

**George Rogers Clark Land Trust,  
DEED OF AGRICULTURAL CONSERVATION EASEMENT**

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT, granted this \_\_\_\_\_ day of \_\_\_\_\_ ("Grantors"), owners in fee simple of the property described in paragraph 1, conveys a real property interest, immediately vested upon acceptance and recording, to George Rogers Clark Land Trust, an Indiana nonprofit corporation, with a principal place of business at Charlestown, Indiana ("Holder").

**WITNESSETH:**

1. Grantors are the owners in fee simple of certain agricultural real property (the "Property") in \_\_\_\_\_ Harrison County, Indiana, described in Exhibit A attached hereto. The Property consists of approximately \_\_\_\_\_ acres of land identified as part of Assessor's Parcel Number \_\_\_\_\_. A description of the Property and easement is attached hereto as Exhibit A, and a map of the Property as Exhibit B. **For purposes of Cross Referencing:** The most recent deed of record for the Property in the Harrison County Recorder's Office is old tax # \_\_\_\_\_.
2. "Grantors" means the current owner(s) as described above. "Owner," means Grantors while Grantors hold title to all or part of the property described in paragraph 1. Because the real interest conveyed herein is intended to be perpetual, upon conveyance of all or part of the Property by Grantors, "Owner" means subsequent owners with reference to the period of time in which each subsequent owner, in turn, owns all or part of such property, however such subsequent interest is acquired. Grantors and Owner have the rights and responsibilities specified for each by the terms of this Easement.
3. The general conservation goal of this conveyance is the preservation of this open space and agricultural land for its significant public benefit. Grantors and Holder, and the United States of America ("United States") acting by and through the United States Department of Agriculture Natural Resources Conservation Service on behalf of the Commodity Credit Corporation, acknowledge that this Easement is being conveyed and acquired to protect the agricultural use and future viability of the Property, along with other conservation values, by limiting non-agricultural uses of the Property. The grant of this Easement serves the following "conservation purpose," as such term is defined in Section 170(h)(4)(A) of the Internal Revenue Code: the protection of open space including farmland, which will yield a substantial public benefit, pursuant, but not limited to, the following clearly delineated governmental conservation policies:
  - 3.1. The State of Indiana, with few exceptions, grants preferential tax treatment to agricultural land, when used for agricultural purposes: it is assessed at a lower value reflecting its agricultural use rather than a higher development value for property taxation purposes. Indiana Code Section 6-1.1-4-13.
  - 3.2. The State of Indiana requires that real property that is subject to limits and affirmative obligations imposed for the purposes of retaining or protecting scenic and open space values, or assuring availability for agricultural, forest, recreational or open space, and which (as the Property does) thereby satisfies the purposes of the Indiana Conservation Easement Act. Section 32-23-5-1, et

seq., of the Indiana Code, be assessed for property tax purposes in a manner that reflects the diminution in value that results from the use restrictions.

3.3. Harrison County, Indiana has established farmland protection policies and programs applicable to the Property. These are reflected in Ordinances #2006-38; #2006-39; #2006-40.

