

DEED OF CONSERVATION EASEMENT

This **DEED OF CONSERVATION EASEMENT** (“Easement”) is made this _____ day of _____, 20____ by _____, having an address at _____, (“Grantor”), to the Mineral County Farmland Protection Board (“MCFPB”, “Grantee”) having its mailing address at PO Box 275, Keyser, WV 26726. For purposes of this agreement, references to the rights, duties and obligations of Grantor and Grantee apply equally and in full force to any successors to the parties to this Easement.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Mineral County, West Virginia, consisting of _____ acres of land, more or less, and more particularly described in Exhibit A, incorporated herein by reference (the “Property”). The Property is also described in a deed of record in the Office of the Clerk of the County Commission of Mineral County, West Virginia (the “Clerk’s Office”) in Deed Book _____, at Page _____;

WHEREAS, the Property possesses agricultural, including prime, unique and significant soils; open space and natural values (collectively, “Conservation Values”) of great importance to Grantor, the people of Mineral County, and the people of the State of West Virginia, and all current and future generations of mankind;

WHEREAS, MCFPB has provided \$ _____ to purchase a conservation easement on the Property;

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of the Grantee and incorporated by reference (“Baseline Documentation”), which consists of reports, maps, photographs, and other documentation that the parties agree provide an accurate representation of the Property at the time of this contract and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement;

WHEREAS, Grantor and Grantee have the exclusive common purpose of preserving the agriculture and open space character of the Property;

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity;

WHEREAS, the Legislature of the State of West Virginia (“Legislature”) has recognized the importance and significant public benefit of conservation and preservation easements in its ongoing efforts to protect the natural, historic, agricultural, open-space and scenic resources of the State of West Virginia;

WHEREAS, the Legislature has declared that agriculture is a unique life support industry, and recognizes the need to support the irreversible loss of agricultural land. The legislature authorizes the State of West Virginia and its counties so desiring to protect agricultural land and woodland as open-space land, to develop programs and to accept qualifying properties voluntarily entered into the program;

WHEREAS, the County Commission of Mineral County, West Virginia (“County Commission”) has declared that the agriculture community of Mineral County provides sources of agricultural products for the citizens of the state; enhances tourism, protects worthwhile community values, institutions and landscapes which are inseparably associated with traditional farming; and controls urban expansion which is consuming land, topsoil and woodland of the county;

WHEREAS, the County Commission has resolved to provide persons of Mineral County an opportunity to voluntarily protect agricultural land by creating the MCFPB and authorizing it to create and administer the Mineral County Farmland Protection Program;

WHEREAS, MCFPB is a public agency established to provide landowners with an opportunity to voluntarily protect agricultural land in Mineral County by the voluntary placement of conservation or preservation easements on eligible property; and

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WHEREAS, Grantee affirms that this Easement represents a unique and valuable asset to the quality of life in Mineral County and the state of West Virginia and that by the acceptance of this Easement it will act in good faith to uphold the Easement and not seek to benefit from its conversion or elimination. They agree by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come in the future.

NOW, THEREFORE, in consideration of the above and the mutual covenants, good and valuable consideration, terms, conditions and restrictions contained herein, and pursuant to the laws of West Virginia, Grantor hereby voluntarily grants, bargains, and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth in this Easement. It is the purpose of this Easement to assure that the Property will be retained forever in its natural, agricultural, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, including its qualifying prime, unique, state, locally important, etc. soils.

To achieve these objectives, the terms, conditions, and restrictions of this Easement are hereinafter set forth.

I. TERMS, CONDITIONS AND RESTRICTIONS

Grantor reserves to himself, and to his personal representatives, heirs, successors and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. The following terms, conditions and restrictions clarify and govern the intent of Grantor and Grantee:

1. **Use and Quiet Enjoyment.** Grantor has the right to reside on the Property and to benefit from all aspects of the quiet enjoyment of the Property. Grantor has the right to engage in any and all personal recreational uses of the Property, including but not limited to hiking; touring; swimming; camping; biking; hunting and fishing; that require no development of the land and are consistent with the Conservation Values.

