

DEED OF CONSERVATION EASEMENT

This **DEED OF CONSERVATION EASEMENT** (“Easement” or “Easement Deed”) is made this _____ day of _____, 20____, by _____, having an address at _____ (“Grantor”), to the [YOUR] COUNTY FARMLAND PROTECTION BOARD (“[YCFPB]”, “Grantee” or “Holder” [*DELETE ALL ORANGE TEXT IF NO CO-HOLDER*]), the ENTITY (“ENTITY,” “Grantee,” or “Co-holder”), having its mailing address at _____, to the West Virginia Agricultural Land Protection Authority, a public board authorized under West Virginia Code §8A-12-1, et seq. and a 501- c-3 organization (“Authority”, “Grantee” or “Co-holder”) having a mailing address of 1900 Kanawha Boulevard East, Charleston, WV 25305, and with a right of enforcement to the United States of America (“United States”), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (“NRCS” or “USDA-NRCS”) with its mailing address at 1550 Earl Core Road, Morgantown, WV 26505, on behalf of the Commodity Credit Corporation (CCC), as its interest appears herein, for the purpose of protecting the agricultural use and future viability, and related Conservation Values (hereinafter defined), by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the Protected Property (defined below). 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 agreement.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in [Your] County, West Virginia, consisting of _____ acres of land, more or less, and more particularly described in Exhibit A [*Legal description of the Easement attached hereto*], incorporated herein by reference (the “Protected Property”). The Protected Property is also described in a deed of record in the office of the Clerk of the County Commission, [Your] County at Deed Book _____, Page _____ [*Explain Source of Protected Property here*];

WHEREAS, the Protected Property possesses agricultural, including prime, unique, statewide or locally important soils; open space and natural values (collectively, “Conservation Values”) of great importance to Grantor, the people of [Your] County, and the people of the State of West Virginia, and all current and future generations of mankind;

WHEREAS, this Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP), 16 U.S.C Section 3865 et seq. and 7 CFR Part 1468 for the purpose of protecting the agricultural use and future viability, and related Conservation Values, by limiting nonagricultural uses that negatively affect the agricultural uses and Conservation Values of the Protected Property (the “Purpose of the Easement”);

WHEREAS, under the authority of the Agricultural Conservation Easement Program, the United States Department of Agriculture’s Natural Resources Conservation Service has provided \$_____ to Grantee for the acquisition of this conservation easement [*INSERT if only a portion of the Protected Property is being enrolled in ACEP-ALE *] for the acquisition of _____ acres of the Protected Property (the “NRCS Easement” as described in Exhibit A-2), entitling the United States to the rights identified herein;

WHEREAS, [the ENTITY or Authority has provided \$_____ and] [YCFPB] has provided \$_____ to purchase a conservation easement on _____ acres of the Protected Property; [*DELETE UNLESS DONATED PORTION*] and has accepted a donation

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of a conservation easement on the remaining _ acres of the Protected Property;

WHEREAS, the specific Conservation Values of the Protected Property are documented in an inventory of relevant features of the Protected Property, on file at the office of 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 Protected 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 common purpose of protecting the agricultural use and future viability, and related Conservation Values;

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

WHEREAS, the Legislature of the State of West Virginia (“Legislature”) has recognized in West Virginia Code §8A-12-1 et seq. 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, and 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, to accept qualifying properties voluntarily entered into the program, and pursuant to West Virginia Code §8A-12-5 provided [Your] County Farmland Protection Board has the authority to acquire and hold conservation easements;

WHEREAS, the County Commission of [Your] County, West Virginia (“County Commission”) has declared that the agriculture community of [Your] 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 [Your] County an opportunity to voluntarily protect agricultural land by creating the [Your] County Farmland Protection Board and authorizing it to create and administer the [Your] County Farmland Protection Program;

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

[*Utilize this language when a land trust is the grantee*] WHEREAS, the Trust is a publicly supported, tax-exempt nonprofit corporation, under Section 501(c)(3) and Section 509 (a) (2) of the Internal Revenue Code of 1986 as amended (“the Code”), qualified under

