

DEPARTMENT OF AGRICULTURE
DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION
Statutory Authority: 3 Delaware Code, Sections 904(a)(13) (3 **Del.C.** §904(a)(13))
3 **DE Admin. Code** 701

PROPOSED

PUBLIC NOTICE

701 Farmland Preservation Program

The Delaware Agricultural Lands Preservation Foundation (the "Foundation"), pursuant to 3 **Del.C.** §928, will hold a public hearing to discuss proposed regulations relating to the administration of the Delaware Agricultural Lands Preservation Program established pursuant to 3 **Del.C.** §901. The Foundation was established by the Delaware Legislature pursuant to 3 **Del.C.** §903. The Foundation is responsible for, among other things, adopting criteria for the establishment and maintenance of Agricultural Preservation Districts and Forestland Preservation Areas and establishing criteria for the purchase of Agricultural Preservation Easements and Forestland Preservation Easements. To carry out its statutory responsibilities, the Foundation has been directed to, among other things, adopt rules of practice and procedure for the acquisition of Preservation Easements, including the process and timeframe for submitting applications for the sale of Easements, the establishment of the purchase price for the easements through the use of appraisal information, the manner in which offers to sell such easements are accepted, and the basis upon which offers for sale of such easements are accepted.

Pursuant to its statutory authority, the Foundation is proposing for adoption a comprehensive set of guidelines and regulations to be used for the administration of the agricultural lands preservation program. The proposed regulations will replace all of the existing regulations set forth in 3 Delaware Administrative Code, Part 701, Sections 1.0 through and including 30.0, including Appendix A through G, and will, among other things: (a) establish eligibility criteria, (b) establish application procedures, (c) establish criteria for the purchase of Agricultural Lands Preservation Easements and methods by which the purchase price will be determined, and (d) provide for additional means of creating priority for acquisition of preservation easements in designated areas which are near or adjacent to any growth zones that may be indicated by each of the three respective counties. No changes are being proposed to the Forestland Preservation regulations set forth in 3 Delaware Administrative Code, Part 702.

The public hearing will be on Wednesday, September 23, 2015 beginning at 10:00 a.m. and ending at 12:00 p.m. at the Foundation's office located at 2320 S. DuPont Highway, Dover, Delaware 19901.

Copies of the proposed regulations are available for review by contacting:

Rebecca Vaughn
Delaware Agricultural Lands Preservation Foundation
2320 S. DuPont Highway
Dover, DE 19901
(302) 698-4531
Email: Rebecca.Vaughn@state.de.us

Anyone wishing to present oral comments at this public hearing should contact the designated Hearing Officer, Mr. William A. Denman at (302) 678-3262 prior to the hearing. Oral comments and written comments may be presented at the hearing, and anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony, should submit such comments by October 1, 2015 to:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

701 Farmland Preservation Program

4.0 Legislative Intent

Delaware farms and farmlands are vanishing at an alarming rate. Thirty-nine percent of the agricultural land in Delaware disappeared in the last 70 years due to commercial and population expansion. In 1920, there were

10,300 farms tilling 944,500 acres of land. In 1990, there were 2,900 farms operating and only 570,000 acres of land dedicated to the profession of farming. These figures impact all Delawareans because agriculture employs more people than any other industry in Delaware and is a leading contributor to the State's economy. If the loss of farmland continues at the current rate, then the State of Delaware will be in danger of losing its number one industry, agriculture.

On July 8, 1991, Governor Michael N. Castle signed House Bill 200 to amend 3 ~~Del.C.~~ Ch. 9. The legislation established a comprehensive agricultural lands preservation program to serve the long-term needs of the agricultural community and the citizens of Delaware. It is the declared policy of the State to conserve, protect and encourage improvement of agricultural lands within the State for the production of food and other agricultural products useful to the public which are grown, raised or harvested on land and water in the State of Delaware.

The Agricultural Lands Preservation Foundation was created by this legislation to accomplish this mission by establishing Agricultural Preservation Districts of viable and productive farmland and forest land. The Foundation is directed to provide economic incentives and benefits to agribusiness, purchase development rights from landowners; encourage development in areas where infrastructures exist, and promote the agricultural industry and the concept of preserving viable land for the future. 3 ~~Del.C.~~, §901

2.0 Program Intent

The Agricultural Lands Preservation Program was created as a long-term response to the depletion of valuable farmland. It is designed to provide landowners with an incentive to remain in agriculture as opposed to subdividing and selling productive farmland. The Agricultural Lands Preservation Foundation was established to develop and implement a comprehensive agricultural lands preservation program. These program guidelines represent policies and procedures adopted by the Agricultural Lands Preservation Foundation and the "Guidelines for the Delaware Agricultural Lands Preservation Program" section represents an exercise of the Foundation's regulatory responsibilities under 3 ~~Del.C.~~, §904(a) and (b)(21). These guidelines will govern the work of the Foundation. The program contained herein augments 3 ~~Del.C.~~ Ch. 9.

3.0 Delaware's Agricultural Lands Preservation Foundation By-Laws

4.0 Preamble

The Agricultural Lands Preservation Foundation, also referred to as the Foundation, accepts and assumes its responsibility to develop and implement a comprehensive agricultural lands preservation program to serve the long-term needs of the citizens of Delaware. In accordance with 3 ~~Del.C.~~, §904 (b)(20), the Foundation hereby adopts these BY-LAWS.

Article I: Origin Of The Organization

On July 8, 1991, Governor Castle signed House Bill 200 which created the Agricultural Lands Preservation Foundation. This organization is established and created as an independent entity by 3 ~~Del.C.~~ Ch. 9, §1.

Article II: Mission Statement

The Foundation's mission is to develop and implement a comprehensive agricultural lands preservation program for Delaware. Encompassed in the enabling legislation are the following goals for the Foundation:

Establish criteria for Agricultural Preservation Districts (For the purpose of this document, they will be referred to as "Districts").

Establish Districts of viable and productive farmland and forest land in accordance with the established criteria.

Develop and implement an application process that includes County Farmland Preservation Advisory Boards, County Planning and Zoning authorities, and the Foundation.

Develop a strategy map identifying the critical agricultural areas of the State, to be used as a guide for establishing Districts and purchasing preservation easements.

Establish criteria for purchasing development rights from landowners in Districts, including the prioritization of purchases in those areas located near and adjacent to designated growth zones.

Purchase development rights of landowners in a District in accordance with established criteria.

Encourage development in areas where infrastructures exist.

Provide economic incentives and benefits to encourage landowners who preserve their land.

Promote and encourage the preservation and support of agriculture as an industry and a valued occupation.

~~Work closely with the Department of Agriculture, Department of Natural Resources and Environmental Control, other state agencies, and private organizations concerned with promoting Delaware's agricultural sector and protecting open space.~~

~~Work with county and local governments to encourage farmland preservation in land use planning and zoning activities.~~

Article III: Organizational Structure

~~The Foundation is comprised of nine (9) Trustees, all appointed by the Governor. Each Trustee must be a resident of Delaware and qualified to vote in the State of Delaware.~~

~~The Chairperson of the Foundation, will serve at the pleasure of the Governor and will be confirmed by the Senate.~~

~~The Secretary of the Department of Agriculture or designee, the Secretary of the Department of Natural Resources or designee, and the State Treasurer or designee will serve an indefinite term.~~

~~Each county will have a representative who is actively engaged in agribusiness to serve on the Foundation for an initial period of three (3) years.~~

~~For the four (4) Trustees appointed to the positions indicated in sections 3.2 and 3.4 ve, Trustees registered in either major political party shall not exceed the other major political party by more than one (1).~~

~~One (1) representative from the Delaware Farm Bureau, selected from a list of three (3) nominees, will serve for an initial term of two (2) years.~~

~~One (1) representative from the Delaware State Grange, selected from a list of three (3) nominees, will serve for an initial term of two (2) years.~~

~~The Governor will appoint an interim Trustee in the event of a death, permanent disability, resignation, or failure to perform duties of a Trustee. The replacement will serve the unexpired term of the departing Trustee. The Chairperson's replacement must be confirmed by the Senate if his/her residual term exceeds six (6) months. 3 Del.C., §903~~

Article IV: Officers

~~Other officers of the Foundation besides the Chairperson shall include a Vice Chairperson, a Secretary and a Treasurer.~~

~~The Chairperson shall preside and maintain order at all meetings of the Foundation.~~

~~The Vice Chairperson shall act for the Chairperson in his/her absence.~~

~~The Secretary shall be responsible for recording the minutes of the Foundation meetings.~~

~~The Treasurer shall be responsible for maintaining records of all receipts and disbursements and shall submit a monthly financial report to the Foundation.~~

Article V: Organizational Function

~~The Foundation will meet at least quarterly; executive meetings or an emergency meeting may be called by the Chairperson.~~

~~All Foundation meetings, except for executive sessions, are open to the public and advance notice will be given in accordance with applicable statutory requirements. Public hearings shall be conducted in accordance with the requirements of 3 Del.C., §928.~~

~~Minutes of every meeting will be recorded and available to the public. An agenda will be sent to each Trustee no less than seven (7) days before the next scheduled meeting, if feasible, provided however that the agenda may be modified as necessary in advance of a meeting in which case the maximum period of notice will be provided.~~

~~Five (5) Trustees will constitute a quorum for conducting business of the Foundation.~~

~~A majority vote of members constituting a quorum is required for action on any matter before the Foundation.~~

~~A Trustee is not entitled to vote on any matter before the Foundation if such Trustee knowingly has a financial interest in the outcome of such matter. The Trustee will inform the Chairperson of his/her conflict of interest and will be recorded in the minutes of the meeting.~~

~~The Foundation may adopt policies and guidelines as necessary for the proper conduct of its work.~~

~~The By-laws will be reviewed periodically by the Trustees.~~

~~Amendments to these By-laws and policies will be introduced with prior notice to the Trustees.~~

~~An Annual Report will be prepared summarizing proceedings and activities for the annual period ending September 30. The Annual Report shall be submitted prior to January 1 following the close of the reporting period. 3 Del.C., §903, §904~~

Article VI: Organizational Authority Granted By 3 Del.C., Ch. 9.