2. **Agricultural Uses of the Land.** Grantor may engage in any and all agricultural uses of the Property. For example, the production of plants and animals useful to man, including, but not limited to, forage, grain and field crops; pasturage, dairy and dairy products; poultry and poultry products; equestrian uses; livestock and fowl uses and livestock and fowl products; bees and apiary products; fruits nuts and vegetables of all kinds; nursery, floral and greenhouse products; aquaculture; a grain mill; and the processing and storage of the agricultural products produced principally on the Property are permitted. Any secondary agricultural activity, including but not limited to farm mechanics, blacksmithing, or related activities, shall be considered an agricultural activity. However, such activities or businesses must be undertaken in the permitted agricultural or residential structures and must be consistent with the Conservation Values.

3. **Agricultural Structures.** Grantor has the right to maintain, construct, and place agricultural structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the Property ("Agricultural Structures"). Agricultural Structures shall be limited by the maximum square footage as described in *Terms, Conditions and Restrictions - Maximum Impervious Surface Coverage*.

4. **Retail Sale of Farm Products.** Businesses directly related to the retail sale of farm products produced primarily on the Property that are supportive and agriculturally compatible may be established on the Property. Such businesses may include roadside stands or structures to facilitate the direct sale to the public of agriculture products.

5. **Activities for Religious, Charitable or Educational Purposes or to Foster Tourism.** Activities or businesses undertaken for charitable or educational purposes or to foster tourism may be conducted on the Property in order to foster rural economic uses while protecting the rural character of the Property. Such activities or businesses must be

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compatible with and supportive of the rural character of the Property, and must remain incidental to the agricultural and open space character of the Property.

- (a) Non-agricultural commercial and industrial structures and uses are prohibited. Activities or businesses undertaken for charitable or education purposes or to foster tourism must be undertaken in the Agricultural Structures permitted under *Terms, Conditions and Restrictions - Agricultural Structures* or the Residential Envelope permitted under *Terms, Conditions and Restrictions - Residential Dwellings*.
- (b) Stables, horseback riding arenas both within and outside the barn, and supporting pavilion(s) and buildings are considered Agricultural Structures. Such buildings shall be limited by the maximum square feet as described in *Terms, Conditions and Restrictions-Maximum Impervious Surface Coverage*.
- (c) Accommodation of tourists and visitors is permitted but only within the permitted structures within the Residential Envelope, and/or Agricultural Structures, except for outdoor rural recreational activities such as hayrides, corn mazes, etc.
- (d) Accommodation of overnight guests is permitted, but only within the permitted structures within the Residential Envelope.
- (e) Commercial operation of dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles whether or not considered to foster tourism is prohibited.
- (f) Extensive commitment of land resources as required by golf courses, racetracks, tennis clubs, baseball, soccer and other ball fields and similar uses whether or not considered to foster tourism is prohibited.

6. Home-based Businesses. Any home-based business that does not require a Division of Environmental Protection permit to operate may be conducted on the Property, provided that:

- (a) The occupation or business use must be conducted entirely within the Residential Envelope allowable under *Terms, Conditions and Restrictions - Residential Dwellings*.
- (b) The use of the Residential Dwelling for the home based business occupation shall be clearly incidental and subordinate to its use for residential purposes.

7. Residential Dwellings. The Grantors and Grantee acknowledge that _____ (____) single residential dwelling currently exists on the Property (“Residential Dwelling”), as more fully described in Exhibit B. The Grantors may construct _____ (____) additional single residential dwellings (“Retained Development Right”) on the Property as more fully described in Exhibit C. No other Residential Dwellings or Retained Development Rights may be constructed or placed on the Property.

- (a) Each Residential Dwelling and/or Retained Development Right shall be contained in a building envelope (“Residential Envelope”) no greater than two (2) acres as described in Exhibit B and C. Each Retained Development Right may be constructed anywhere within the Residential Envelope described in Exhibit C.
- (b) Grantors have the right to maintain, repair, enlarge or replace the allowed Residential Dwelling and/or Retained Development Right as it may so desire, except that its impervious surface is limited to 5,000 square feet.
- (c) Grantors have the right to construct appurtenances such as garages, sheds, pools and recreational facilities within the Residential Envelope(s), except that the total allowed impervious surface within the Residential Envelope(s) shall not exceed 9,000 square feet.
- (d) The Residential Dwelling and/or Retained Development Right may house one or more families or occupants, but shall not be reconstructed or modified to become a multi-tenant commercial dwelling.