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section 170(h) of the Code to receive qualified conservation contributions, is authorized under West Virginia law to accept and hold conservation easements in the State of West Virginia, and has as its primary purpose to promote the preservation, protection, or enhancement of land for conservation purposes in its natural, scenic, agricultural, forested, and/or open space condition; and

WHEREAS, Grantee affirms that this Easement represents a unique and valuable asset to the quality of life in [Your] County and the state of West Virginia, that by the acceptance of this Easement it will act in good faith to uphold the conservation easement and not seek to benefit from its conversion or elimination, and that it agrees to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Protected 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, and with a right of enforcement to the United States, a conservation easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth in this Easement. It is the purpose of this Easement to protect the agricultural use and future viability of the Protected Property by limiting nonagricultural uses; and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property, including its prime, unique, statewide and locally important soils.

To achieve these objectives, the terms, conditions, and restrictions of this Easement are hereinafter set forth. The parties agree that the United States is granted enforcement rights under the terms of this Easement. However, the United States will only exercise its rights as set forth below at Paragraph II. 5. e (*United States Right of Enforcement*). Until such time, if ever, the United States exercises its rights under this Easement, Grantee is the primary manager and enforcer of this Easement.

The Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

I. TERMS, CONDITIONS AND RESTRICTIONS

1. Conservation Plan for Highly Erodible Cropland. A Conservation Plan for Highly Erodible Cropland that complies with 7 CFR Part 12 shall be included for all highly erodible cropland on the Protected Property. The Conservation Plan must be updated in consultation with NRCS in the event the agricultural uses or ownership of the Protected Property change. If the NRCS standards and specifications for highly erodible cropland are revised after the date of this Easement based on an Act of Congress, NRCS will work cooperatively with the Grantor and Grantee to develop and implement a revised Conservation Plan for highly erodible cropland. A copy of the current Conservation Plan is kept on file with the Grantee and NRCS.

2. Use and Quiet Enjoyment. Grantor has the right to reside on the Protected Property

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and to benefit from all aspects of the quiet enjoyment of the Protected Property. Grantor has the right to engage in any and all personal recreational uses of the Protected Property, including but not limited to hiking, touring, swimming, camping, biking, horseback riding, hunting, and fishing, so long as said personal recreational uses require no development of the Protected Property and are consistent with the Conservation Values.

Grantor reserves to itself, and to grantor's personal representatives, heirs, successors, and assigns, all rights accruing from grantor's ownership of the Protected Property, including the right to engage in or permit or invite others to engage in all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement; provided, however, that any activities inconsistent with the purposes of this Easement are prohibited.

3. Agricultural Uses of the Land. Any activities inconsistent with the purposes of the Easement are prohibited. Grantor may engage in any and all agricultural uses of the Protected Property provided it is conducted in a manner consistent with the terms of this Easement. Examples of permitted agricultural uses include 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 Protected Property. Any secondary agricultural activity, including but not limited to farm mechanics, blacksmithing, or related activities, shall be considered an agricultural activity. However, such secondary agricultural activities must be undertaken in the permitted agricultural or residential structures and must be consistent with the Conservation Values.

4. 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 Protected Property. Agricultural structures shall be constructed or placed within the area described in **Exhibit C** [*must clearly identify farm structure area(s) and attached hereto*] attached hereto and made a part hereof ("Farmstead Complex Area") and shall be limited by the maximum square footage as described in **Paragraph I. 11. (Maximum Impervious Surface Coverage)**.

5. Retail Sale of Farm Products. Businesses directly related to the retail sale of farm products produced primarily on the Protected Property that are supportive and agriculturally compatible may be established on the Protected Property. Such businesses include roadside stands or structures to facilitate the direct sale to the public of agriculture products, as long as not more than 2,000 square feet of structures are erected to facilitate such retail sales. Structures permitted under this paragraph (5) shall be subject to **Paragraph I. 11. (Maximum Impervious Surface Coverage)**.