- ~~To purchase, sell, manage, lease, or rent real and personal property for use of the Foundation.~~
- ~~To seek, obtain, and utilize federal and private funding.~~
- ~~To accept gifts, grants or loans of funds, property or service from any source, private or public.~~
- ~~To receive funds from the sale of general bonds, revenue bonds or other obligations of the State or under the name of the Foundation.~~
- ~~To establish a Delaware Farmland Preservation Fund.~~
- ~~To recover reasonable costs for service provided and to collect rollback taxes from real estate transactions.~~
- ~~To adopt procedural rules to govern how internal affairs of the Foundation are conducted.~~
- ~~To select an Executive Director, who shall be chief executive officer of the staff to the Foundation.~~
- ~~To employ a staff subject to the availability of funding.~~
- ~~To retain by contract auditors, accountants, appraisers, legal counsel, surveyors, private consultants, financial advisors, or other contractual services required by the Foundation.~~
- ~~To delegate to one (1) of its members, its Executive Director or its agent, such powers and duties necessary to conduct authorized business on behalf of the Foundation.~~
- ~~To adopt, after notice and public hearing, policies and guidelines to fulfill the Foundation's responsibilities.~~
- ~~To undertake such other activities authorized by the Foundation's enabling legislation and the amendments thereto. 3 Del.C., §904~~

Article VII: Organizational Responsibilities

- ~~To develop and implement, after public hearing, a statewide agricultural lands preservation strategy which specifically identifies the areas in which viable, productive agriculture lands are located and which are considered most vital for permanent preservation, and to identify growth zones, and those areas located near and adjacent to designated growth zones to be given priority for acquisition of preservation easements.~~
- ~~To adopt, after public hearing, criteria for establishing and maintaining Agricultural Preservation Districts.~~
- ~~To adopt, after public hearing, criteria for establishing and maintaining a program to purchase development rights.~~
- ~~To establish a program of cooperation and coordination with the counties, municipalities, and other governmental bodies of Delaware and with private non-profit or public organizations to assist in the statewide preservation of agricultural land.~~
- ~~To monitor and enforce the requirements, restrictions and policies developed by the Foundation.~~
- ~~To administer, operate, and supervise, the Delaware Farmland Preservation Fund.~~
- ~~To engage the services of an independent certified public accountant to conduct an annual audit of the Foundation's accounts at the end of each fiscal year.~~
- ~~To develop and establish a program of education and promotion of agricultural lands preservation.~~
- ~~To engage in such other activities designed to promote an effective program. 3 Del.C., §904~~

Article VIII: Parliamentary Matters

- ~~In all matters not covered in 3 Del.C., Ch. 9 or these By-Laws, Roberts Rules of Order shall apply.~~

5.0 Guidelines Used For The Delaware Agricultural Lands Preservation Program

~~The Foundation is granted authority to establish criteria for Agricultural Preservation Districts (hereinafter referred to as "Districts") and the purchase of preservation easements. 3 Del.C., §904~~

6.0 Criteria For District Eligibility

- 6.1 ~~In order to qualify for the Agricultural Lands Preservation Program, the lands proposed as a Agricultural Preservation District in the application must meet the following criteria:~~
 - 6.1.1 ~~owner(s) shall hold fee simple title to all land to be placed in a District;~~
 - 6.1.2 ~~must constitute at least 200 acres of contiguous farmland or lesser acreage if the farmlands are located within three (3) miles of an established District;~~
 - 6.1.3 ~~shall be zoned for agricultural purposes and shall not be subject to any major subdivision plan;~~
 - 6.1.4 ~~applicant(s) including all fee simple title holders, must sign a written agreement committing to District restrictions set forth in this Section and 3 Del.C., §909 and other adopted requirements.~~

- 6.1.5 ~~must be viable and productive agricultural land and meet the minimum County Land Evaluation and Site Assessment (LESA) scoring requirements for eligibility as established by the Foundation. 3 Del.C., §908 (a)(3)~~
- 6.1.6 ~~must include all of the eligible real property located in the tax parcel or tax parcels subject to application.~~
- 6.2 ~~For the purposes stated in this chapter, the phrase "viable and productive agricultural land" is defined as land that qualifies under provisions of the Farmland Assessment Act. 9 Del. C., §8329 – 8333~~
- 6.3 ~~The minimum LESA score for an eligible District or Expansion shall be 170 points out of a possible 300 points for each county in the State as computed under the currently approved LESA program of the Delaware Department of Agriculture.~~

7.0 Application Procedures

- 7.1 ~~The Foundation will provide application forms (Appendix A) on which applicants who volunteer to place their lands into an Agricultural Preservation District will provide the following information:~~
 - 7.1.1 ~~name of petitioner(s)~~
 - 7.1.2 ~~mailing address(es)~~
 - 7.1.3 ~~telephone number(s)~~
 - 7.1.4 ~~property location~~
 - 7.1.4.1 ~~county~~
 - 7.1.4.2 ~~community name~~
 - 7.1.5 ~~deed or property description~~
 - 7.1.6 ~~area – total acreage of:~~
 - 7.1.6.1 ~~cropland~~
 - 7.1.6.2 ~~woodland~~
 - 7.1.6.3 ~~pasture~~
 - 7.1.6.4 ~~aquaculture~~
 - 7.1.6.5 ~~tidal wetlands~~
 - 7.1.6.6 ~~farm structures~~
 - 7.1.6.7 ~~residence/buildings~~
 - 7.1.6.8 ~~other~~
 - 7.1.7 ~~land use/zoning designation or designations~~
 - 7.1.8 ~~easements/rights-of-way (identify, if any)~~
 - 7.1.9 ~~mortgages/liens (identify, if any)~~
 - 7.1.9.1 ~~mortgagee or lien holder's name or names~~
 - 7.1.9.2 ~~date of mortgages or liens~~
 - 7.1.10 ~~number of dwelling units~~
 - 7.1.11 ~~soil and water conservation plan (if any)~~
 - 7.1.12 ~~proof of eligibility under the Farmland Assessment Act~~
 - 7.1.13 ~~evidence of historical significances (if any)~~
 - 7.1.14 ~~information regarding the occupancy of dwelling units on the property~~
- 7.2 ~~The Foundation shall provide assistance to potential applicants in completing application forms when requested 3 Del. C., §907(a)~~
- 7.3 ~~Foundation staff may conduct on-site inspections and/or phone interviews with the applicants to acquire data necessary to perform LESA analyses and write a staff report.~~
- 7.4 ~~In conjunction with the application, all fee simple owners shall sign a District Agreement (Appendix B) which serves as a declaration in recordable form of acknowledgment of the policies and restrictions that must be followed, and all benefits realized in a District.~~

8.0 Application Review Procedures

- 8.1 ~~The Foundation has the authority to approve applications, establishing Agricultural Preservation Districts and purchasing preservation easements. 3 Del.C. §904~~
- 8.2 ~~The Foundation staff will review applications and determine whether or not the minimum eligibility requirements under Section 1.1 have been met.~~

- 8.3 If the minimum eligibility requirements have not been met, then the applicant will be notified by letter from the Foundation indicating that the application does not qualify for further review, and the reasons for ineligibility.
- 8.4 If an applicant excludes a portion of property otherwise includable in a proposed District, then the Foundation shall deny the application.
- 8.5 Subject to Section 3.3 above, if the lands proposed as a District in the application meet minimum eligibility criteria, then the Foundation staff will submit to the Foundation, the County Farmland Preservation Advisory Board and the County Planning and Zoning Authority, applications and criteria checklists describing and summarizing the criteria as established in this chapter (see Appendix C).
- 8.6 If the applicant disagrees with the staff evaluation of the proposed District, then the applicant may contact the Foundation staff to discuss the application review. Foundation staff will meet with the landowner to discuss the review within thirty (30) days from receiving such telephone call or letter.
- 8.7 If the issue is not resolved to the applicant's satisfaction, he/she may request an administrative review with the Foundation by submitting a letter to the Foundation within fourteen days (14) of the applicant's last meeting with Foundation staff.
- 8.8 This letter must include reasons and documentation to justify the applicant's claim(s).
- 8.9 Within seven (7) working days from the receipt of the landowner's letter, the Foundation will schedule a meeting and notify the applicant by certified letter of the date, time, and place of the meeting, at least seven (7) days in advance.
- 8.10 At the administrative review meeting, the applicant(s) shall present information or documentation as to how the proposed District satisfies the eligibility criteria.
- 8.11 The Foundation will render a decision within thirty (30) days from the administrative review meeting and notify the applicant in writing of its decision.

9.0 Creation Of A District

- 9.1 To establish an Agricultural Preservation District, the application must be approved by two out of three of the entities listed under section 3.4 of these guidelines. ~~3 Del.C., §907(c)~~
- 9.2 After review by the Foundation, the application is subject to a review period of thirty (30) days in which the Secretary of Agriculture may reject the application. The application is officially approved at the end of the review period, if it is not rejected by the Secretary of Agriculture. ~~3 Del.C., §919~~
- 9.3 The property legally becomes a District when the applicant and Foundation Chairperson (or designee) have signed the District Agreement and no rejection has been exercised by the Secretary of Agriculture, or the Secretary of Agriculture has specifically approved the application.
- 9.4 Copies of the District Agreement shall be filed with the County Planning and Zoning and Tax Assessor's Offices and recorded in the Office of the Recorder of Deeds. The Foundation shall require from these Offices proof of recording and/or receipt of the District Agreement.
- 9.5 The Foundation shall endeavor to provide written notification of the date of establishment of the Agricultural Preservation District and provide a copy of the District Agreement to the applicant, however, the failure of the Foundation to satisfy any formality following execution of a District Agreement shall not affect the validity of the District Agreement.

10.0 District Restrictions

- 10.1 Any rezoning or major subdivision of real property included in an Agricultural Preservation District is prohibited. ~~3 Del.C., §909 (a)(1)~~
- 10.2 The submission of applications or preliminary rezoning or subdivision plans for any property within an Agricultural Preservation District to a county or municipality shall be considered evidence of the intent to rezone or subdivide and is prohibited.
- 10.3 All activities on the property shall be limited to "agricultural and related uses." ~~3 Del.C., §909 (a)(2)~~
- 10.4 For the purposes of these guidelines, the phrase 'agricultural and related uses' shall be defined as, all forms of farming including but not limited to, agriculture, horticulture, forestry, aquaculture, or silviculture as defined in the Farmland Assessment Act of 1968 ~~9 Del.C., Ch. 83 and 3 Del.C., §403~~ or by the National Agricultural Statistics Service.
- 10.5 Excavation or filling, borrow pits, extraction, processing and removal of sand, gravel, loam, rock or other minerals is prohibited unless such action is currently required by or ancillary to any preparation for, or operation of any activities including, but not limited to: aquaculture, farm ponds, cranberry operations, manure handling facilities, and other activities directly related to agricultural production.