8. Transfer of Development Rights. All other development rights not specifically reserved under this Easement are hereby extinguished and shall not be transferred to any other property pursuant to a transfer of development rights program or any other means or used to calculate permitted development density.

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9. **Subdivision.** It is the intention of Grantor to protect the open space values of the Property. Accordingly, subdivision of the Property is prohibited except as permitted above in *Terms, Conditions and Restrictions – Residential Dwellings*. The Property may be subdivided to create the Residential Envelope. However, the Residential Envelope may not be conveyed separately from the remainder of the Property.

10. **Maximum Impervious Surface Coverage.** The total surface coverage of impervious surfaces on the Property shall be subject to the limitations defined below.

- (a) Impervious surfaces shall be defined as any material which covers land and inhibits the percolation of storm water directly into the soil, including, but not limited to, buildings, roofs, the area covered by permanent or nonpermanent structures, macadam and pavement, gravel and stone driveways and parking areas.
- (b) See *Terms, Conditions and Restrictions - Residential Dwellings* for residential impervious surface limits.
- (c) The total surface coverage of the Property by all impervious surfaces, including the Residential Envelope, Agricultural Structures, roads, driveways and parking areas, shall not exceed _____ square feet, which is less than 2% of the total Property.

11. **Removal of Natural Resources.** Ditching, draining, diking, filling, excavating, removal of topsoil or sand, gravel or rock on the Property is prohibited, except when such activities are conducted in order to carry out agricultural activities or other activities permitted under this Easement, are in accordance with a Conservation Plan, do not exceed one (1) acre in total area, and are restored within a reasonable time period. A Conservation Plan is a record of decisions and supporting information for the treatment of the natural resources on the Property prepared by a qualified conservation planner (“Conservation Plan”). The exploration, development, mining or extraction of minerals, oil, gas or any other hydrocarbon substance from the surface of the Property is prohibited.

12. **Management of Woodland Resources.** Easement property with contiguous forest that exceeds 40 acres of the Property will have a Forest Management Plan. The agricultural use of timber and woodland products on the Property is permitted under a current forest management plan subject to approval by the Grantee.

The use of timber and woodland products of not more than one percent (1%) in any two-year period on site is permitted without a Forest Management Plan and will not require acceptance by the Grantee.

Forest Management Plan shall not be required for the following permitted non-commercial activities and do not require prior approval of the Grantee:

- (a) removal of trees posing an imminent hazard to the health or safety of persons or livestock;
- (b) cutting of trees for firewood, or for other domestic uses of Grantor;
- (c) cutting of trees for the construction or maintenance of permitted structures or landscaping within the Residential Envelope or for access otherwise permitted in this Easement;
- (d) removal of trees for the maintenance or the improvement to existing pastures or fence lines;
- (e) removal of invasive species both plant and insect.

The Grantor reserves the right to remove all trees on a portion of the Property as indicated in the Baseline Documentation that has a Conservation Value of qualifying soil (prime, unique, state, locally important soils, etc.), but was forested at the time this Deed of Conservation Easement was recorded. Such tree removal shall be carried out under a Conservation Plan.

Forest management and timber harvesting activities must be carried out in accordance with all applicable local, State, Federal, and other governmental laws and regulations and be consistent with this Deed of Conservation Easement and the protection of Conservation Values of the Property.

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Such forest management and timber harvesting must be performed in accordance with a written Forest Management Plan consistent with this Deed of Conservation Easement prepared and signed by a licensed professional forester. The Grantee will approve the plan to ensure it is consistent with the agricultural conservation value of the easement. Said plan must have been prepared not more than 10 years prior to the date any harvesting is expected to commence.

13. Other Construction. Except as specifically permitted above, outside of the Residential Envelope and other than Agricultural Structures there shall be no constructing or placing of any buildings; manufactured homes; swimming pools or other recreational facilities; commercial lighting or any other temporary or permanent structure or facility on or above the premises. Existing roads as identified in the Baseline Documentation Report may be maintained and repaired in their current state. New roads may be constructed only if they are necessary for agricultural operations or access to the Residential Envelope or Agricultural Structures on the Property. Macadam and pavement, gravel and stone driveways, and parking areas are subject to the impervious surface limitations referenced above.