6. 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 Protected Property in order to foster rural economic uses while protecting the rural character of the Protected Property. Such activities or businesses must be compatible with and supportive of the rural character of the Protected

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Property, and must remain incidental to the agricultural and open-space character of the Protected 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 Paragraph I. 4. (*Agricultural Structures*) or Paragraph I. 8. (*Residential Dwellings*); no other structures are permitted on the Protected Property.
- (b) [*OPTIONAL LANGUAGE*] The stables, horseback riding arenas both within and outside the barn, and supporting pavilion(s) and buildings are considered agricultural buildings. Such buildings shall be located within the Farmstead Complex Areas described in Exhibit C, and shall be limited by the maximum square feet as described below in Paragraph I. 11. (*Maximum Impervious Surface Coverage*).
- (c) Accommodation of tourists and visitors is permitted but only within permitted residential structures and appurtenances, and/or agricultural structures, except for rural recreational activities such as hayrides, corn mazes, etc.
- (d) Accommodation of overnight guests is permitted, but only within permitted residential structures.
- (e) Non-agricultural 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.

7. Home Based Businesses. Industrial or commercial activities on the Protected Property are prohibited except the following:

- (a) agricultural production and related uses in accordance with the terms and conditions of this Easement Deed; ;
- (b) temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related Conservation Values of the Protected Property herein protected;
- (c) commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and small-scale farm wineries; and
- (d) home-based businesses that do not require a Department of Environmental Protection permit to operate, provided that:
 - i. the occupation or business use is conducted entirely within the Single Residential Dwelling(s) (as described in Exhibit B or Exhibit D) or appurtenances allowable under Paragraph I. 8. (*Residential Dwellings*); and
 - ii. the use of the dwelling for the home-based business is clearly incidental and subordinate to the use of the dwelling for residential purposes.

8. Residential Dwellings. Grantor and Grantee acknowledge the existence of Single Residential Dwelling(s) on the Protected Property as more fully described in Exhibit B [*surveyed legal description attached hereto*]. In addition, Grantor may construct additional Single Residential Dwelling(s) on the Protected Property, each to be located within a separate

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Building Envelope as indicated in Exhibit D [*surveyed legal description attached hereto*] (the “Retained Development Rights”). No other Single Residential Dwellings shall be constructed or placed on the Protected Property. [*If there is no Exhibit B or D utilize the following language*] Grantor and Grantee acknowledge the existence of no single residential dwelling on the Property. No single residential dwellings shall be constructed on the Property. *Then proceed with deleting paragraphs a-e below. All new or relocated structures and improvements must be located within the Building Envelopes, except for agricultural structures permitted herein under Paragraph I. 4. (Agricultural Structures). The following conditions and restrictions shall apply:

- (a) Each Building Envelope shall contain no greater than two (2) acres each.
- (b) Grantor has the right to maintain, repair, enlarge, or replace all structures and improvements, including Single Residential Dwellings, as grantor may so desire, except that the total impervious surface of any Single Residential Dwelling that is enlarged or constructed after the Effective Date is limited to 5,000 square feet, excluding any associated driveways, farm lanes, or parking areas.
- (c) Grantor has the right to construct appurtenances such as garages, sheds, and recreational facilities within each Building Envelope, except that the total allowed impervious surface within each Building Envelope, excluding driveways, farm lanes, and parking areas, shall not exceed 9,000 square feet. If the impervious surface within a Building Envelope, not including driveways, farm lanes, and parking areas, exceeds 9,000 square feet at the time this easement is closed, no additional impervious surface is permitted within the Building Envelope.
- (d) The boundaries and location of the Building Envelopes may be adjusted if Grantee and the Chief of NRCS provide prior written approval of the adjusted boundaries and location. The Building Envelopes may not increase in size and the adjusted Building Envelopes must provide equal or greater protection of the agricultural use and future viability and related Conservation Values of the Protected Property. Following receipt of written approval to adjust identified Building Envelope(s), the Grantor and Grantee shall amend this Easement Deed to add an Exhibit that describes the subsequently approved boundaries and locations of the Building Envelope(s).
- (e) The Single Residential Dwellings may house one or more families or occupants but shall not be converted to apartments, townhomes, condos, or any other commercial multi-family dwelling.

9. 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.

[*DELETE FOR COUNTIES OTHER THAN JEFFERSON COUNTY*] The Protected Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open spaces requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission

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of Grantee, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Protected Property.

10. Subdivision. Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited. Notwithstanding the fact that, as of the Conservation Easement Date, the Protected Property might consist of more than one parcel for real estate tax or any other purpose or if it may have been acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole.