- 10.6 ~~Activities that would be detrimental to drainage, flood control, water conservation, erosion control or soil conservation are prohibited;~~
- 10.7 ~~Any other activity that might negatively affect the continued agricultural use of the land is prohibited.~~
- 10.8 ~~The term "usable land owned in the district" 3 **Del.C.**, §909(a)(2), shall be defined as any land meeting the requirements for agricultural, horticultural or forest land in the Farmland Assessment Act of 1968 [9 **Del.C.**, Ch. 83] and 3 **Del.C.**, §403 or criteria for farm definition as established by the National Agricultural Statistics Service.~~
- 10.9 ~~The District Agreement and District requirements and benefits shall be binding on the heirs, successors and assigns of property owners of lands within a District. A property owner in a District shall provide written notice to a successor or assign in advance of the date of transfer of the property that the property is subject to District restrictions. The party taking title shall execute a document as required by 3 **Del.C.**, §909(a)(2)(iii) acknowledging the acreage allowed for dwelling housing and the restrictions which apply to the property.~~
- 10.10 ~~Under 3 **Del.C.**, §909(a)(3), all restrictions shall be covenants which run with and bind the lands in the District for a minimum of ten (10) years, beginning when the District Agreement takes effect as specified in the District Agreement.~~

11.0 Continuation Of A District

- 11.1 ~~All properties are to remain in an Agricultural Preservation District for at least ten (10) years, subject to the allowance of hardship exceptions for exclusion of dwelling pursuant to 3 **Del.C.**, §909(a)(2)(ii) and Section 9 of these guidelines.~~
- 11.2 ~~If a landowner wishes to withdraw from, or terminate a District, then the Foundation must receive a written notice of intent to withdraw no less than six (6) months prior to the ten (10) year anniversary date of initial establishment of the District. 3 **Del.C.**, §909 (b)~~
- 11.3 ~~If the Foundation does not receive a written notification of the landowner's intent to withdraw from the District six (6) months prior to the ten (10) year anniversary date of that District, then the land shall remain in the District, unless notice of intent to withdraw shall be given within six months of the end of each additional five-year period.~~

12.0 Expansion Of A District

- 12.1 ~~An Agricultural Preservation District can be expanded for the purpose of preserving additional lands. Lands added to a District may be under 200 acres. 3 **Del.C.**, §907(d).~~
- 12.2 ~~Land which is less than 200 usable acres, yet meets the other criteria established by the Foundation is eligible to be an expansion of an Agricultural Preservation District if it is within three (3) miles of any portion of an established Agricultural Preservation District. 3 **Del.C.**, §907(a).~~

13.0 Inspection Of Districts

- 13.1 ~~The Foundation has the authority to enter upon lands as may be necessary to perform surveys, appraisals, and investigations to accomplish its mission; consistent with applicable statutes. 3 **Del.C.**, §904(b)(14)~~
- 13.2 ~~The Foundation or its designee reserves the right to inspect restricted land and enforce agreements on its own behalf.~~
- 13.3 ~~If any violations of the terms and the conditions of the District Agreement occur, the Foundation may institute proceedings in the appropriate court to enforce the terms and seek appropriate relief. 3 **Del.C.**, §920(a)~~

14.0 Dwelling Property Hardship Exceptions

- 14.1 ~~In accordance with 3 **Del.C.**, §909(a)(2)(ii), the legal or equitable owners of real property subject to a District Agreement or Preservation Easement are entitled to apply to the Foundation for a hardship exception allowing for the transfer of dwelling property to parties who are not otherwise entitled to residential use of the dwelling property under the District Agreement or Preservation Easement, subject to the provisions of 3 **Del.C.**, §909(a)(2)(ii) and the following requirements.~~
- 14.2 ~~An applicant for a hardship exception shall submit the following information in writing to the Foundation:~~
 - 14.2.1 ~~name and property interest of the applicant in the dwelling property~~
 - 14.2.2 ~~acreage of the dwelling property subject to application~~
 - 14.2.3 ~~date on which the District was established~~
 - 14.2.4 ~~number of dwellings and acreage of residential use currently on the property in the District~~
 - 14.2.5 ~~the nature of the hardship condition and reasons justifying the granting of a hardship exception~~

- 14.2.6 the extent to which the hardship condition is unavoidable
- 14.3 The Foundation shall consider hardship conditions involving the following circumstances:
- 14.3.1 the sale or transfer of the dwelling property compelled by foreclosure, court order, or marital property division agreement.
- 14.3.2 the sale or transfer of the dwelling property compelled by job transfer.
- 14.3.3 the sale or transfer of the dwelling property compelled by health conditions.
- 14.3.4 the sale or transfer of the dwelling property required to avoid insolvency or bankruptcy.
- 14.3.5 other circumstances of an unusual and extraordinary nature which pose a practical hardship to continued ownership of the dwelling property and which are unavoidable.
- 14.4 Hardship exceptions will not be granted when no real hardship exists and the primary consequence of the sale or transfer of the dwelling property is financial gain.
- 14.5 The applicant shall bear the burden of establishing the existence of hardship circumstances, and shall provide to the Foundation documentation in support of the application, and any documentation requested by the Foundation, provided however, that documentation involving privileged information may be submitted on a confidential basis.
- 14.6 The Foundation may require the applicant for a hardship exception to appear before the Foundation Board to present the application, and an applicant shall be entitled to appear before the Board to make a presentation by submitting a written request to the Foundation.
- 14.7 The granting of a hardship exception by the Foundation shall be subject to the following conditions:
- 14.7.1 the dwelling property following transfer shall be used only for residential purposes.
- 14.7.2 the transferred property shall not qualify for District benefits or benefits of Preservation Easements.
- 14.7.3 if the transferred property is subject to a Preservation Easement prior to transfer, payment shall be made to the Foundation in an amount equal to twenty-five (25) percent of the current fair market value of the land subject to transfer.
- 14.7.4 the transferee shall execute a Declaration in recordable form as prescribed by the Foundation which includes the acreage allowed for dwelling housing and the restrictions which apply to the real property.
- 14.7.5 the Foundation may require the transferor to execute a Declaration in recordable form as prescribed by the Foundation to evidence the status of allowable dwelling housing property on lands retained by the transferor which are in the District or subject to a Preservation Easement.
- 14.7.6 such other terms and conditions considered necessary by Foundation to address the nature of the hardship condition.

15.0 Delaware Farmland Preservation Fund

- 15.1 The Delaware Farmland Preservation Fund, hereinafter referred to as the "Fund" was enacted under 3 ~~Del.C.~~, §905 for the exclusive application by the Foundation to achieve the desired goals of preserving viable agricultural lands and conducting the business of the Foundation.

16.0 Authority

- 16.1 The Foundation Trustees shall manage and administer the Fund according to the requirements as stated in 3 ~~Del.C.~~, §905. A Trustee shall be elected as Foundation Treasurer to monitor and supervise the Fund.
- 16.2 The Foundation has the authority to hire an Executive Director and any other staff necessary to accomplish its mission. Salaries for these positions and retention of consultants and other professionals will be paid from the Fund.
- 16.3 The Foundation members, by a majority vote, can purchase all the necessary materials, equipment, and services to perform its mission. All necessary expenses incurred by the Trustees to enable the performance of their duties are paid from the Fund.
- 16.4 The Foundation has the authority to establish accounts at any bank or financial institution, purchase certificates of deposit or other appropriate investment instruments.
- 16.5 Any two officers, or one officer and a designated staff person, are authorized to sign checks and drafts against any accounts established by the Foundation, providing such expenditures have been budgeted or specifically approved by the Board.

17.0 Sources Of Funding

- 17.1 The Foundation may accept donations, property, or development rights as gifts and monetary gifts from any source, public or private.

- 17.2 ~~Monies not needed on a current basis by the Foundation will be invested with the approval of the Board of Trustees.~~
- 17.3 ~~The Fund is subject to an annual audit to be prepared by an independent, certified public accountant. The findings of all audits shall appear in the Foundation's Annual Report.~~
- 17.4 ~~The Foundation shall manage the monies appropriated to it by the General Assembly in accordance with the terms of the appropriations.~~

18.0 ~~Criteria For The Purchase Of Agricultural Lands Preservation Easements {3 Del.C. §904(A)(2)}~~

- 18.1 ~~The intent of this section is to provide a framework for the acquisition of Agricultural Lands Preservation Easements (hereinafter referred to as "Preservation Easements") to protect in perpetuity those lands of the state most suitable for long-term agricultural production, to preserve a sufficient critical mass of agricultural land to insure the economic viability of the agriculture industry, and to protect farmland from development in those areas located near and adjacent to designated growth zones.~~
- 18.2 ~~The Foundation will place greatest emphasis on acquiring Preservation Easements in areas where significant agricultural acreage can be maintained for long-term agricultural production and prioritize acquisitions in areas located near and adjacent to designated growth zones.~~
- 18.3 ~~Based on the long-range goal, the Foundation will give primary consideration to the Agricultural Lands Preservation Strategy Map for the State of Delaware {3 Del.C., §904(a)(2)} in the acquisition of Preservation Easements.~~
- 18.4 ~~In the criteria established for the prioritization of Preservation Easements, the Foundation will also give weight to the Land Evaluation and Site Assessment (LESA) score for the subject parcel, and the eligibility criteria used in the establishment of agricultural districts, and factors designed to prioritize acquisitions in areas located near and adjacent to designated growth zones.~~

19.0 ~~Schedule For Acquisition Of Agricultural Lands Preservation Easements~~

- 19.1 ~~Recognizing that voluntary applications by agricultural preservation district landowners may exceed available funds for the procurement of Preservation Easements, it is necessary to establish a procedure for pooling, reviewing, prioritizing, and funding applications for permanent Preservation Easements.~~
- 19.2 ~~Application and funding cycles will take place on schedules established by the Foundation.~~
- 19.3 ~~Applications for the purchase of Preservation Easements in Rounds of Purchases shall be subject to deadlines established by the Foundation.~~
- 19.4 ~~For each Round of Preservation Easement Purchases the Foundation shall rank the applications in the Round in accordance with the criteria set forth in Section 13. Following the ranking the Foundation shall establish a cut-off score, and arrange for the appraisal of the Preservation Easement value of those properties at or above the cut-off score.~~
- 19.5 ~~Upon completion, the appraisals shall be provided to the landowners, and procedures set forth in Section 23 involving offers for the sale of preservation easements shall be initiated.~~
- 19.6 ~~After receipt of offers for the sale of preservation easements, the Foundation shall review the offers and announce the selections in accordance with the provisions of Section 22.~~
- 19.7 ~~Following the selection of properties for acquisition of Preservation Easements, the Foundation shall arrange for surveys of the properties to be conducted, and proceed to settlement under the terms of the Option Agreements, subject to the availability of funding and satisfaction of regulatory, financial or other restrictions or limitations.~~
- 19.8 ~~The Foundation is under no obligation to purchase a Preservation Easement which is offered for sale. 3 Del.C., §913.~~

20.0 ~~Matching Contributions To The Program~~

~~The Foundation may establish a reserve of available funds for the matching of federal, county, state, local, or private funds for the preservation of farmland.~~

21.0 ~~Eligibility Criteria For Agricultural Lands Preservation Easements~~

~~The criteria for eligibility of acquisition of a Preservation Easement shall be the same as the criteria for district eligibility. In addition, offered preservation easement lands shall be in an established district and in compliance with district requirements to be eligible.~~

22.0 Application Procedures

- ~~22.1 A separate application shall be required for each farmland tract (operating farm unit) offered for Preservation Easement purchase. The Foundation shall not be obligated to process any incomplete application.~~
- ~~22.2 The Foundation shall develop, and make available to landowners or other interested parties, an application form which requires the following information (See Appendix E):~~
 - ~~22.2.1 Name, address, telephone number and signature of the owner of the farmland tract.~~
 - ~~22.2.2 County, municipality or hundred, and Agricultural Preservation District in which the farmland tract is located.~~
 - ~~22.2.3 Total acreage of the farmland tract and the number of acres of that tract proposed for Preservation Easement purchase.~~
 - ~~22.2.4 Street/Road location of the farm, and directions from the nearest State route.~~
 - ~~22.2.5 Deed reference – book, volume and page.~~
 - ~~22.2.6 County tax map records, including tax parcel number, or account number of each parcel.~~
 - ~~22.2.7 If a conservation plan has been approved by the County Conservation District, specify the date of the plan.~~
 - ~~22.2.8 Name, address and telephone number of the person to be contacted to view the farmland tract.~~
- ~~22.3 The applicant shall provide the following information on the application:~~
 - ~~22.3.1 Major assets and investments related to agricultural production such as buildings, packing equipment, dairy equipment, irrigation/water supply, etc.~~
 - ~~22.3.2 Use of the land for the most recent crop year.~~
- ~~22.4 The applicant shall provide information on the farmland tract for the highest three crop production years out of the last five crop years on crops where comparable statistics are available from the Delaware Agricultural Statistics Service (DASS) on the Crop Production/Livestock Production form (See Appendix E).~~
- ~~22.5 The applicant shall provide a livestock report for the farmland tract for the most recent calendar year for which comparable statistics are available from the Delaware Agricultural Statistics Service (DASS) on the Crop Production/Livestock Production form (See Appendix E).~~
- ~~22.6 If the applicant grows crops or produces livestock that are of a type not reported by DASS, the applicant shall provide two years of production data to the Foundation.~~