4. The primary conservation purpose of this conveyance is to preserve and protect this Property and the opportunity to utilize it or parts of it as open space for agriculture, and wildlife habitat, and as described in the inventory of relevant features as noted in Exhibit C, Baseline Document. Additional conservation values include preserving the wildlife, open space and scenic values of the property. These goals will be achieved by the development of and adherence to a management and conservation plan ("Management and Conservation Plan"), as required by paragraph 14, for the Property. The area in which the Property is located, including this property, is subject to significant pressure to develop for urban and suburban uses, both commercial and residential. Restrictions on development rights resulting from the creation of this Easement will provide a long-term opportunity to continue agricultural operations on the site, and to support the regional agricultural economy, and to conserve and keep available for future production the valuable soils present on the site, and to preserve the Property's scenic, wildlife, and open space values.
5. The Property includes productive agricultural land; approximately 37 percent of the soils on the Property have been classified as "Prime Farmland" by the Natural Resources Conservation Service, U.S. Department of Agriculture. The inventory of relevant features of the Property is documented in Exhibit C, Baseline Document.
6. The conservation values of the Property ("Conservation Values") and its current use and state of improvements are described in paragraph 13 herein and the Baseline Document attached hereto as Exhibit C, which Grantors and Holder acknowledge is accurate though not exhaustive as of the date of this Easement. The Baseline Document may be used by Holder to establish that a change in the use or character of the Property has occurred, but that shall not preclude the Holder from presenting other evidence to establish the condition of the Property as of the date of this Easement.
7. The parties specifically acknowledge that the Conservation Values can be maintained if and as changes in farming techniques prove to be necessary or desirable to maintain economically viable agriculture operations, and therefore acknowledge that Owner is not limited to those farming techniques currently known or foreseeable, but rather may utilize new farming techniques that do not violate any specific provision herein, and which are consistent with the Property's Management and Conservation Plan and the maintenance of the Conservation Values of the Property.
8. Grantors intend that the agricultural and other Conservation Values of the Property be preserved and maintained, and by this conveyance intend to pre-empt uses of the Property that are inconsistent with that primary goal. Grantors acknowledges that now and in the future, the conveyance of this restricted charitable gift will foreclose uses of the Property that may be more economically remunerative than upholding the Conservation Values. Grantors intend to convey to Holder the right to preserve and protect the Conservation Values of the Property in perpetuity.
9. Unless otherwise specified below, nothing in this Easement shall require Owner to take any action to restore the condition of the Property after any event legally qualifying as an "act of God" or other event over which Owner had no reasonable control.
10. This perpetual agricultural conservation Easement gives rise to property rights, immediately vested in Holder, and any extinguishment of some or all of such rights gives rise to rights of compensation pursuant to the terms of Paragraph 37 hereof.



11. George Rogers Clark Land Trust ("Holder") is an organization described in Section 501(c)(3) of the Internal Revenue Code, and meets the requirements of Section 509(a)(2) of the Internal Revenue Code. Holder is a "qualified organization," as such term is defined in Section 170(h)(3) of the Internal Revenue Code, and is qualified under the Internal Revenue Code, and Ind. Code 32-23-5-1 *et seq.* to hold conservation easements.

## GRANT OF EASEMENT

12. **Grant of Interest.** In consideration of the above and the good, sufficient and valuable consideration represented by the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the law of Indiana and in particular the Indiana Uniform Conservation Easement Act, Indiana Code § 32-23-5-1, *et seq.*, Grantors hereby grant and convey to Holder, and Holder hereby accepts as a restricted gift, a perpetual conservation easement over the Property. This interest is defined herein and by Indiana Code § 32-23-5-2, and is immediately vested upon recording. The interest is in real property described in Exhibit A. Owner will neither perform, nor knowingly allow others to perform any act on or affecting the Property that is inconsistent with the objective of maintaining the Conservation Values, or with covenants made in this Easement. Owner authorizes Holder to enforce these covenants in the manner described below

## CONSERVATION VALUES

### 13. Conservation Values.

13.1. **Primary Value, Agricultural.** The Easements are meant to preserve and protect the Property's availability for agricultural use as well as its agricultural soils and its scenic and open space characteristics. Except as specified herein, no activity that significantly impairs the actual or potential agricultural use of the Property shall be permitted, provided, however, that permitting the property to undergo ecological succession shall not be deemed an impermissible impairment of the actual or potential agricultural use of the Property. Further, certain agricultural uses or practices that are inconsistent with the open space and scenic conservation values may be restricted herein by specific provision or the Management and Conservation Plan required in paragraph 14. As such, use of this land for a concentrated animal feeding operation, as defined in Indiana Code 13-11-2-38.3, or a confined feeding operation, as defined in Indiana Code 13-11-2-40, or successor statutes is prohibited. Non-regulated confined feeding operations may be permitted by Holder pursuant to the waste management criteria, where allowable animal confinement numbers will be determined by the easement acreage available to properly manage the waste as outlined in the Management and Conservation Plan in paragraph 14. The agricultural soils, agricultural viability and productivity, as well as the wildlife habitat, scenic value, and open space character of the Property described in paragraph 13.2 are collectively referred herein as the Conservation Values of the Property.