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

- (a) Impervious surfaces shall be defined as any material that covers land and inhibits the percolation of stormwater directly into the soil, including, but not limited to, buildings with or without flooring, roofs, any area covered by permanent or nonpermanent structures, macadam, concrete, asphalt, pavement, gravel and stone driveways, and parking areas. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this Easement Deed.
- (b) The total surface coverage of the Protected Property by all impervious surfaces, including all Single Residential Dwellings, structures considered as an appurtenance to such dwellings, structures associated with agricultural uses, driveways, and parking areas, but excluding NRCS-approved conservation practices, shall not exceed _____ square feet, which is less than 2% of the total Conservation Easement area. This limitation shall not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this Easement. **[*INSERT if only a portion of the Protected Property is being enrolled in ACEP-ALE*]** Allowable square footage for the NRCS Easement shall not exceed square feet total. Allowable square footage for the non-NRCS Easement shall not exceed square feet total.

12. Surface Alteration. Grading, blasting, filling, sod farming, excavating, removal of topsoil, earth, sand, gravel, or rock, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

- (a) dam construction to create ponds for agricultural use, fire protection, or wildlife enhancement, or wetland restoration, enhancement or creation, in accordance with a Conservation Plan;
- (b) erosion and sediment control pursuant to a plan approved by the Grantee;
- (c) soil disturbance activities as required in the construction of approved buildings, structures, roads, or utilities, provided that the required alteration has been approved in writing by Grantee as being consistent with the Conservation Values; or
- (d) agricultural activities conducted in accordance with a Conservation Plan.

Provided, however, that activities permitted under this paragraph (12) are conducted in accordance with a Conservation Plan, disturbed land does not exceed one (1) acre in total

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area, and all disturbed land is restored within a reasonable time period.

13. Oil, Gas, or Mineral Exploration and Extraction. The exploration, development, mining, or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Easement or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited.

[*Include the following subparagraph if a limited allowance for agricultural purposes*] Provided however, limited mining activities for materials (e.g., sand, gravel, or shale) used to facilitate the agricultural operations on the Protected Property is allowed where the extraction of such materials facilitating agricultural operations is limited, localized, and small with a defined area and acreage identified in Exhibit E and does not harm the Conservation Values or the agricultural uses of the Protected Property.

If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to this Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph (13). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Easement are subordinate to the terms of this Easement and must incorporate by reference this Easement,

[*Include the following if an active non-developmental mineral lease may be authorized*] Subsurface mineral development on the Protected Property is allowed in accordance with this Paragraph (13), if approved by Grantee and Chief of NRCS. Grantee and Grantor must demonstrate prior to the initiation of mineral development activity that such subsurface mineral development shall—

- (a) be conducted in accordance with applicable State Law;
- (b) accomplished by a method of extraction, production, and transport that has no more than a limited and localized impact that does not harm the agricultural use or conservation values of the Protected Property;
- (c) not harm the purpose of this Easement;
- (d) not materially alter or affect the existing topography, as determined by Grantee and the Chief of NRCS;
- (e) comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the purpose of this Easement, which includes reclaiming and restoring all areas of the Protected Property that are impacted by the subsurface mineral development and such plan is approved by Grantee and the Chief of NRCS prior to the initiation of mineral development activity;
- (f) not be accomplished by any surface-mining method;
- (g) be within the impervious surface limits of this Easement;
- (h) employ practices and technologies that minimize the duration and intensity of impacts to the purpose of this Easement.

All areas of the Protected Property that are impacted by subsurface mineral development pursuant to this section must be reclaimed and restored within a reasonable time, as

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determined by Grantee and the Chief of NRCS, at cessation of subsurface mineral development activities.

Impervious surfaces as defined in the above Paragraph (11) of this Easement will include any surface disturbance or impervious surfaces associated with subsurface mineral development allowed by this paragraph.

14. Management of Woodland Resources. Easement property with contiguous forest that exceeds the greater of 40 acres or 20 percent of the easement area will have a current forest management plan that is subject to approval by the Grantee and the NRCS. The agricultural use of timber and woodland products on the Protected Property is permitted, provided it is carried out to the extent practicable in accordance with current, generally accepted, best management practices for the site's soils and the terrain of the Protected Property.