14. Fences. Existing fences may be repaired and replaced and new fences may be built on the Property as necessary for agricultural operations on the Property, including customary management of livestock, to delineate the boundary of the Property.

15. Signs. Except for no trespassing signs, for-sale signs, signs identifying this Easement, and signs to advertise an on-site activity or business, all other signs, advertisements and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet per sign.

16. Wastes. Dumping or storage of trash, garbage, hazardous substances, abandoned vehicles or machines or other material on the Property is prohibited. However, composting of biodegradable material used or produced on the Property to improve gardens and pastures on the Property is permitted so long as composting and its application is consistent with a Conservation Plan.

17. Utilities. Utility lines (including, but not limited to, power, communications, and water supply lines) may be placed or constructed for the sole purpose of providing service to permitted structures on the Property, including the Residential Dwelling and Agricultural Structures. Public and private utilities whose construction and maintenance will not significantly impair the Property's Conservation Values may be constructed and maintained if Grantee, in their sole and absolute discretion, give their prior written approval. This sub paragraph is not intended to conflict with utility easements existing on the Property as of the date this Easement is executed.

18. Streams, Wetland and Water Bodies. There shall be no pollution, alteration, depletion of surface water, natural water courses, lakes, ponds, marshes, wetlands, springs, subsurface water or any other water bodies, nor shall there be activities conducted on the Property which would be detrimental to water purity or which could alter natural water level and/or flow in or over the Property. Nothing in this paragraph shall prohibit the creation or dredging of farm ponds or disallow the reasonable use of the available water of the Property for agricultural purposes permitted by this easement. Structures and facilities associated with irrigation, farm pond impoundment, and soil and water conservation on the Property shall be considered an agricultural use. Expansion and construction of ponds and structures shall be in accordance with the Conservation Plan. Farm ponds shall not exceed two (2) acres in area.

II. GENERAL PROVISIONS

1. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

2. Rights of the Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee or its agent by this Easement:

- (a) To preserve and protect the Conservation Values of the Property;

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- (b) To enter upon the Property on a yearly basis (or more frequently if violations are observed or suspected) in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and
- (c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to *General Provision – Grantee's Remedies*.

3. **Grantee Notification/Approval.** Grantor reserves for itself the right to engage in any and all activities not expressly prohibited herein and not inconsistent with the purpose of this Easement without seeking the approval of Grantee.

4. **Grantee's Remedies.**

(a) **Notice of Violation: Corrective Action.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action within 60 days or a time sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) **Injunctive Relief.** The Grantee, its successors or assigns, jointly or severally shall have the right to enforce these restrictions by injunction and other appropriate proceedings, including, but not limited to, the right to require Grantor to restore the Property to the condition existing at the time of this Easement in order to correct any violation(s) of this Easement. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee shall be entitled to the injunctive relief in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

(c) **Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including without limitation costs of suit and attorneys' fees, and costs or restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee. Costs incurred by Grantee in enforcing the terms of this Easement against third party shall be borne by Grantee.

(d) **Forbearance.** Forbearance by Grantee to exercise their rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

5. **Acts beyond the Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantor could not reasonably have anticipated or prevented, Grantor agrees that Grantee have the right to pursue enforcement action against the responsible parties.

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6. **Costs, Legal Requirements and Liabilities.** Grantor, its successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

7. **Control.** Nothing in this Easement shall be construed as giving rise to any right or ability of Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any responsibility to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (42 U.S.C. §§ 9602 et seq.).

8. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property or the Residential Dwelling contained thereon by competent authority, including any taxes imposed upon, or incurred as a result of, this Easement.

9. **Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors (collectively “Indemnified Parties”) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys’ fees, arising from or in any way connected with: an injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties and only that negligent party shall be deprived of this protection.

10. **Environmental Warranty.** Grantor covenants and represents that to the best of its knowledge it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that it has received no written notices issued by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor’s indemnification obligation will not be affected by any authorizations provided by Grantee to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

“Environmental Law” or “Environmental Laws” means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

11. **Proceeds for Extinguishment.** The conveyance of this Easement gives rise to a property right immediately vested in the Grantee. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be

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terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. At the date this Easement was purchased, the proportionate values were as follows: Grantor's interest is represented by _____% of the appraised fair market value of the Property, and Grantee's interest is represented by _____% of the appraised fair market value of the subject Property (the "Proportionate Values").