13.2. **Secondary Values, Wildlife, Scenic, Open Space.** In addition to the above described values, there is a secondary and more general conservation value this conveyance is intended to protect by perpetually preserving the Property from development other than agricultural development: the Property has important scenic, wildlife, and open space value that would be compromised by residential or commercial development. These wildlife, scenic, and open space values can be preserved consistent with timber management and harvesting as further described in sub-paragraph 15.2, through practices that provide for sustained harvest and minimum adverse environmental impact. The Conservation Values can also be preserved while invasive species are appropriately managed. In addition wildlife management that is consistent with generally

accepted practice among professional wildlife managers is consistent with the protection of the Conservation Values.

## **MANAGEMENT PLAN**

**14. Management and Conservation Plan.** All agricultural operations on the Property shall be conducted in a manner consistent with a Management and Conservation Plan prepared by qualified agricultural and conservation professionals approved by Holder. This plan (attached as Exhibit D1 and D2, and further referenced in Exhibit C Baseline Document) shall be updated periodically, and at least every ten years, as well as any time the basic type of agricultural operation on the Property changes or ownership of the Property changes. This plan shall provide for management of the Property in a manner consistent with generally accepted "Best Management Practices," as those practices may be identified from time to time by appropriate governmental or educational institutions, and in a manner not wasteful of soil resources or detrimental to water quality or conservation. All agricultural operations shall be conducted in accordance with applicable federal, state, and local laws, regulations and requirements.

## **RESERVED RIGHTS**

### **15. Reserved Rights.**

**15.1. Reserved Rights, General.** All rights reserved by Grantors and activities not prohibited by this Easement shall be exercised so as to prevent or to minimize damage to the Conservation Values identified above and water quality, air quality, land/soil stability and productivity, wildlife habitat, scenic and cultural values, and the natural topographic and open space character of the Property. The Grantors reserve the right to sell or lease the Property, as well as any other rights consistent with the protection of the Conservation Values of the Property and not specifically prohibited or limited by this Easement. Nothing in the Easement relieves Grantors of any obligation with respect to the Property or restriction on the use of the Property imposed by law.

**15.2. Specific Reserved Rights: Forestry.** The following forest management activities may be conducted on the Property in a manner which complies with the provisions and purposes of this conservation Easement and which is consistent with the standards, customs and practices that are current and generally accepted by professional forest resource managers, and which generally meet the standard of best timber management practices: timber stand improvement practices such as thinning and culling trees and grapevine deadening; timber harvesting and regeneration of forest stands; firewood harvesting; wildlife habitat management; tree planting; pruning; maple syruping, and sugaring; and construction and maintenance of necessary log landings, skid trails and haul/access roads. All such activities shall be in accordance with a forest management plan for the Property, which must be in accordance with the conservation purposes of this Easement, and which must be presented to the Holder for review, and at Holder's discretion, approval prior to timber harvesting under such plan. Such approval, as further specified in paragraph 26, will not be unreasonably withheld. Any draining structures such as culverts, bridges or waterbars constructed on trails and roads shall be removed or maintained by the Owner as needed to protect the Conservation Values of the Property. Notwithstanding the above, the Property shall not be subjected to "clear cut" logging or any similar practice.



## RESERVED RIGHT: AGRICULTURAL PURPOSES

**16.. Right to Use the Property for Agricultural Purposes.** Owner retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, consistent with applicable law, the conservation purposes of this Easement, the specific prohibitions incorporated in this Easement, and the Management and Conservation Plan required by paragraph 14.