A forest management plan shall not be required for the following activities and do not require prior approval of the Grantee or NRCS:

- (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 Area or the Retained Development Areas or for access otherwise permitted in this Easement;
- (d) removal of trees for the maintenance or the improvement to existing pastures or fence lines; or
- (e) removal of invasive species both plant and insect

The Grantor reserves the right to remove trees in areas of the Protected Property that were forested at the time this Deed of Conservation Easement was executed, as indicated in the Baseline Documentation, in order to convert management systems from a forest land use to an agricultural land use. Such land use conversion shall be conducted through an update to a Conservation Plan, which update must be approved by NRCS, the Grantor, and the Grantee before any trees are removed.

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 Easement and the protection of Conservation Values of the Protected Property.

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

15. Other Construction. Except as specifically permitted herein, 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

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facility on or above the premises.

16. Roads. New roads may be constructed if they are within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property, including providing access to the Retained Development Rights (Exhibit D) on the Protected Property. Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property. Paved roads are subject to the impervious surface limitations referenced above.

17. Fences. Existing fences may be maintained, repaired, and replaced and new fences may be built on the Protected Property as necessary for agricultural operations or other allowed uses on the Protected Property, including for customary management of livestock and to delineate the boundary of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the Purpose of the Easement.

18. 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.

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

20. Granting of Easements. The granting or modification of easements for utilities or roads is prohibited when the utility or road will adversely affect the Conservation Values of the Protected Property as determined by the Grantee in consultation with the Chief of NRCS. **[*Include the following if reserving a utility strip is a condition for easement acquisition from the funding agency or other body with approval authority:*** Notwithstanding the foregoing, subject to prior written approval by the Grantee, which approval shall not be unreasonably withheld, the Grantor may grant, after the Effective Date, non-exclusive rights for ingress, egress, and utilities within the identified 60-foot Right of Way, described in Exhibit A, provided that said rights explicitly reference and require compliance with this Easement and are consistent with the Purposes and other requirements described herein.]

21. Utilities. **[*Include the following language if reserving a utility strip:*** Except as set forth in Section 20,] Grantor shall not sell, lease, or grant an easement covering any portion of the Protected Property where such sale, lease, or easement is for the purpose of construction or installation of underground or above-ground utility systems, including, but not limited to, water, sewer, power, fuel, sewerage pumping stations, and cellular telephone or other communication towers, except where such easement is for the sole purpose of serving approved buildings or structures on the Protected Property. Utilities to serve approved

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buildings or structures on the Protected Property that neither individually nor collectively have an adverse impact on the agricultural use and future viability and related conservation values of the Protected Property may be built or installed outside of the Building Envelopes with prior written approval of the Grantee and NRCS provided that said utilities are consistent with a Conservation Plan. Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the Conservation Values of the Protected Property and consistent with the purposes of the Easement.

22. 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 Protected Property that would be detrimental to water purity or that could alter natural water level and/or flow in or over the Protected Property. Nothing in this paragraph shall prohibit the creation or dredging of farm ponds or the reasonable use of the available water of the Protected Property for agricultural purposes permitted by this Easement. Structures and facilities associated with irrigation, farm pond impoundment, or soil and water conservation on the Protected Property shall be considered to be intended for agricultural purposes. Expansion and construction of ponds and structures outside the Farmstead Complex Area shall be conducted in accordance with **Paragraph I. 12. (Surface Alteration)** and a Conservation Plan. Farm ponds both inside and outside the Farmstead Complex Area shall not exceed two (2) acres in area.

II. GENERAL PROVISIONS

1. Preserving Agricultural Uses. The provisions of this Easement Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long term viability of the Protected Property, Conservation Plan and Easement purposes, and do not violate Federal laws, including Federal drug laws, or that decrease the Easement's protection for the purpose of this Easement. No uses will be allowed that decrease protection for the agricultural use and future viability, and related Conservation Values, of the Protected Property.

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

3. 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 Protected Property;
- (b) To enter upon the Protected 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 Protected Property; and
- (c) To prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or feature_of

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the Protected Property that may be damaged by any inconsistent activity or use, pursuant to Paragraph II. 5. (*Grantee's Remedies*).

