me Douglas M. Duncan and acknowledged that he is the County Executive of Montgomery County, Maryland and that the execution of the foregoing instrument is his free act as County Executive.

IN TESTIMONY WHEREOF, I have affixed my official seal.

Jo Anne Faele  
Notary Public

My Commission expires: June 1, 2006

## EXHIBIT A

### Legal Description

Being, part of the property in a conveyance from Mary Adele Bennett, et al to Plummer Waters Allnutt by deed dated February 17, 1944 and recorded among the Land Records of Montgomery County, Maryland at Liber 933 at folio 244 and being described as follows:

BEGINNING for the same at the rear southeast corner of Lot 6, Block 1, Fairview subdivision and running thence with the rear lot lines of Lots 6, 7, 8, North 55 degrees 39' 45" East 120.13 feet to a point, thence North 26 degrees 17' 20" East 125.0 feet to a point, thence North 11 degrees 25' 16" West 126.27 feet to a point, thence South 27 degrees 29' 33" West 96.47 feet to a point, thence North 85 degrees 56' 37" West 131.24 feet, North 64 degrees 9' 45" West 128.47 feet to a point in the edge of Oursler Road, and thence with east edge of said road South 25 degrees 53' 26" West 207.45 feet to a point, thence leaving said road and running South 64 degrees 18' 54" East 248.26 feet to a point, thence South 26 degrees 41' 29" West 535.50 feet to a point in Maryland Route #198 also know as Spencerville Road, then with said road South 70 degrees 31' 45" East 20.22 feet to a point, thence leaving said road and running North 26 degrees 43' 50" East 555.47 feet to the point of beginning, containing 84,932 square feet of land, as per survey by Dewberry & Davis dated March, 1992.

The land hereby conveyed being all of the same land conveyed by William T. Bobb, personal representative of the Estate of Robert A. Bobb, to James J. Bierbower by deed dated August 27, 1981 and recorded at Liber 5760 folio 216 among the Land Records of Montgomery County, Maryland.