**16.1. Definition.** "Agricultural Uses" shall mean the commercial production, processing, storage or retail marketing of crops, livestock, and livestock products. For purposes hereof, crops, livestock and livestock products include, but are not limited to (i) crops commonly found in the community surrounding the Property; (ii) field crops, including corn, wheat, oats, rye, barley, hay, potatoes, cotton, tobacco, herbs and dry beans; (iii) fruits, including apples, peaches, grapes, cherries, nuts and berries; (iv) vegetables, including lettuce, tomatoes, snap beans, cabbage, carrots, beets, onions, mushrooms, and soybeans; (v) horticultural specialties, including seeds, Christmas trees and flowers; (vi) livestock and livestock products, including dairy cattle, beef cattle, sheep, swine, goats, horses, poultry, fur bearing animals, milk and other dairy products, eggs and furs; (vii) timber, wood, and other wood products derived from trees; (viii) breeding and raising of bees; and (ix) boarding, stabling, raising, feeding, grazing, exercising, riding and training horses and instructing riders. Other uses may be allowed with prior approval of Holder.

**16.2. Prohibitions.** Certain uses that might broadly be considered agricultural are prohibited: Grantors and Holder hereby affirm, that large confined animal feeding operations (generally prohibited in sub-paragraph 13.1), as well as large greenhouse production and like intensive industrialized agricultural operations are inconsistent with the soil productivity and open space values this Easement are meant to protect.

Agricultural uses that involve removal of soil from the Property (such as sod farming and ball-and-burlap nursery uses) are permitted only if conducted in accordance with a Resource Management Plan approved by Holder after Review that provides for, among other features, a soil replenishment program that will qualify the activity as a Sustainable Agricultural use.

**16.3. Standards and Practices.** All agricultural activities shall be conducted in accordance with the then-current scientifically-based practices recommended by the U.S. Cooperative Extension Service, U.S. Natural Resources Conservation Service, or other government or private natural resource conservation and management agencies then active.

**16.4. Processing of Agricultural Residues.** Owner may engage in the burning, chipping, grinding, mixing or composting of agricultural residues of plant or animal origin that result from on-Property production of farm, ranch, horticultural, floricultural or agricultural products, processed for the purpose of returning a similar amount of processed material to the Property. Such residues may include manures, orchard or vineyard prunings or other crop residues derived from the Property. The addition of amendments to stabilize or cure the processed residues to improve attributes such as bulk, nutrient value, pH, moisture or texture shall be permitted, so long as such addition does not cause the resulting volume of processed material to exceed substantially the amount of agricultural residues initially collected. All processing of agricultural residues shall be conducted in accordance with applicable federal, state, and local laws, regulations and requirements.

**16.5. Uses and Activities Related to Agriculture.** The following agriculturally related activities and uses are permitted: farm machine repair shop or seed and mineral shop (utilizing buildings permitted under the terms of paragraph 20); seasonal or occasional outdoor commercial activities that are accessory to the Agricultural Uses of the Property, for example: hay rides, corn maze, farm animal petting zoo, pick your own produce, sale of agricultural products produced off of the Property but associated with such seasonal or occasional activities (for example: the sale of apple cider on a hay ride; production/processing (within a permitted structure) of agricultural products, a majority of which are produced on the property or another property owned by Owner, into derivatives thereof; the commercial retail and/or non-retail sale of (i) agricultural products, a majority of which are produced on the property or another property owned by Owner, or (ii) derivatives; services related to agriculture limited to equestrian sports, events, and shows, boarding, the training of horses/ponies and riders, and the provision of recreational or therapeutic riding opportunities; and recreational uses that do not compromise the conservation purposes and values of this Easement offered and operated by a resident of a permitted Dwelling Unit on the Property, or by the Owner. Agriculture-related activities not described in this sub-paragraph that are not analogous to those described (or more minimal) in impact on the conservation purposes and values of this Easement are prohibited, unless approved by Holder as set forth in paragraph 26.

**16.6. Visual Screening.** In order to maintain the scenic view of the Property from the state highway and county roads, Owner shall not erect, construct, assemble, or plant visual screening, including but not limited to stockade fences, tall berms, and dense hedges, that would, in Holder's sole discretion, substantially block views of the Property from such public roadways or waterways.

**16.7. Alternatives to Production Agriculture.** In the event that agricultural use of the land ceases, the nonresidential portions of the property may, in whole or in part: (1) be planted to native trees and/or managed wildlife habitat or other uses approved in advance by the Holder; (2) be allowed to revert to wild land through the process of natural succession; unless and until returned to agricultural uses.