4. 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.

5. 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 that the Grantor take corrective action within 60 days sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) **Injunctive Relief.** The Grantee and 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 Protected 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 (5. (b)) 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 parties shall be borne by Grantee. The preceding two sentences shall not apply to the United States should the United States exercise its rights under (e) below (*United States Right of Enforcement*).

(d) **Forbearance.** Forbearance by Grantee to exercise its 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.

(e) **United States Right of Enforcement.** [*INSERT bracketed language below limiting to NRCS Easement if additional acres are being donated*] Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement [on the NRCS Easement] that it may exercise only if the terms of the Easement are not enforced

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by the Grantee. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement [on the NRCS Easement] under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement [on the NRCS Easement], it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorneys' fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement [on the NRCS Easement], it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorneys' fees and expenses related to Grantee's violations or failure to enforce the Easement against the Grantor up to the amount of the United States contribution to the purchase of the Easement.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the Easement and Conservation Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the Easement, [and] the United States' ALE-Agreement with the Grantee, and the Conservation Plan for Highly Erodible Cropland [on the NRCS Easement] the United States will have reasonable access to the [NRCS Portion of the Easement] Protected Property. Prior to its inspection of the Protected Property, the United States shall provide advance notice to Grantee and Grantor, or Grantor's representative, and provide Grantee and Grantor a reasonable opportunity to participate in the inspection. In the event of an emergency, the United States may enter the [NRCS Easement portion of the] Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of the [NRCS] Easement and will give notice to Grantee and Grantor, or Grantor's representative, at the earliest practicable time.

(f) General Disclaimer and Grantor Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or which the United States may incur relating to the Protected Property.

(g) Holder's and Co-holder's Rights and Obligations. Holder shall have the primary responsibility for the stewardship and monitoring of this easement, determining if a violation has occurred, and for approving any amendments to the Deed of Conservation

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Easement. These duties may be fulfilled directly by Holder or their agent or the Holder may arrange to have the Co-holder fulfill these duties. Holder will share with the Co-holders monitoring and stewardship information, including but not limited to written notices to Holder and monitoring reports.

The Holder is responsible for any costs incurred in enforcing the terms of the easement, including any attorneys' fees and any costs of suit. Holder may recover costs from Grantor or third party as described in Paragraph II. 5. (c) (*Costs of Enforcement*) above. The Holder and Co-holder shall make every good faith effort to determine a unified course of action should a potential or actual violation of the easement arise.

Co-holder shall have the right to enforce the terms of the Easement if Holder becomes unable or refuses to enforce the Easement, or if the Co-holder in its sole discretion finds that the Holder's enforcement action or consent fails to protect the Conservation Values of the Protected Property. In such cases the Co-holder is responsible for any costs incurred in enforcing the terms of the easement, including attorneys' fees and any costs of suit.

6. 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 Protected 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 Protected 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 shall have the right to pursue enforcement action against the responsible parties.

7. Costs, Legal Requirements, and Liabilities. Grantor and grantor's heirs, 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 Protected Property.

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

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

10. Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and the United States and its members, directors, officers, employees, agents, assigns, and contractors (collectively "Indemnified Parties") from and against any and all liabilities, fines, fees, penalties, costs, losses, damages, expenses, actions and causes of actions, suits, proceedings, claims, demands, judgments, and sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and

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including, without limitation, court costs and reasonable attorneys' fees and attorneys' fees on appeal), to which Indemnified Parties may be subject or which Indemnified Parties may incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts, omissions, or breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws.

11. Environmental Warranty. "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 that may pose a present or potential hazard to human health or the environment.

Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property.

Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of any Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law. Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate. Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States 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 Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

12. Extinguishment, Termination, and Condemnation. The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this Easement,

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the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee(s) and the United States stipulate that the appraised fair market value of the **[*Differentiate between NRCS Easement and the larger Easement by inserting bracketed language below if only a portion of the Protected Property is being enrolled in ACEP-ALE*]** Easement is \$_____. The Grantee(s) contributed \$_____, or _____ percent (_____%), the United States contributed \$_____, or _____ percent (_____%), and the landowner donated \$_____, or _____ percent (_____%), of the value. The appraised fair market value of the **[NRCS]** Easement (\$_____) divided by the fair market value of the **[NRCS Easement portion of the]** Protected Property unencumbered by the **[NRCS]** Easement (\$_____) at the time of the creation of this **[NRCS]** Easement is hereinafter referred to as the “**[NRCS Easement]** Proportionate Share.” The **[NRCS Easement]** Proportionate Share equals _____ percent (_____%) of the appraised fair market value of the Protected Property. The **[NRCS Easement]** Proportionate Share will remain constant over time.

If this Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the **[NRCS Easement]** Proportionate Share of the fair market value of the [portion of the] Protected Property unencumbered by this **[NRCS]** Easement. The fair market value will be determined at the time all or a part of this Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the **[NRCS Easement]** Proportionate Share between the Grantee(s) and the United States will be as follows: (a) to the Grantee(s) or its designee _____ percent (_____%) of the **[NRCS Easement]** Proportionate Share; and (b) to the United States, _____ percent (_____%) of the **[NRCS Easement]** Proportionate Share. Until such time as the Grantee and the United States receive the **[NRCS Easement]** Proportionate Share from the Grantor or the Grantor’s successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the **[NRCS Easement]** Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the **[NRCS Easement]** Proportionate Share due to the United States.

The Holder, **YCFPB**, contributed \$_____, or _____ percent (_____%) of the Grantee’s contribution, the Co-Holder, **[ENTITY]**, contributed \$_____, or _____ percent (_____%) of the Grantee’s contribution, and the Authority contributed \$_____, or _____ percent (_____%) of the Grantee’s contribution. The Grantee’s **[NRCS Easement]** Proportionate Share allocation shall be allotted on this basis for any extinguishment, termination, or condemnation value.

[*Utilize this language if NRCS is not taking an interest in a portion of a larger

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Easement*] In addition, the appraised value of the non-NRCS Easement (described in Exhibit _____) is \$_____. The Proportionate Share of the non-NRCS Easement is \$_____. The Grantee contributed \$_____, or _____ percent (_____%), the [ENTITY]. contributed \$_____, or _____ percent (_____%), the Authority contributed \$_____, or _____ percent (_____%), and the landowner donated \$_____, or _____ percent (_____%), of the value. In the event of extinguishment, termination or condemnation, the Grantor is entitled to _____ percent (_____%) of the proceeds, and the Grantees are entitled to _____ percent (_____%) of the proceeds of the non-NRCS Easement.

Grantor, upon receipt of notification of any pending condemnation action brought by any government entity affecting and/or relating to the Protected Property, shall notify the Grantee and the United States, in writing, within fifteen (15) days of receipt of said notification.

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.

The conveyance of this Easement gives rise to a property right immediately vested in the Grantee and the United States with a fair market value equal to the proportionate value that this Easement at the effective date hereof bears to the value of the Property as a whole at that time. The interests and rights under this Easement may only be extinguished or terminated with written approval of the Grantee and the United States and by judicial proceedings in a court of competent jurisdiction. Any proceeds received by the Grantee shall be used in a manner consistent with the conservation purposes of the Easement.

13. Assignment. [*DELETE HIGHLIGHTED SECTION IF USING CO-HOLDER LANGUAGE*] 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 YCFPB ceases to operate or exist, the rights of the Grantee under this Easement shall be transferred to an organization that is qualified 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, (W. Va. Code 20-12-1, et seq., 1995). The USDA-NRCS or its successor must approve any such transfer in advance.

This Easement is not transferable by the Grantee to any other local, county or state department, board, agency, commission or successor. The Co-Holder may, upon notice to Grantor and with approval of USDA-NRCS or the United States, assign its rights under this Conservation Easement to any organization that is qualified under Section 170(h) of the Internal Revenue Code of 1954, 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, (W. Va. Code 20-12-1, et seq., 1995). In the event that the Holder ceases to operate or exist and the United States declines to take sole title as set forth

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under Paragraph II. 5. (e) herein, the rights of the Holder under this Easement shall be transferred to the Co-holder, or an organization that is qualified under Section 170(h) of the Internal Revenue Code of 1954, 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, (W. Va. Code 20-12-1, et seq., 1995). The USDA-NRCS or its successor must approve any such transfer in advance.