23.0 Review And Evaluation Of Agricultural Lands Preservation Easement Application

- ~~23.1 The Foundation shall review the application to determine if it is complete and meets the minimum criteria set forth in Section 15.~~
- ~~23.2 If the application is complete and the minimum criteria are met, a representative of the Foundation shall view the farmland tract~~
- ~~23.3 The Foundation shall for each Round of Preservation Easement Purchases evaluate applications which meet the minimum criteria and rank the applications in accordance with the criteria of Section 18. Notwithstanding the ranking procedure set forth in Section 18, the Foundation shall be entitled to have all eligible properties appraised and considered for purchase of Preservation Easements pursuant to Section 22.~~

24.0 Ranking Criteria For Agricultural Lands Preservation Easement Applications

- ~~24.1 A system for ranking Preservation Easement applications is established to assist the Foundation in reaching a final decision.~~
- ~~24.2 Four categories will be utilized to rank the Preservation Easement applications during the Foundation's review periods with a maximum score of 100 points~~
- ~~24.3 Agricultural Lands Preservation Strategy Map – 50 Points.~~

In order to follow a rational, statewide plan for the acquisition of development rights on agricultural lands, the Foundation will give weight to applications for sale of Preservation Easements according to location on the Agricultural Lands Preservation Strategy Map. Scoring will be based on location relative to preservation categories on the map:

 - ~~Class I = 50 Points~~
 - ~~Class II = 40 Points~~
 - ~~Class III = 25 Points~~
 - ~~Class IV = 15 Points~~
 - ~~Class V = 0 Points~~

Land will be categorized according to which class comprises the majority of the active cropland on the farm. Farms within two or more classes shall be placed in the predominant class.

24.4 LESA Score – 20 Points.

Weight will be given to the LESA scoring on parcels being submitted for the purchase of permanent Preservation Easements. Using the highest LESA score for an Agricultural Preservation District within the county as 100%, and 170 points as 0%, then:

greater than 75-100%=20 Points

greater than 50-75%=15 Points

greater than 25-50%=10 Points

0-25%= 0 Points

Farms with tidal wetlands and other non-productive lands will receive a LESA score based on the cropland and forest land subject to Preservation Easement acquisition by the Foundation.

24.5 Productivity of current farm operations – 15 Points.

Weight will be given to the current level of productivity exhibited on the land where a Preservation Easement is offered for sale. The score is based on the type of farming being pursued, the value of investments in agriculture and the recent, proven yields of the operation.

Investment: High (upper 1/3 for type of operation) = 4 points

See Appendix F Medium (middle 1/3 for type of operation) = 2 points

Low (lower 1/3 for type of operation) = 0 points

Management: Excellent = 4 points

Average = 2 points

Low = 0 points

Past Yields: High greater than 110% or more of state avg. = 4 points

Medium-High greater than 90% – 110% of state avg. = 3 points

Medium greater than 70% to 90% of state avg. = 2 points

Low less than or equal to 70% of state avg. = 0 points

Farms reporting more than one crop will receive points based on the average of points computed for each crop.

Type of High value/intensity = 3 points

Of operation: Medium-High value/intensity = 2 points

See Appendix F Medium value/intensity = 1 point

Low value/intensity = 0 points

24.6 Other factors – 15 Points.

Other criteria for eligibility used in the determination of areas to be included in the Agricultural Preservation District program will be taken into account in the decision to procure a Preservation Easement. Scores will be based on the consideration of factors specified in 3 ~~Del.C.~~, §908(b), relative to the Preservation Easement application.

24.6.1 The extent to which long-term preservation of the farmland and forestland is consistent with land use plans adopted at the state or county levels.

24.6.2 The subject property is contiguous to protected open space.

24.6.3 The subject property is contiguous to existing agricultural districts or permanently protected farmland.

24.6.4 The extent to which the subject property provides documented historic, cultural, archeological, or socio-economic benefits for Delaware agriculture.

24.6.5 The potential of a Preservation Easement in this area for reducing development pressures on adjacent and nearby farmlands and is officially documented as a high priority for preservation by another state agency or a county.

24.6.6 Lands that have implemented resource protection measures as approved by the Delaware Department of Natural Resources and Environmental Control.

An application will receive the following scores:

4 or more factors present = 15 points

3 " " = 10 points

2 " " = 6 points

1 " " = 3 points

25.0 Appraisals — 3 Del.C. §916

- 25.1 ~~An offer to purchase a Preservation Easement shall be based upon one or more appraisal reports which estimate the full market value of the land under its agricultural zoning designation and the agriculture-only value of the farmland tract.~~
- 25.2 ~~An appraisal to the extent possible shall be based primarily on an analysis of comparable sales.~~
- 25.3 ~~Excluded from the value of the Preservation Easement shall be the value of the one (1) acre of land for each dwelling structure on the property.~~
- 25.4 ~~The appraiser shall be:~~
 - 25.4.1 ~~An independent, licensed real estate appraiser who is qualified to appraise a property for easement purchase. An appraiser shall be selected on the basis of experience, expertise and professional designation, and~~
 - 25.4.2 ~~A member of an organization which subscribes to the "Uniform Standards of Professional Appraisal Practice" published by the Appraisal Standards Board of the Appraisal Foundation, and shall follow their ethical and professional standards.~~
- 25.5 ~~The appraiser shall supply a narrative report which contains the following information and is in the following format:~~
 - 25.5.1 ~~Introduction~~
 - 25.5.1.1 ~~Professional qualifications of the appraiser~~
 - 25.5.1.2 ~~Letter of transmittal or appraiser certificate~~
 - 25.5.1.3 ~~Table of contents~~
 - 25.5.1.4 ~~Summary of salient facts and conclusions~~
 - 25.5.1.5 ~~Purpose of the appraisal~~
 - 25.5.1.6 ~~Easement value definition as provided in 3 Del.C. §916(a).~~
 - 25.5.2 ~~Description of property~~
 - 25.5.2.1 ~~Area or neighborhood description~~
 - 25.5.2.2 ~~Description of appraised property~~
 - 25.5.2.2.1 ~~Legal description~~
 - 25.5.2.2.2 ~~Property data and zoning~~
 - 25.5.2.2.3 ~~Description of improvements~~
 - 25.5.2.2.4 ~~Photos and sketches (if available) of subject property~~
 - 25.5.2.2.5 ~~Tax map of subject property. In instances where the county does not have tax maps available, the sketch map required under vi below shall include the boundary lines and acreage of properties adjoining the subject property and the names of all adjoining property owners~~
 - 25.5.2.2.6 ~~Location map~~
 - 25.5.2.2.7 ~~Development constraints. The appraiser shall report whether the farmland tract has public or private land use restrictions, is within a flood plain, or has other physical attributes which limit its developmental capability.~~
 - 25.5.3 ~~Analyses and conclusions~~
 - 25.5.3.1 ~~Analysis of highest and best development use~~
 - 25.5.3.2 ~~Full market valuation~~
 - 25.5.3.2.1 ~~Comparable sales data~~
 - 25.5.3.2.2 ~~Adjustment grid~~
 - 25.5.3.2.3 ~~Location map of comparable sales~~
 - 25.5.3.2.4 ~~Market value estimate~~
 - 25.5.3.3 ~~Agriculture-only valuation~~
 - 25.5.3.3.1 ~~Comparable sales data or value based on income capitalization~~
 - 25.5.3.3.2 ~~Location map of comparable sales (as applicable)~~
 - 25.5.3.3.3 ~~Agriculture-only value estimate~~
 - 25.5.3.4 ~~Agricultural Lands Preservation Easement value~~
- 25.6 ~~The appraiser shall provide at least one original and three copies of each report to the Foundation. The original of each report and all copies shall be bound with rigid covers.~~

26.0 Comparable Sales Data

- 26.1 The appraiser shall supply information concerning comparable sales as follows:
- 26.1 At least four comparable sales shall be used for an appraisal. If the appraiser cannot obtain sufficient comparable sales data within the same general area as the subject farmland tract, the appraiser may use comparable sales from other areas within the county, state or outside the state, after consultation with the Foundation. The use of comparable sales which require adjustment of 50% or more is permitted only with the approval of the Foundation.
 - 26.2 Pertinent data for each comparable sale used in the preparation of the appraisal shall be stated in the appraisal report, including date of sale, purchase price, road frontage in feet, soil series, an estimate of the range of slope and other relevant information. The appraisal shall include an analysis comparing the pertinent data for each comparable sale to the subject farmland tract.
 - 26.3 The location of each comparable sale used in the appraisal report shall be shown accurately on the comparable sales map and sufficiently identified and described so as to be located easily.
 - 26.4 For comparable sales used to estimate the agriculture-only value, the appraiser may use sales of land that are confined to agricultural use because of legal restrictions or physical impairments that make the land valuable only for agricultural use. Data may also be gathered from farm real estate markets where farms have no apparent developmental value.
 - 26.5 If comparable sales data is not available for agriculture-only value, the Foundation may assign an agriculture-only value based on crop production and/or a capitalization of rental income.

27.0 Agricultural Lands Preservation Easement Value And Purchase Price

- 27.1 The value of a Preservation Easement in perpetuity shall be the difference between the full market value and the agriculture-only value contained in the appraisal report.
- 27.2 The price paid by the Foundation for the purchase of a Preservation Easement may not exceed, but may be less than the value of the Preservation Easement. ~~3 Del.C., §916(a)~~
- 27.3 In the event an applicant is not satisfied with the appraisal provided by the Foundation, the applicant shall be entitled to have an independent appraisal performed at the applicant's expense by a qualified appraiser as specified in Section 19. The alternative appraisal shall be prepared in the same format as the Foundation's appraisal and shall be submitted to the Foundation within forty five (45) days of the applicant's date of receipt of the appraisal provided by the Foundation. The forty five (45) day period may be extended by the Foundation provided the time extension does not delay the time frame established by the Foundation for making selection and acquisition decisions.
- 27.4 The review of the alternative appraisals by the Foundation shall be based on written submissions under such procedures as specified by the Foundation.
- 27.5 The maximum adjusted Preservation Easement value which the Foundation will accept is the difference between the agriculture-only value and the full market value, determined as follows:
 - 27.5.1 The agriculture-only value shall equal the sum of:
 - 27.5.1.1 The agriculture-only value determined by the applicant's appraiser and
 - 27.5.1.2 Up to one-half of the positive difference between the agriculture-only value determined by the Foundation's appraiser and his/her values which exceed those determined by the applicant's appraiser.
 - 27.5.2 The full market value shall equal the sum of:
 - 27.5.2.1 The full market value determined by the Foundation's appraiser, and
 - 27.5.2.2 Up to one-half of the positive difference between the full market value determined by the applicant's appraiser and his/her values which exceed those determined by the Foundation's appraiser.