#### **RESERVED RIGHTS AND LIMITATIONS REGARDING RECREATIONAL AND OTHER PURPOSES**

**17. Other Reserved Rights.** Grantors reserve certain other rights and acknowledges other limitations:

**17.1. Recreational Uses.** Owner retains the right to use and to permit others to use the Property for lawful noncommercial and non-motorized recreational uses, including, but not limited to, hiking, cross-country skiing, bird-watching, meditating, observing and photographing nature, walking, picnicking, resting, education, hunting, and other activities that are consistent with the maintenance of the Conservation Values. Owner retains the right to use and to permit others to use the Property for passive, non-intrusive, and non-commercial recreational or educational purposes that require no significant surface alteration or other development of the land. Such uses may include, but are not limited to hiking, horseback riding and nature study. All commercial recreational uses of, or commercial recreational activities on, the Property that are not specifically permitted herein, or approved in advance by Holder under the terms of paragraph 26, are prohibited. The terms "commercial recreational uses" and "commercial recreational activities" shall mean uses or activities that are typically recreational in nature for which users are charged a fee (including a membership fee), in excess of the Owner's costs, for the privilege of engaging in the uses or activities.



**17.2. Uses Prohibited.** Resort structures, cell towers, billboards, golf courses, athletic fields, non-residential swimming pools, public or commercial airstrips, public or commercial helicopter pads, and any other nonagricultural recreational structures or facilities are prohibited on the Property. Solar Panels and wind turbines are likewise prohibited except within the Farmstead Area.

**17.3. Certain Other Uses Permitted.** Owner may place and/or remove a reasonable number of small identifying signs, bird houses, bat houses, butterfly houses and the like on the Property. Owner may control invasive species by means designed to best serve the Conservation Values and purposes of this Easement. Owner may gather wild plants for household consumption, and gather firewood from dead and downed trees.

**17.4. Ecological/Scientific Research.** Owner may engage in and permit others to engage in ecological research on the Property that is not inconsistent with the Conservation Values of this Easement provided that Holder's approval is obtained as provided herein if the research is more than merely observational.

**17.5. Educational Activities.** Owner may carry out educational activities related to the agricultural use and conservation of the Property, including but not limited to educational activities addressing the subjects of sustainable agriculture, food production and nutrition, environmental conservation, and ecology. These activities must be planned and carried out so as to be consistent with the objective of maintaining the Conservation Values of the Property.

#### **RIGHT TO EXCLUDE**

**18. Right to Exclude; Duty Regarding Trespass.** No right of access by the general public to any portion of the Property is conveyed by this Easement, except that visual access to the Property's scenic attributes shall be preserved. Owner retains the right to privacy and the right to exclusive possession of the Property. Owner shall undertake reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property.

#### **DEVELOPMENT RIGHTS**

**19. Development Rights Dormant.** The parties recognize that despite their efforts to preserve the Property, there remains a risk of condemnation of some or all of the Property by governmental or other authorized entities. In order to clarify their respective rights in the event of such a condemnation, and to make clear their intentions, the parties agree that the development and other rights conveyed to Holder by Grantors in this Easement are dormant, rather than extinguished. These rights will remain dormant as long as this Easement or an amended version of this Easement, or the Property, is held by the Holder or a successor Holder. The parties further agree that so long as such rights transferred by Grantors to Holder remain dormant, they may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for calculating permissible lot yield of the Property or any other property. Extinguishment or termination of this Easement in whole or in part renders active, for purposes of compensation, the rights previously held dormant by Holder on the portion of the Property affected by the extinguishment or termination.

## IMPROVEMENTS

**20. Construction of Buildings and Other Improvements.** No structures or buildings not currently in existence on the Property are permitted, except as specified herein. The total maximum allowable impervious surface for all buildings, paved or concrete surfaces or roads, shall not exceed 1.5% of the easement acres: . All new farm buildings or residential construction plans must be submitted in advance to Holder for approval. All new building construction will only be allowed within the Farmstead Area as shown on Exhibit B, attached hereto.