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 this Easement was originally intended to advance. The transfer of this Easement to a new or successor transferee or assignee will not create a financial obligation of any kind on the Grantor.

13. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. Notwithstanding any failure of the Grantor to comply with this requirement, all the Grantor's heirs, successors, and assigns shall be bound by the terms of this Easement.

14. 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.

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

To Grantor: [LANDOWNER]
 [Address]
 [City, State, Zip Code]

To Grantee: [YOUR] COUNTY FARMLAND PROTECTION BOARD
 [Address]
 [City, State, Zip Code]

To Co-Holder: WEST VIRGINIA AGRICULTURAL LAND PROTECTION
 AUTHORITY
 1900 Kanawha Blvd. East
 Charleston, WV 25305

To United States: NATURAL RESOURCES CONSERVATION SERVICE
 1550 Earl Core Road, Suite 200
 Morgantown, WV 26505

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

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16. Recordation. Grantee shall record this instrument in timely fashion with the Office of the Clerk of [Your] County, West Virginia and may re-record it at any time as may be required to preserve its rights in this Easement.

17. Amendment. This Easement may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this Easement and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended Easement Deed, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

18. Other Provisions.

- (a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of West Virginia and the United States.
- (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, agents, assigns, lessees, and any other person claiming under them, any and all of whom shall comply with all terms and conditions of this Easement, and shall continue as a servitude running in perpetuity with the Protected Property.
- (e) **Subordination.** Any mortgage or lien arising after the date of this Easement shall be subordinated to the terms of this Easement.
- (f) **Title Warranties.** Grantor warrants that the Grantor has good title to the Protected Property, that the Grantor has the right to convey this Easement, and that the Protected Property is free and clear of any encumbrances other than those of record.
- (g) **Merger.** If Grantee at some future time acquires the underlying fee title in the Protected 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 an part of the consideration hereunder, that the provisions of this Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Protected Property by or to the local grantee, the United States, 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.
- (h) **Boundary Line Adjustments.** Boundary line adjustments are permitted in the case of technical errors made in the survey or legal description. In such cases, boundary line adjustments cannot exceed two (2) acres for the entire Protected Property.
- (i) **[* Delete when property adjoins a state road*]Access Easement.** Grantor hereby

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grants and conveys to Grantor, Grantee and NRCS a non-exclusive easement (the "Access Easement") over and across the Protected Property _____ feet in width in the location shown on the plat attached hereto as Exhibit A for the purpose of pedestrian and vehicular ingress to and egress from WV Route _____ to the Protected Property. The Access Easement constitutes a covenant running with the land and shall bind every person or entity having any fee, leasehold, or other interest in any portion of the Protected Property.

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TO HAVE AND TO HOLD this Easement hereunto the Grantee, the United States, and their successors and assigns forever

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 Federal, state and 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:

[Landowner]

Signature

Date

GRANTEE:

[Your] County Farmland Protection Board

Signature

Date

DEED OF CONSERVATION EASEMENT

STATE OF WEST VIRGINIA

COUNTY OF [YOUR], to-wit:

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

My commission expires: _____

Notary Public

STATE OF WEST VIRGINIA

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by _____, Chairman on behalf of the [YCFPB].

My commission expires: _____

Notary Public

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STATE OF WEST VIRGINIA

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by [ENTITY/CO-HOLDER].

My commission expires: _____

Notary Public

STATE OF WEST VIRGINIA

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by LAVONNE PADEN, Director on behalf of the West Virginia Agricultural Land Protection Authority.

My commission expires: _____

Notary Public

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SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement (Protected Property) **[*INSERT if only a portion of the Protected Property is being enrolled in ACEP-ALE*] A-2 Legal Description of NRCS Easement]**
 - B. Residential Dwelling(s)
 - C. Farmstead Complex Area(s)
 - D. Retained Development Right(s)
 - E. Extraction Area
- [*IF ANY EXHIBIT IS OMITTED, LEAVE LETTER AND NAME OF EXHIBIT AND MARK “Intentionally Omitted.”*]**