28.0 Offer Of Purchase By The Foundation

- 28.1 The Foundation has the authority to incorporate bidding and/or negotiation as part of the procurement process. ~~3 Del.C., §915~~
- 28.2 The Foundation has incorporated the evaluation criteria for acquisition of Preservation Easements in the evaluation of applications using the ranking system of Section 18 subject to the allowance provided under Section 17.3. In reviewing the offers of applicants to sell Preservation Easements to the Foundation, the Foundation shall, subject to adoption by Resolution of any alternative criteria by the Foundation to satisfy special objectives, select those offers providing the highest level of percentage donation or percentage

~~discount to the finally appraised value of the Preservation Easement, in accordance with the procedures and requirements of this Section.~~

~~28.3 The applications for sale of Preservation Easements selected for appraisal shall be divided into two categories; (1) priority preservation area applications for those properties located in whole or in part in a priority preservation area as shown on the Priority Preservation Area Map, and (2) non-priority preservation applications.~~

~~28.4 The Foundation shall accept offers in the form of Option Agreements from all eligible applicants who wish to submit offers, and after all offers are received, list the offers with the highest to the lowest level of percentage donation or percentage discount to the finally appraised value of the Preservation Easement for each of the two categories of applications.~~

~~28.5 Of the monies available to the Foundation in a Round of Purchases of Preservation Easements, up to seventy-five (75) percent of the monies shall be committed for Preservation Easements on properties located in priority preservation areas and up to twenty five (25) percent of the monies shall be committed for Preservation Easements on properties in non-priority preservation areas. The priority for making purchases of Preservation Easements in each category of preservation area shall be those offers providing the highest percentage level of donation or discount,~~

~~28.6 Notwithstanding the priority and non-priority requirements set forth in this Section, the Foundation (1) shall be entitled to accept donations of preservation easements under such terms and conditions that may be imposed in the donations, provided the preservation easements contain the restrictions imposed under 3 Del.C. Ch. 9 and (2) the Foundation shall be entitled to participate in programs which make monies available for the purchase of preservation easements, subject to the requirements of such programs, provided the preservation easements contain the restrictions imposed under 3 Del.C. Ch. 9.~~

29.0 The Agricultural Lands Preservation Easement

~~29.1 The owners of the subject farmland tract shall execute a document conveying the Preservation Easement which document shall be in the form of Appendix F, or such other form which contains conditions contained in Option Agreements executed by landowners.~~

~~29.2 The document shall be in recordable form and contain:~~

~~29.2.1 A legal description setting forth the metes and bounds of the farmland tract subject to the Preservation Easement.~~

~~29.2.2 At least one course and distance referencing a fixed marker or monument of a type commonly placed in the field by a surveyor.~~

~~29.3 The legal description shall not contain a closure error greater than one foot per 200 linear feet in the survey.~~

~~29.4 The farmland tract on which a Preservation Easement is to be purchased must be surveyed~~

30.0 Title Quality:

~~The Preservation Easement conveyed to the Foundation shall be unencumbered except of standard exceptions and be capable of being insured as such by an established and recognized title insurance company doing business in the State of Delaware.~~

3-DE Reg. 170 (08/01/99)

**APPENDIX A: APPLICATION FOR A PRESERVATION DISTRICT
DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION
AGRICULTURAL PRESERVATION DISTRICT APPLICATION**

RETURN TO: Delaware Agricultural Lands Preservation Foundation File# _____
2320 S. duPont Highway, Dover, DE 19901
(302) 739-4811, (800) 282-8685 in DE only

PLEASE TYPE OR PRINT:

Name(s) of Petitioner(s) _____ (All Fee Simple Owners of Record)

Mailing Address: _____

Telephone Number: (H) _____ (W) _____

Farm Location (County): _____

Adjoining Roads _____

Attach an aerial photo of the farm, if you have one. _____ # of Dwelling Units: _____

County Tax Parcel Number(s) _____

Total _____ Acreage _____ of _____ Farm: _____ Zoning _____ Designation: _____
(Call County Planning for zoning designation) _____

Type of Land Use:

Crop Land	acres	Tidal Wetlands-	acres
Aquaculture	acres	Farm Structures	acres
Pasture Land	acres	Residence/buildings	acres
Woodland	acres	Other (specify)	acres

Type of Farm Operation: _____

Historic Significance of Farm (if any) _____

Easements/Rights-of-Way (identify, if any): _____

Is there a Federally approved soil and water conservation plan in effect ___ Yes ___ No

Is any portion of the proposed District currently subject to subdivision? ___ Yes ___ No

District Name You would Prefer _____

**APPENDIX B: DISTRICT AGREEMENT:
DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION-
AGRICULTURAL PRESERVATION DISTRICT AGREEMENT**

This Agricultural Preservation District Agreement, in the nature of a declaration of a Restriction on the Use of Land for the purpose of preserving productive agricultural

land, is made this _____ day of _____, 19 _____ by and between _____, their heirs, successors and assigns (hereafter "GRANTORS"), of the County of _____, Delaware, and the DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION, its successor, nominee or assign, a body politic and corporate constituting a public instrumentality of the State, created and organized under the laws of the State of Delaware, with its offices at 2320 S. DuPont Highway, Dover, Delaware 19901 (hereinafter "GRANTEE").

WHEREAS, GRANTORS are the owners in fee of lands (Property) subject to agricultural use as shown on Exhibit "A" which Grantors desire to be included in an Agricultural Preservation District such Property being located in _____ County, Delaware, more fully described in whole or in part in a deed recorded in the Office of the Recorder of Deeds in and for _____ County, Delaware in Deed Book _____, Page _____, _____ County Parcel Nos. _____. The Property consists of _____ acres on which _____ acre(s) are devoted to dwelling housing; and

WHEREAS, in consideration of those benefits conferred under 3 Del.C. §910 and §911 GRANTORS voluntarily enter into this Agreement;

WHEREAS, public open space benefits result from the protection and conservation of farmland including the protection of scenic areas for public visual enjoyment from public rights-of-way; that the conservation and protection of agricultural lands as valued natural and ecological resources provide needed open spaces for clean air as well as for aesthetic purposes; and that public benefit will result from the conservation, protection, development and improvement of agricultural lands for the production of food and other agricultural products; and

WHEREAS, GRANTEE has declared that the preservation of prime agricultural land is vital to the public interest of the State, the region, and the nation through its economic, environmental, cultural and productive benefits; and

WHEREAS, GRANTORS desire and intend that the agricultural and open space character of the Property be preserved, protected, and maintained; and

WHEREAS, GRANTEE is entitled to enforce this Agricultural Preservation District Agreement and to preserve and protect for ten years from the effective date of this Agreement, or any extension period, the Property subject to the restrictions imposed under this Agreement;

NOW, THEREFORE, in consideration of the foregoing and as required by 3 Del. C. §908(a)(4), the undersigned GRANTORS agree to the following restrictions which shall apply to the Property of GRANTORS as shown on Exhibit "A" and/or referenced in whole or in part in Deed Book _____, Page _____, _____ County Parcel Nos. _____ as recorded in the Office of the Recorder of Deeds in and for _____ County:

1. No rezoning or major subdivision of the Property, or any portion thereof, shall be allowed.
2. Activities conducted on the Property shall be limited to agricultural and related uses.

3. The residential use of the Property shall be limited to dwelling housing for the Owner, relatives of the Owner, and persons providing permanent or seasonal farm labor services. The dwelling housing allowed hereunder shall be further limited to usage of no more than one (1) acre of land for each twenty (20) acres of usable land on the Property, with a maximum of ten (10) acres of land being used for dwelling housing on the Property. The Property consists of _____ acres, _____ of _____ which _____ acres are usable for agricultural and related uses. There (is) (are) currently _____ acre(s) used for dwelling housing on the Property, and only _____ additional acre(s) for dwelling housing shall be allowed.

4. For purposes of this Agreement the term "agricultural and related uses" shall mean all forms of farming, including agriculture, horticulture, aquaculture, silviculture, and activities devoted to the production for sale of food and other products useful to man which are grown, raised or harvested on lands and waters. The term "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.

(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. uses that are not directly and functionally related to the farming activities conducted on the Property.

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 Property under this Agreement.

6. This Agreement shall become effective as of the date the necessary approvals have been rendered and the Secretary of Agriculture has either failed to exercise or waived the right of rejection allowed within the thirty (30) day period following Foundation action on the District Application. At the time of recording of the Agreement the Foundation shall certify the date of creation of the District or extension thereto, and such date shall serve as the effective date of this Agreement.

7. This Agreement shall remain in effect for a minimum period of ten (10) years from the effective date. Unless GRANTOR(s) provide written notification to the Foundation of intent to withdraw the Property from the District at least six (6) months prior to expiration date of this Agreement or any extension thereto, this Agreement shall continue for additional five (5) year periods.

8. This Agreement shall be considered a covenant which runs with and binds the Property and the terms and conditions shall be subject to specific performance, and other action allowed under 3 Del.C., §920. GRANTOR(s) agree to abide by the provisions of 3 Del.C., Ch. 9 and the duly adopted regulations thereunder as such provisions relate to the Property.

9. By executing this Agreement the GRANTOR(s) verify that individually or collectively GRANTOR(s) hold a fee simple interest in the Property and (is) (are) entitled to enter into this Agreement. GRANTOR(s) further verify that the information contained in the District Application is true and correct.

10. The Agreement shall be binding on the heirs, successors and assigns of GRANTOR(s). In the event of transfer of any interest in the Property during the term of this Agreement GRANTOR(s) shall provide advance written notification of this Agreement and the restrictions contained herein to the party acquiring such interest and a copy of such written notification shall be provided to the Foundation.

IN WITNESS WHEREOF, the (party) (parties) have set (his) (her) (their) hands and seals this _____ day of _____, 19 ____.

WITNESS:

_____(S)

Grantor

_____(S)

Grantor

STATE OF DELAWARE)

)—SS.:

COUNTY OF _____)

ON THIS, the _____ day of _____, 19 ____, before me, the undersigned Notary Public, personally appeared _____

_____, known to me (or satisfactorily proven) to be the person or persons whose names are subscribed to the within instrument and acknowledged that he/she/they executed the same for

1) \$ _____ for the entire farm; or 2) \$ _____ per acre; or 3) an amount to be determined by appraisal and acceptable to buyer and seller ____ (please check).

The land proposed for easement sale equals _____ acres and consists of (check one):

 the entire property owned as identified and stated in the District Agreement.

 the property as outlined on the Agricultural Preservation District map attached (highlight the land proposed for an Agricultural Preservation Easement).

Tax Parcel Number(s): _____

Deed Reference(s): _____

Street/Road Location: _____

Mortgages or Leins on the Property: _____

Easements/Right-of-Way (identify, if any): _____

of Dwelling Units: _____ Date of Soil & Water Conservation Plan, if any: _____

Applicant(s): Corporate or Business Name: _____

Federal I.D. Number (if applicant is a corporation or business) _____

Name: _____

Address: _____

Telephone Number: (H) _____ (W) _____

FOR OFFICE USE ONLY

File #: _____ District Name: _____ Date Received: _____

LAND TYPE AND USE

Tillable Cropland: _____ acres Aquaculture _____ acres

Pasture: _____ acres Farm Structures: _____ acres

Woodland _____ acres Residence/Buildings: _____ acres

Orchard/Vineyard/Nursery: _____ acres Other (Specify): _____ acres

List Crops Grown on Land Proposed for Easement Sale for the Highest Three Crop Production Years Out of the Last Five Crop Years:

CROP _____ **ACRES GROWN** _____ **YIELD PER ACRE**

Year _____

- 1.
- 2.
- 3.
- 4.
- 5.