**20.1. Existing Agricultural Structures.** There are no existing usable agricultural structures present on the property.

**20.2. New Agricultural Structures.** Each new agricultural structure shall be constructed entirely within the Farmstead Area, as approved by Holder. After new structures are built, they may be maintained, repaired, or replaced. New buildings constructed or subsequently modified shall not exceed the easement's maximum allowable impervious surface noted in Paragraph 20. In addition, unless approved in advance by the holder and as noted below, the height must not exceed thirty-five (35) feet or the local zoning height restriction, if any. Exception to this height restriction shall be granted to the historic structures as described in EXHIBIT F, which may be relocated to the property. Any historic structures relocated must be included in the easement's maximum allowable impervious surface.

**20.3. Single-Family Residential Dwelling.** Any new residential dwelling and appurtenant facilities associated with the dwelling shall be constructed entirely within the Farmstead Area, as approved by Holder. The maximum allowable area for a residence shall not exceed 3000 square feet on the ground floor, and an associated garage shall not exceed 1200 square feet, built separately or attached, unless approved in advance by holder. The height must not exceed three (3) stories above ground or the local zoning height restriction, if any, whichever is more stringent.

**20.4 Maintenance of Existing Structures.** This conveyance does not create, supplement or enhance the obligation of Owner now or in the future to maintain, restore, or remove wreckage of, any structure existing on the Property.

**20.5. Fences.** Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock, wildlife, and farm produce, and the reasonable and customary security of the farm produce and the residence(s) and other improvements upon the Property. Location of new fences shall be consistent with the Conservation Plan and paragraph 16.6, and new fences that interfere with the Conservation Values intended to be protected by this Easement are not permitted.

**20.6. Utilities, and Septic Systems.** Existing wires, lines, pipes, cables, or other facilities providing electrical, gas, water, sewer, communications, energy generation (but only for energy to be used primarily at the Property), or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed, relocated, and replaced. In addition, septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired, replaced, relocated, or improved. Except as provided herein, Owner may not install or approve the installation of Utilities not now existing on the Property. However, with notice to and approval of Holder as provided in paragraph 26, and sharing of proceeds in accordance with



paragraph 31 herein, Owner may consent to acquisition of such rights of way pursuant to or as an alternative to what would otherwise be proper exercise of eminent domain.

**20.7: Paving, Road Construction and Trails.** The maintenance, repair, and use of access and agricultural roads, and walking and riding trails existing as of the date of this Easement on the Property in substantially their present location and condition is permitted. Installation of a crossing to minimize stream impacts and for improved access for existing farm lane is permitted. No extension or expansion of roads is permitted without prior approval of Holder as set forth in paragraph 26.

## **SURFACE WATER MANAGEMENT**

**21. Maintenance and Improvement of Water Sources.** In accordance with applicable law, the conservation purposes of this Easement, the Plan required by paragraph 14, and the approval procedure set forth in paragraph 26, Owner may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion, or improve the agricultural management of the Property.

## **SUBDIVISION**

**22. Subdivision.** Recording of a plan for subdividing the Property, lot line adjustments, imposition of a mortgage or other encumbrance not expressly subordinate to this Easement on less than the entire Property( even if the property consists of more than one legal parcel for assessment tax, or other purposes) is prohibited. More broadly, any attempt to divide the Property into two or more legal parcels without prior approval of Holder as provided below is prohibited and, if approval is requested, it may be withheld without explanation at Holder's sole discretion.

## **WASTE**

**23. Trash and Debris, Storage and the Like.** The dumping, burial, burning, or other disposal or accumulation of wastes, ashes, refuse, debris, dredge spoils, hazardous or toxic materials, inoperative vehicles, or other unsightly or offensive material on the Property is prohibited, except as may be permitted under sub-paragraph 20.4 and that which is reasonably generated by activities permitted herein and disposed of in a lawful manner that does not cause, and is not likely to cause, soil degradation or erosion, harm to native plant communities, pollution of any surface or subsurface waters, or any other degradation of Conservation Values. Agricultural products, agricultural chemicals (including herbicides, pesticides, fungicides, fertilizers, and other materials commonly used in farming operations), oil, fuels, and petroleum products for use in agricultural operations on the Property, agricultural byproducts, and agricultural equipment used on the Property may be stored on the Property in accordance with label requirements and applicable federal, state, and local laws, regulations and requirements. The application, storage and placement on the Property for agricultural purposes of domestic septic effluent or municipal, commercial or industrial sewage sludge or liquid generated from such sources may be undertaken only if in accordance with applicable federal, state, and local laws, regulations and requirements, and only if the application of any of these materials will not substantially diminish the viability and productivity of the agricultural soils on the Property.