In making this Easement, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement.

12. Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantor shall be entitled to compensation at not less than the fair market value of the Property determined without regard to the existence of the Easement. Grantor, upon receipt of notification of any pending condemnation action brought by any government entity affecting and/or relating to the Property, shall notify the Grantee in writing, within fifteen (15) days of receipt of said notification.

13. Assignment. This Easement is not transferable by the Grantee to any other local, county or state department, board, agency, commission or successor. In the event that the MCFPB ceases to operate or exist, the rights of the Grantee under this Easement shall be transferred to an organization that is a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended, and is a West Virginia-domiciled organization authorized to acquire and hold conservation easements under the West Virginia Conservation and Preservation Easements Act, (WV Code 20-12-1, et seq., 1995).

The Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the Easement was originally intended to advance. The transfer of the Easement to a new or successor transferee or assignee will not create a financial obligation of any kind on the Grantor.

14. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest.

15. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

16. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt, addressed as follows:

To Grantor: _____

To Grantee: Mineral County Farmland Protection Board
PO Box 275
Keyser, WV 26726

or to such other address as either party from time to time shall designate by written notice to the other.

17. Recordation. Grantee shall record this instrument in timely fashion in the Clerk's Office and may re-record it at any time as may be required to preserve its rights in this Easement.

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18. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will invalidate this Easement or be inconsistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded as above specified. No such amendment shall be effective unless in writing and signed by all parties hereto.

19. Other Provisions.

(a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of West Virginia.

(b) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(c) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of the Grantor's title in any respect.

(d) **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(e) **Captions.** The captions herein have been inserted solely for convenience of reference and are not a part of this Easement and shall have no effect upon construction or interpretation.

(f) **Subordination.** Any mortgage or lien arising after the date of this Easement shall be subordinated to the terms of this Easement.

(g) **Title Warranties.** Grantor warrants that Grantor has good title to the Property; that Grantor has the right to convey this Easement, and that the Property is free and clear of any encumbrances.

(h) **Merger.** If Grantee at some future time acquire the underlying fee title in the Property, the interest conveyed by this Easement will not merge with fee title but will continue to exist and be managed as a separate estate. The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the conservation easement deed set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the Grantee, or any successor or assignee will be deemed to eliminate these conservation easement terms, or any portion thereof, pursuant to the doctrine of "merger" or any other legal doctrine.

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DECLARATION OF CONSIDERATION OF VALUE. The undersigned hereby declare under penalty of fine and imprisonment as provided by law, that the conveyance made by this document is a transfer of property right to state and/or county governmental entities, and therefore, is exempt from the West Virginia excise tax due on the transfer of real property.

IN WITNESS WHEREOF Grantor and Grantee have set their hand:

GRANTOR:

By:

Date

GRANTEE:

Mineral County Farmland Protection Board

By: _____, Chairman _____

Date

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STATE OF WEST VIRGINIA

COUNTY OF Mineral, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____.

My commission expires: _____

Notary Public

STATE OF WEST VIRGINIA

COUNTY OF Mineral, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, Chairman of the Board of the Mineral County Farmland Protection Board, on behalf of the Board.

My commission expires: _____

Notary Public

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SCHEDULE OF EXHIBITS

- A.** Legal Description of Property Subject to Easement
- B.** Area where Residential Envelope is to be located

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LANDOWNER DISCLOSURE

West Virginia state law allows landowners to exclude any portion of their property from easement. The Residential Envelope must have a survey.

Under the language prohibiting the parcels from being conveyed separately, multiple home parcels can no longer be owned separately by family members. In addition, financial institutions that participate in the secondary mortgage market typically loan only on a residence and a limited number of acres. The prohibition against separate conveyance may cause title issues. In the event of a foreclosure, the financial institution may be in a position of not being able to foreclose and sell the house and separate parcel apart from the larger easement parcel in which they may have no legal interest.

I acknowledge that I have read this statement and agree that any surveyed Residential Envelopes, even if legally considered to be subdivided, may not be conveyed separately.

By:

Date