Year _____

- 1.
- 2.
- 3.
- 4.
- 5.

Year _____

- 1.
- 2.
- 3.
- 4.

APPENDIX E: TYPES OF FARM OPERATIONS BY VALUE/INTENSITY & INVESTMENT

FARM OPERATION VALUE-INTENSITY- (EXAMPLES)	INVESTMENT		
	HIGH	MEDIUM	LOW
<ul style="list-style-type: none"> —High Mushrooms —Greenhouse —Aquaculture (enclosed) —Layers (enclosed) —Vineyards —Dairy 	<ul style="list-style-type: none"> —Modern production facilities —Most capital investments are less than 10 years old. —Outstanding maintenance and appearance. —Machinery up to date and maintained. —Soil and Water Conservation Plan implemented 	<ul style="list-style-type: none"> —Good production facilities. —Capital investment less than 10 years old & better than average maintenance and appearance. —Machinery maintained. —Soil and Water Conservation Plan exists 	<ul style="list-style-type: none"> —Adequate to poor production facility. —Capital investments over 10 years old. —Poor appearance and machinery not well maintained. —No Soil and Water Conservation Plan.
<ul style="list-style-type: none"> —Medium to High Poultry (enclosed) —Livestock (enclosed) —Nursery Stock —Fruit —Vegetables —Turf 	SAME AS ABOVE	SAME AS ABOVE	SAME AS ABOVE
<ul style="list-style-type: none"> —Medium Row Crops —Hay —Livestock (range) —Tree Farm (planted) 	<ul style="list-style-type: none"> —Same as above, plus the following: —Grain drying & storage available. —Firebreaks to specification & well maintained. —Proof of implementation of a Forest Management Plan. 	<ul style="list-style-type: none"> —Same as above, plus the following: —Grain storage available. —Adequate firebreaks. —Forest Management Plan exists. 	<ul style="list-style-type: none"> —Same as above, plus the following: —No storage available. —Inadequate firebreak —No Forest Management Plan exists
<ul style="list-style-type: none"> —Low Forestry —Non-crop rotation 	<ul style="list-style-type: none"> —Firebreaks to specification and well maintained. —Proof of implementation of a Forest Management Plan. 	<ul style="list-style-type: none"> —Adequate Firebreaks. —Forest Management Plan exists. 	<ul style="list-style-type: none"> —Inadequate firebreak —No Forest Management Plan exists.

APPENDIX F: AGRICULTURAL LAND PRESERVATION EASEMENT

STATE OF DELAWARE
 AGRICULTURAL LANDS PRESERVATION PROGRAM

THIS PRESERVATION EASEMENT, made, granted, assigned and conveyed this _____ day of _____, 19____, by _____, whose address is _____, and who is 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 herein after referred to as "Grantee" and/or "Foundation".

WHEREAS, Grantor is fee simple title holder of certain lands situated in _____ Hundred, _____ County, Delaware, being of record in Deed Record Book _____, at the Office of the Recorder of Deeds in and for _____ County, at _____, Delaware, hereinafter referred to as the "Parcel" and more particularly described in Exhibit "A" (annexed hereto); and as shown on plot entitled "Delaware Agricultural Lands Preservation Foundation - Preservation Easement Area _____" 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 forestlands 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; and

WHEREAS, the Grantor desires to grant and convey to the Foundation an agricultural lands preservation easement as provided in 3 ~~Del.C.~~ Ch. 9.

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.~~ §902. "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; and
 - (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.

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. Residential use of the real property shall be limited to dwelling housing for the owner, relatives of the owner and persons providing permanent or seasonal farm labor services, provided, however, that any such dwelling housing shall be limited to usage of no more than 1 acre of land for each 20 acres of usable land owned in the Agricultural Preservation District, with a maximum of 10 acres of land being allowed for dwelling housing on an owner's land within a District.

5.This easement shall be deemed a covenant which runs with and binds the parcel permanently as set forth in 3 ~~Del.C.~~ §909(c), the terms and conditions 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.

6.The provisions of 3 ~~Del.C.~~ Ch. 9 of the Delaware Code Annotated and duly adopted regulations hereunder as such provisions relate to the Parcel shall govern this easement.

IN WITNESS WHEREOF, the said _____, have hereunto set their hands and seals this ____ day of _____, A.D., _____.

Signed and Delivered
in the Presence of:

_____(SEAL)

_____(SEAL)

STATE OF DELAWARE)
)SS.:
COUNTY OF _____)

BE IT REMEMBERED that on this _____ day of _____, A.D. 19 _____, 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: _____

APPENDIX G: STRATEGY MAP NUMERICAL FORMULA

The Agricultural Lands Strategy Map represents a modified Land Evaluation and Site Assessment (LESA) System utilized by the Department of Agriculture. The modified system includes factors used in the original LESA but are altered to suit an area-wide analysis as opposed to a site-specific analysis.

LAYER	SOURCE
<u>Soils</u> (weight = 9) A=9 = prime B=6 = statewide importance C=3 = marginal D=0 = other (not important)	SCS Natural Soils Groups
<u>Sewer</u> (weight = 8) A=9 = no sewer B=6 = proposed/planned sewer C=0 = area has sewer	County Engineering
<u>Land Use/Land Cover</u> (weight = 5) A=9 = cropland B=7 = forest C=0 = other	1992 Land Use/Land Cover Map
<u>% of Area in Agriculture</u> (weight = 4) A=9 = high B=6 = medium C=3 = low D=0 = very low	SCS Soil map grids were used. Then LU/LC cropland % within each map calculated by computer
<u>Agricultural Investment</u> (weight = 4) A=9 = high B=6 = medium C=3 = low D=0 = none	County ASCS Maps barns, storage facilities, grain elevators, feed mills, livestock shelters, poultry houses, slaughter facilities deep water wells, irrigation systems milking & loafing facilities, equipment dealers, chemical & fertilizer suppliers, canneries & freezing processing facilities, tax ditches
<u>Natural Areas</u> (weight = 3) A=9 = high B=6 = medium C=3 = low D=0 = none	DNREC Natural Areas Map Federal Lands - National Wildlife Refuge Army Core of Engineers National Guard Lands State Lands - Foundation Easements - State Parks, Fish & Wildlife Management Areas, State Forests, State Nature Preserves, State Ponds, Dept. of State (Museums/Cultural Resources) DNREC (donated) Local Lands - County Parks, Municipal Parks, Private Lands: Conservation Organizations include: Delaware Wild Lands, Inc., Nature Conservancy Delaware Nature Society preserved lands were given a 4:1 weight over "proposed" lands for protection and privately preserved lands.

Regimes:

The maximum possible scoring range in Delaware is 0–297. Each county may have a different range based on the land characteristics of each layer. For instance, if Kent County's top score was 280 and the lowest was 40, then the range would be from 40–280. An eight-regime model is used in each county meaning that Kent County may have 30 points in each regime. For each county; regimes 1-4 = dk. yellow, 5 = lt. yellow, 6 = blue, 7 = lt. green, 8 = dk. green

Yellow areas are a lower priority for farmland preservation.

Blue areas are a medium priority

Green areas are a higher priority for farmland preservation, with dark green being the highest.

The Agricultural Lands Preservation Act ("Act") was enacted on July 8, 1991 and provided for the creation of the Agricultural Lands Preservation Foundation ("Foundation"). The Foundation has been charged with the authority and responsibility of establishing and administering an extensive statewide program to preserve Delaware's farmlands and forestlands. Information relating to the Foundation and questions regarding the Foundation's operations may be obtained by contacting the Foundation by telephone at 302- 698-4530 or Toll Free in DE Only at 800-282-8685, or by visiting the office of the Foundation located at 2320 South DuPont Highway, Dover, DE 19901. Included in its responsibilities is the adoption of criteria for the establishment of and maintenance of Agricultural Preservation Districts ("Districts") and adoption of criteria for the purchase of agricultural lands preservation easements ("Preservation Easement") 3 Del.C. §904(a) and (b). These regulations are intended to provide guidelines and simplification regarding the manner in which the Agricultural Lands Preservation Program is administered.

1.0 Criteria for District Eligibility

- 1.1 In order to qualify for the Agricultural Lands Preservation Program, the lands proposed as an Agricultural Preservation District in the application must meet the following minimum criteria:
 - 1.1.1 owner(s) shall hold fee simple title to all land to be placed in a District and must be actively using the property for "agricultural and related uses";
 - 1.1.2 must constitute at least 200 acres of contiguous farmland or lesser acreage if the farmlands are located within three (3) miles of an established District;
 - 1.1.3 shall be zoned for agricultural purposes and shall not be subject to any major subdivision plan;
 - 1.1.4 applicant(s) including all fee simple title holders, must sign a written agreement committing to District restrictions set forth in this Section and 3 Del.C. §909 and other adopted requirements;
 - 1.1.5 must be viable and productive agricultural land comprising a farm property unit and meet the minimum County Land Evaluation and Site Assessment (LESA) scoring requirements for eligibility as established by the Foundation; [3 Del.C. §908(a)(3)]
 - 1.1.6 must include all of the eligible real property located in the tax parcel or tax parcels subject to application.
- 1.2 For the purposes stated in this chapter, the phrase "viable and productive agricultural land" is defined as land that qualifies under provisions of the Farmland Assessment Act. [9 Del.C. §§8329 - 8333]
- 1.3 The minimum LESA score for an eligible District or Expansion shall be 170 points out of a possible 300 points for each county in the State as computed under the currently approved LESA program of the Delaware Department of Agriculture.
- 1.4 The LESA score for agricultural lands is the primary factor in evaluating the eligibility of agricultural lands for inclusion in Districts and expansions, including the eligibility for purchase of preservation easements.

2.0 Application Procedures

- 2.1 The Foundation will provide application forms on which applicants who volunteer to place their lands into an Agricultural Preservation District will provide such information as the Foundation deems appropriate.
- 2.2 The Foundation shall provide assistance to potential applicants in completing application forms when requested.
- 2.3 Foundation staff may conduct on-site inspections and/or phone interviews with the applicants to acquire data necessary to perform LESA analyses and write a staff report.
- 2.4 In conjunction with the application, all fee simple owners shall sign a District Agreement in such form as deemed acceptable by the Foundation and which serves as a declaration in recordable form of acknowledgment of the policies and restrictions that must be followed, and benefits realized in a District.