## **MINING**

**24. Surface Mining.** The mining or extraction of any mineral substance by any method that substantially disturbs the surface of the land subject to this Easement is prohibited. Methods of mineral extraction that are managed so as to have limited and localized impact on the Property and which do not have a materially adverse effect on the Conservation Values may be permitted upon notice to and approval by the Holder, as specified in paragraph 26.

## **OTHER PROHIBITIONS**

### **25. Other Prohibitions.**

**25.1. Vehicles.** Use of bicycles, motorcycles, all-terrain vehicles, or any other type of motorized or non-motorized vehicles on or off roadways on the Property is prohibited except that Owner or others under Owner's control may make customary use of vehicles for permitted agricultural purposes, and limited use of vehicles when reasonably necessary for permitted activities, permitted residential, agricultural or recreational uses, or urgent emergency uses, or as permitted by existing easements of record as shown in the Baseline Documentation.

**25.2. Amplified Sound and Outdoor Lighting.** The use of amplified sound systems audible outside Farmstead Area that may harass or harm wildlife is prohibited. Outdoor lighting shall not result in any light visible off of the Property that is inconsistent with the rural character of the Property and the surrounding landscape.

## **NOTICE AND APPROVAL**

**26. Notice to and Approval of Holder.** In addition to the provisions hereunder that specifically require that notice be provided to Holder in advance of a particular activity or use of the Property, Owner shall notify Holder at any time Owner proposes to undertake an activity or use that, pursued without sufficient regard, could have a materially adverse effect on the Conservation Values. The purpose of requiring Owner to notify Holder and seek approval for certain activities is to afford Holder an adequate opportunity to assess the activity, as specifically planned, for consistency with the objective of maintaining the Conservation Values. Thus, all notifications must describe the nature, scope, design, location, schedule, and other material information about the proposed activity in sufficient detail that Holder is able to make an informed judgment as to its compatibility with the Conservation Values. Where Owner is required to obtain Holder's permission or approval for a proposed action hereunder, Holder shall grant permission or approval to Owner only when Holder determines that the proposed action will not substantially diminish or impair the Conservation Values of the Property and does not exceed the 1.5% total impervious surface as described in Paragraph 20. Holder's response to a request for approval shall not be unreasonably delayed or withheld by Holder, and shall be given or denied in writing within 90 days after receipt of Owner's complete written application. If approval is withheld, Holder shall inform Owner in writing of the reasons. If Owner and Holder cannot reach agreement on a plan that addresses Holder's stated concerns within 10 days of the posting of Holder's explanation (or of the delivery, if Holder's explanation is delivered by means other than mail service) Owner may bring suit in a court of competent jurisdiction. If any such suit brought within 6 months of the posting or delivery of Holder's explanation proceeds to judgment, the prevailing party is entitled under this agreement to be reimbursed, by the party that does not prevail, for reasonable attorney's fees and other costs of the litigation. After such 6 month period, Owner waives, without requirement of a writing, the right to object to Holder's decision not to approve the planned activity

## **RIGHTS OF HOLDER**



**27. Rights of Holder.** To accomplish the purpose of this easement the following rights are conveyed to Holder:

**27.1. Right to Protect.** To preserve and protect the Conservation Values of the Property.

**27.2. Right to Enforce.** 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 the remedies provided in paragraph 28.

**27.3. Right to Monitor.** To manage its responsibilities as Holder of this easement by all reasonable means, including but not limited to, annual monitoring, such additional monitoring as circumstances may require, record keeping, and enforcement, for the purpose of preserving the Property's Conservation Values and purposes. Failure of the Holder to carry out these responsibilities shall not impair the validity of this Easement or limit enforceability in any way.