3.0 Application Review Procedures

- 3.1 The Foundation has the authority to approve applications establishing Agricultural Preservation Districts and the authority to purchase preservation easements. [3 Del.C. §904]
- 3.2 The Foundation staff will review applications and determine whether or not the minimum eligibility requirements under Section 1.0 have been met.
- 3.3 If the minimum eligibility requirements have not been met, then the applicant will be notified by letter from the Foundation indicating that the application does not qualify for further review, and the reasons for ineligibility.
- 3.4 If an applicant excludes a portion of property otherwise includable in a proposed District, then the Foundation may deny the application, unless the property proposed for exclusion is not otherwise eligible for inclusion due to the use of the property at the time of the application.
- 3.5 Subject to Section 3.3 above, if the lands proposed as a District in the application (200 or more acres) meet minimum eligibility criteria, then the Foundation staff will submit to the Foundation, the County Farmland Preservation Advisory Board and the County Planning and Zoning Authority, applications and an indication that the application meets the minimum eligibility requirements.
- 3.6 If the applicant disagrees with the staff evaluation of the proposed District, then the applicant may contact the Foundation staff to discuss the application review.
 - 3.6.1 Foundation staff will meet with the landowner to discuss the review within thirty (30) days from receiving formal contact from the applicant.
- 3.7 If the issue is not resolved to the applicant's satisfaction, the applicant may request an administrative review with the Foundation by submitting a letter to the Foundation within fourteen days (14) of the applicant's last meeting with Foundation staff.
- 3.8 This letter must include reasons and documentation to justify the applicant's claim(s).
- 3.9 The Foundation will schedule a meeting and notify the applicant by certified letter of the date, time, and place of the meeting.
- 3.10 At the administrative review meeting, the applicant(s) shall present information or documentation as to how the proposed District satisfies the eligibility criteria.
- 3.11 The Foundation will render a decision within thirty (30) days from the administrative review meeting and notify the applicant in writing of its decision.
- 3.12 Owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments and who elect to be released from the restrictions set forth in 9 Del.C. §909(a)(2)(b) pursuant to 9 Del.C. §909(a)(4)(c), shall comply with the following requirements:
 - 3.12.1 Owners who have executed a district agreement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage, and while a survey may be submitted, a survey shall not be required. The Owner shall execute an amendment to the Owner's District Agreement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del.C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).
 - 3.12.2 Owners who have executed a preservation easement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage and shall submit to the Foundation for its review and approval, at the Owner's expense, an amended survey in recordable form. The amended survey shall show the entire parcel subject to the preservation easement and the location of any residential lots. The Owner shall execute an amendment to the preservation easement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del.C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).

4.0 Creation of a District

- 4.1 To establish an Agricultural Preservation District, the application must be approved by two out of three of the entities listed under Section 3.4 of these regulations. [3 Del.C. §907(c)]
- 4.2 After review by the Foundation, the application is subject to a review period of thirty (30) days in which the Secretary of Agriculture may reject the application. The application is officially approved at the end of the review period, if it is not rejected by the Secretary of Agriculture. [3 Del.C. §919]
- 4.3 The property legally becomes a District when the applicant and Foundation Chairperson (or designee) have signed the District Agreement and no rejection has been exercised by the Secretary of Agriculture, or the Secretary of Agriculture has waived the right of rejection.

- 4.4 Copies of the District Agreement shall be filed with the County Planning and Zoning and Tax Assessor's Offices and recorded in the Office of the Recorder of Deeds. The Foundation shall require from these Offices proof of recording and/or receipt of the District Agreement.
- 4.5 The Foundation shall endeavor to provide written notification of the date of establishment of the Agricultural Preservation District and provide a copy of the District Agreement to the applicant, however, the failure of the Foundation to satisfy any formality following execution of a District Agreement shall not affect the validity of the District Agreement.

5.0 District Restrictions

- 5.1 Any rezoning or major subdivision of real property included in an Agricultural Preservation District is prohibited. [3 Del.C. §909(a)(1)]
- 5.2 The submission of applications or preliminary rezoning or subdivision plans for any property within an Agricultural Preservation District to a county or municipality shall be considered evidence of the intent to rezone or subdivide and no action shall be taken by any county or municipality on any such application until the expiration of the District Agreement.
- 5.3 During the term of the District Agreement, the property shall be used for "agricultural and related uses" and shall be used in such a way so that the property continues to qualify as "viable and productive agricultural land" as defined under provisions of the Farmland Assessment Act. [9 Del.C. §§8329 - 8333] No more than 1 acre of land for each 20 acres of usable land, subject to a maximum of 10 acres, shall be allowed for dwelling housing. For purposes of calculating the number of acres allowable for dwelling housing, fractions of any acre shall not be allowed. By way of example, if a farm consists of 45 acres of usable farmland, the number of acres allowed for dwelling housing shall be 2, and not 2.25.
- 5.4 The phrase 'agricultural and related uses' shall have the meaning set forth in 3 Del.C. §909, as the same may be amended from time to time.
- 5.5 Excavation or filling, borrow pits, extraction, processing and removal of sand, gravel, loam, rock or other minerals is prohibited unless such action is currently required by or ancillary to any preparation for, or operation of any activities including, but not limited to: aquaculture, farm ponds, cranberry operations, manure handling facilities, and other activities directly related to agricultural production.
- 5.6 Activities that would be detrimental to drainage, flood control, water conservation, erosion control or soil conservation are prohibited.
- 5.7 Any other activity that might negatively affect the continued agricultural use of the land is prohibited.
- 5.8 The term "usable land owned in the district" [3 Del.C. §909(a)(2)], shall be defined as any land meeting the requirements for agricultural, horticultural or forest land in the Farmland Assessment Act of 1968 [9 Del.C., Chapter 83] and [3 Del.C. §403] or criteria for farm definition as established by the National Agricultural Statistics Service.
- 5.9 The District Agreement and District requirements and benefits shall be binding on the heirs, successors and assigns of property owners of lands within a District. A property owner in a District shall provide written notice to the Foundation of any proposed transfer of property subject to the District Agreement at least ten (10) days in advance of the transfer, and shall give written notice to any successor or assign at least ten (10) days in advance of the date of transfer of the property that the property is subject to District restrictions. The party taking title shall execute a document as required by [3 Del.C. §909(a)(2)c.] acknowledging the acreage allowed for dwelling housing and the restrictions which apply to the property. The failure of the property owner to notify the transferee as provided herein shall not affect the transferee's obligation to comply with the terms and conditions of the District Agreement upon the transfer of title.
- 5.10 Under 3 Del.C. §909(a)(3), all restrictions shall be covenants which run with and bind the lands in the District for a minimum of ten (10) years, beginning when the District Agreement takes effect as specified in the District Agreement.

6.0 Continuation of a District

- 6.1 All properties are to remain in an Agricultural Preservation District for at least ten (10) years, subject to the allowance of hardship exceptions for exclusion of dwelling housing pursuant to 3 Del.C. §909(a)(2)(b) and Section 9 of these guidelines.
- 6.2 If a landowner wishes to withdraw from, or terminate a District, then the Foundation must receive a written notice of intent to withdraw no less than six (6) months prior to the ten (10) year anniversary date of initial establishment of the District. [3 Del.C. §909(b)]
- 6.2.1 If the Foundation does not receive a written notification of the landowner's intent to withdraw from the District six (6) months prior to the ten (10) year anniversary date of that District, then the land shall remain

in the District for an additional five (5) year period unless and until notice of intent to withdraw shall be given six months prior to the end of each additional five-year period.

7.0 Expansion of a District

- 7.1 An Agricultural Preservation District can be expanded for the purpose of preserving additional lands. Lands added to a District may be under 200 acres.[3 Del.C. §907(d)]
- 7.2 Land which is less than 200 usable acres, yet meets the other criteria established by the Foundation, is eligible to be an expansion ("Expansion") of an Agricultural Preservation District if it is within three (3) miles of any portion of an established Agricultural Preservation District. [3 Del.C. §907(a)]

8.0 Inspection of Districts

- 8.1 The Foundation has the authority to enter upon lands as may be necessary to perform surveys, appraisals, and investigations to accomplish the purpose of the program, consistent with applicable statutes. [3 Del.C. §904(b)(14)]
- 8.2 The Foundation or its designee reserves the right to inspect restricted land and enforce agreements on its own behalf.
- 8.3 If any violations of the terms and the conditions of the District Agreement occur, the Foundation may institute proceedings in the appropriate court to enforce the terms and seek appropriate relief. [3 Del.C. §920(a)]

9.0 Dwelling Property Hardship Exceptions

- 9.1 Except as set forth in Section 9.7 hereof, owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments are entitled to apply to the Foundation for a hardship exception allowing for the transfer of dwelling property to parties who are not otherwise entitled to residential use of the dwelling property under the District Agreement or Preservation Easement, subject to the provisions of 3 Del.C. §909(a)(2)(b) and the following requirements.
- 9.2 An applicant for a hardship exception shall submit the following information in writing to the Foundation:
 - 9.2.1 name and property interest of applicant in the dwelling property;
 - 9.2.2 acreage of the dwelling property subject to application;
 - 9.2.3 date on which the District was established;
 - 9.2.4 number of dwellings and acreage of residential use currently on the property in the District;
 - 9.2.5 the nature of the hardship condition and reasons justifying the granting of a hardship exception;
 - 9.2.6 the extent to which the hardship condition is unavoidable.
- 9.3 The Foundation shall consider hardship conditions involving the following circumstances:
 - 9.3.1 the sale or transfer of the dwelling property compelled by foreclosure, court order, or marital property division agreement;
 - 9.3.2 the sale or transfer of the dwelling property compelled by job transfer;
 - 9.3.3 the sale or transfer of the dwelling property compelled by health conditions;
 - 9.3.4 the sale or transfer of the dwelling property required to avoid insolvency or bankruptcy; and
 - 9.3.5 other circumstances of an unusual and extraordinary nature which pose a practical hardship to continued ownership of the dwelling property and which are unavoidable.
- 9.4 Hardship exceptions will not be granted when no real hardship exists and the primary consequence of the sale or transfer of the dwelling property is financial gain.
- 9.5 The applicant shall bear the burden of establishing the existence of hardship circumstances, and shall provide to the Foundation documentation in support of the application, and any documentation requested by the Foundation, provided however, that documentation involving privileged information may be submitted on a confidential basis.
- 9.6 The Foundation may require the applicant for a hardship exception to appear before the Foundation Board to present the application, and an applicant shall be entitled to appear before the Board to make a presentation by submitting a written request to the Foundation.
- 9.7 The granting of a hardship exception by the Foundation shall be subject to the following conditions:
 - 9.7.1 the dwelling property following transfer shall be used only for residential purposes;
 - 9.7.2 the transferred property shall not qualify for District benefits or benefits of Preservation Easements;

- 9.7.3 if the transferred property is subject to a Preservation Easement prior to transfer, payment shall be made to the Foundation in an amount equal to twenty-five (25) percent of the current fair market value of the land subject to transfer;
 - 9.7.4 the transferee shall execute a Declaration in recordable form as prescribed by the Foundation which includes the acreage allowed for dwelling housing and the restrictions which apply to the real property;
 - 9.7.5 the Foundation may require the transferor to execute a Declaration in recordable form as prescribed by the Foundation to evidence the status of allowable dwelling housing property on lands retained by the transferor which are in the District or subject to a Preservation Easement; and
 - 9.7.6 such other terms and conditions considered necessary by Foundation to address the nature of the hardship condition.
- 9.8 The hardship provisions set forth herein shall not apply to the owners of real property who, pursuant to 3 Del.C. §909(a)(4)(c), have elected to be released from the restrictions of 3 Del.C. §909(a)(2)(b).

10.0 Delaware Farmland Preservation Fund

The Delaware Farmland Preservation Fund, hereinafter referred to as the "Fund", was enacted under 3 Del.C. §905 for the exclusive application by the Foundation to achieve the desired goals of preserving viable agricultural lands and conducting the business of the Foundation.

11.0 Sources of Funding

- 11.1 The Foundation may accept donations, property, or development rights as gifts and monetary gifts from any source, public or private.
- 11.2 Monies not needed on a current basis by the Foundation may be invested with the approval of the Board of Trustees.
- 11.3 The Fund is subject to an annual audit to be prepared by an independent, certified public accountant. The findings of all audits shall be presented to the Board.
- 11.4 The Foundation shall manage the monies appropriated to it by the General Assembly in accordance with the terms of the appropriations.

12.0 Criteria for Purchase Agricultural Lands Preservation Easements

- 12.1 The criteria for eligibility of acquisition of a Preservation Easement shall be the same as the criteria for district eligibility. In addition, offered preservation easement lands shall be in an established district and in compliance with district requirements to be eligible. The Foundation shall have the right, in its sole discretion, to acquire a Preservation Easement on only a part of the property included within the District Agreement.
- 12.2 The prioritization and selection of properties for the purchase of preservation easements shall be as set forth in Sections 13.0 through 20.0 inclusive hereof.

13.0 Matching Contributions to the Program

The Foundation may establish a reserve or set aside of available funds for the matching of federal, county, local, or private funds for the preservation of farmland. The Foundation may allow the entity providing matching funding to select the qualified properties for purchases of easements using the matching funding notwithstanding provisions of these regulations regarding selections. The Foundation has the discretion, but is not required, to match contributions.

14.0 Schedule for Acquisition of Agricultural Lands Preservation Easements

- 14.1 Application and funding cycles will take place on schedules established by the Foundation.
- 14.2 Applications for the purchase of Preservation Easements in Rounds of Purchases shall be subject to deadlines established by the Foundation.
- 14.3 For each Round of Preservation Easement Purchases the Foundation shall arrange for the appraisal of the Preservation Easement value of those properties under consideration.
- 14.4 Upon completion, the appraisals shall be provided to the landowners, and procedures set forth herein involving offers for the sale of preservation easements under Option Agreements shall be initiated.
- 14.5 Offers received shall be held confidential until all offers are received after which the Foundation shall review the offers and announce the selections.
- 14.6 Following the selection of properties for acquisition of Preservation Easements, the Foundation shall arrange for surveys of the properties to be conducted, and proceed to settlement under the terms of the Option

Agreements, subject to the availability of funding and satisfaction of regulatory, financial or other restrictions or limitations.

14.7 The Foundation is under no obligation to purchase a Preservation Easement which is offered for sale. [3 Del.C. §913.]

15.0 Application Procedures

15.1 A separate application shall be required for each farmland tract (operating farm unit) offered for Preservation Easement purchase. The Foundation shall not be obligated to process any incomplete application.

15.2 The Foundation shall develop, and make available to landowners or other interested parties, an application form for use in offers to sell Preservation Easements.

15.3 The Foundation shall review the application to determine if it is complete.

16.0 Appraisals [3 Del.C. §916]

16.1 An offer to purchase a Preservation Easement shall be based upon one or more appraisal reports which estimate the full market value of the land under its agricultural zoning designation and the agriculture-only value of the farmland tract. The agricultural only value shall be based on an income capitalization methodology. Any appraisal obtained by the Foundation shall constitute the property of the Foundation and may not be used by the property owner for tax or other purposes. All categories of land located in the farmland tract shall be eligible for easement purchase and shall be appraised

16.2 The value of buildings or other improvements on the farmland tract shall not be considered in determining the Preservation Easement value. Excluded from the value of the Preservation Easement shall be any acreage designated or eligible to be designated by the owner for residential use pursuant to 3 Del.C. §909(a)(4)(a), provided however, the landowner shall have the right to waive eligible residential usage in which case the development rights value of the waived acreage shall be included.

16.3 The appraiser shall be:

16.3.1 An independent, licensed real estate appraiser who is qualified to appraise a property for easement purchase. An appraiser shall be selected on the basis of experience, expertise and professional designation; and

16.3.2 A member of an organization which subscribes to the "Uniform Standards of Professional Appraisal Practice" published by the Appraisal Standards Board of the Appraisal Foundation, and shall follow their ethical and professional standards.

16.4 The appraiser shall supply a narrative report which shall contain such information as required by the Foundation.

17.0 Agricultural Lands Preservation Easement Value and Purchase Price

17.1 The value of a Preservation Easement in perpetuity shall be the difference between the full market value and the agriculture-only value contained in the appraisal report.

17.2 The price paid by the Foundation for the purchase of a Preservation Easement may not exceed, but may be less than, the value of the Preservation Easement. [3 Del.C. §916(a)]

17.3 If the applicant is not satisfied with the appraisal provided by the Foundation, the applicant shall be entitled to have an independent appraisal performed at the applicant's expense by a qualified appraiser as specified in subsection 16.3. The alternative appraisal shall be prepared in the same format as the Foundation's appraisal and shall be submitted to the Foundation within forty-five (45) days of the applicant's date of receipt of the appraisal provided by the Foundation. The forty-five (45) day period may be extended by the Foundation, provided the time extension does not delay the time frame established by the Foundation for making selection and acquisition decisions.

17.4 The review of the alternative appraisals by the Foundation shall be based on written submissions under such procedures as specified by the Foundation. The maximum adjusted Preservation Easement value which the Foundation will accept is the difference between the agriculture-only value and the full market value, determined as follows:

17.4.1 The agriculture-only value shall equal the sum of:

17.4.1.1 The agriculture-only value determined by the applicant's appraiser; and

17.4.1.2 Up to one-half of the positive difference between the agriculture-only value determined by the Foundation's appraiser and his/her values which exceed those determined by the applicant's appraiser.

17.4.2 The full market value shall equal the sum of:

- 17.4.2.1 The full market value determined by the Foundation's appraiser; and
- 17.4.2.2 Up to one-half of the positive difference between the full market value determined by the applicant's appraiser and his/her values which exceed those determined by the Foundation's appraiser.

18.0 Offer of Purchase by the Foundation

- 18.1 The Foundation has the authority to incorporate bidding and/or negotiation as part of the procurement process. [3 Del.C. §915]
- 18.2 In reviewing the offers of applicants to sell Preservation Easements to the Foundation, the Foundation shall, subject to consideration of any alternative criteria by the Foundation to satisfy special objectives, select those offers providing the highest level of percentage donation or percentage discount to the finally appraised value of the Preservation Easement, in accordance with the procedures and requirements of this Section. As an additional incentive, if any part of the applicant's property subject to the offer is located in whole or in part within one-half (1/2) mile completely outside of any growth zone of the County in which the Property is located, or in whole or in part within one-half (1/2) mile completely outside of the boundary of an incorporated town, municipality or city, for the sole purpose of ranking said application, the Foundation shall increase the offered percentage discount by five percent (5%). By way of example, if an applicant's offer includes a discount of sixty percent (60%), and the applicant's property is located in whole or in part within one-half (1/2) mile completely outside of the specified areas, for ranking purposes, the applicant's discount shall be deemed to be sixty-five percent (65%). If the applicant's property is selected for purchase of a preservation easement, the purchase price for the preservation easement shall incorporate a discount of only sixty percent (60%). The locations of the growth zones referenced by the Counties and the one-half (1/2) mile surrounding areas are as shown in Appendix "A" attached hereto.
- 18.3 The Foundation shall entertain offers in the form of Option Agreements from all eligible applicants who wish to submit offers, and after all offers are received, list the offers with the highest to the lowest level of percentage donation or percentage discount to the finally appraised value of the Preservation Easement with any adjustment to the offered donation or percentage discount as specified in subsection 18.2 above.
- 18.4 Prior to releasing information to the public regarding the percentage of any discount or donation provided by a landowner the Foundation shall notify the landowner, identifying the requesting party, and obtain permission from the landowner prior to releasing the requested information. Otherwise, the information shall not be disclosed.
- 18.5 The Foundation may, but shall not be required to, allow a property owner in a District to submit an offer to sell a preservation easement on a portion of the real property in a District.

19.0 The Agricultural Lands Preservation Easement

- 19.1 The owners of the subject farmland tract shall execute a document conveying the Preservation Easement which document shall be in a form which contains conditions contained in Option Agreements executed by landowners.
- 19.2 The document shall be in recordable form and contain:
 - 19.2.1 A legal description setting forth the metes and bounds of the farmland tract subject to the Preservation Easement.
 - 19.2.2 At least one course and distance referencing a fixed marker or monument of a type commonly placed in the field by a surveyor.
 - 19.2.3 The legal description shall not contain a closure error greater than one foot per 200 linear feet in the survey.
 - 19.2.4 The survey of the farmland tract on which a Preservation Easement is to be purchased shall show each of the residential lots, if any, designated by the owner pursuant to 9 Del.C. §909(a)(4)(a).

20.0 Title Quality

The Preservation Easement conveyed to the Foundation shall be unencumbered except for standard exceptions and be capable of being insured as such by an established and recognized title insurance company doing business in the State of Delaware. Any title defects, liens, survey discrepancies, boundary line disputes, or similar title issues shall be resolved by the property owner, at the property owner's sole expense. If subsequent to the purchase of a Preservation Easement it is determined that the amount of acreage is less than as reflected on the survey used by the Foundation for purposes of calculating the purchase price for the Preservation Easement, the property owner shall be required to refund to the Foundation any excess funds paid in reliance upon the inaccurate survey.

21.0 Residential Lots

21.1 Senate Bill 333 imposes alternative restrictions on the limited residential use of property subject to a District Agreement or Preservation Easement by replacing the unlimited number of residential dwellings allowed for owners, relatives of owners, and farm labor, with a total limit of three dwellings which can be occupied by any person. The overriding limitation of residential use of 1 acre for 20 acres of usable farmland (subject to a maximum of 10 acres) was left unchanged. Accordingly, owners can now designate up to three residential lots on District Property or Preserved Property. With respect to the designation of the residential lots allowed under Senate Bill 333, the following additional guidelines shall apply:

21.1.1 The acceptance by the Foundation of the designation of a residential lot does not mean that the location of the lot and proposed residential use complies with any applicable zoning rules or regulations, or that a lot is suitable for residential use. Owners are encouraged to conduct such investigations and perform such tests as they deem appropriate to ascertain whether or not any designated lot will be suitable for residential use and complies with all applicable land use regulations, including zoning laws.

21.1.2 The Foundation recognizes that at times, due to circumstances beyond the control of the owner, it may be necessary for the owner to change the location of a lot. As a matter of policy, the Foundation will allow such changes subject to the following requirements:

21.1.2.1 No change in the location of a lot or size of a lot shall be allowed which would cause the number of lots or amount of residential acreage to be in excess of that otherwise allowed under the terms of the District Agreement or Preservation Easement.

21.1.2.2 With respect to property subject to a Preservation Easement, the owner shall cause to be prepared, at the owner's expense, an amended plot plan showing the entire parcel subject to the Preservation Easement and the location of each residential lot.

21.1.2.3 The owner shall execute an amendment to the District Agreement or Preservation Easement, which amendment shall reflect the change in the location or size of the residential lots, and which shall reference the amended plot plan.

22.0 Strategy Map

The farm lands shown on the Strategy Map attached hereto as Appendix "B" which have a LESA Score of at least 170 are targeted for inclusion in Districts, and those qualified farms located in whole or in part one-half (1/2) mile completely outside of any growth zones designated under these regulations shall be further prioritized by the donation or discount advantage for such properties provided under subsection 18.2 of these regulations.

3 DE Reg. 170 (08/01/99)

19 DE Reg. 160 (09/01/15) (Prop.)