**27.4. Right to Inspect.** With reasonable advance notice as specified in paragraph 27.4.1 (except in the event of an emergency circumstance or prevention of a threatened breach in which case no advance notice is required as further specified in paragraph 28), Holder shall have the right to enter upon, inspect, observe, document, monitor and evaluate the Property to identify the current condition of, and uses and practices on the Property and to determine whether the condition, uses, and practices are consistent with this Easement, subject to the following conditions:

27.4.1. Holder shall give at least forty-eight (48) hours notice to Owner before entering upon the Property, except in the event of an emergency or suspected emergency or to prevent a breach of the Easement restrictions that Holder reasonably suspects is imminent, in which case verbal or written notice that is reasonable under the circumstances shall be attempted. The notice shall indicate the purpose of the entry and shall provide the timeframe during which Holder shall be upon the Property.

27.4.2. Holder shall promptly reimburse Owner for damages arising out of or in connection with such entry to the extent that such damages were the result of the negligent act of Holder or Holder's representative(s).

**27.5. Right of Signage.** To erect and maintain small unlighted signs or other appropriate markers visible from public vantage points and along boundary lines to identify Holder, and public programs that have supported the conservation of the Property, and/or to inform the public that the Property is protected by this Easement and identify activities prohibited by the Easement. Also, Holder may erect a 16 square foot sign identifying the Property as a project qualifying under the Harrison County ordinances referenced above.

**27.6. Right to Administer.** To interpret the terms of this Easement, apply the terms of this Easement to factual conditions on or about the Property, respond to requests for information from persons having an interest in this Easement or the Property, and apply the terms of the Easement to changes occurring or proposed within the Property.

**27.7. General Rights.** To exercise such additional rights as may be reasonably necessary to effectuate the purposes of this Easement, including the right (but not the obligation) if Holder determines doing so will serve the conservation purposes, to remove or arrange for removal of wreckage, at Holder's expense, of any structure on the Property.

**27.8. Right to Use Access.** To use any and all access easements and rights-of-way, whether recorded or not, over the Property or the property of others that individually or together provide Owner with legal, physical and other access to the Property. Owner shall execute additional documents as necessary to evidence this assignment. Right of ingress and egress is described in Exhibit B3, attached.

## **ENFORCEMENT AND REMEDIES**

### **28. Enforcement and Remedies.**

**28.1 Notification.** If Holder determines that a violation of this Easement has occurred, Holder shall so notify Owner, giving Owner thirty days to cure the violation, except in instances requiring immediate action as specified in sub-section 28.2. If the violation cannot reasonably be cured within 30 days, then Owner shall commence the cure within such 30 day period and shall be allotted such additional time, subject to Holder's approval which will not be unreasonably withheld, as shall be needed so that, that with reasonable diligence, Owner can complete the cure.

**28.2 Injunction.** As specified in sub-section 28.1, where Holder in Holder's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the Conservation Values of the Property, Holder may require Owner to immediately cure the violation and if no affirmative response is immediately forthcoming, Holder may bring an action to enjoin the violation, *ex parte* if the circumstances do not permit notice, through a temporary restraining order, preliminary injunction, and/or permanent injunction. Owner and Holder agree that the character of the Conservation Values is such that money damages or other remedies at law are insufficient to fully protect Holder's interests.

**28.3. Additional Remedies.** If the Holder elects to seek a judicial remedy, in addition to injunctive relief Holder shall be entitled to the following remedies, in the event of a violation:

28.3.1. Money damages, including damages for the loss of the Conservation Values protected by this Easement; and

28.3.2. Restoration of the Property to its condition existing prior to such violation.

28.3.3. Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**28.4 Costs.** In any litigation or administrative proceeding enforcing this Easement, Holder shall be entitled to be reimbursed for its expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation, including attorney's fee in preparing for or participating in settlement discussions whether before or during, unless Holder was unsuccessful in establishing that any breach of this conservation Easement had occurred. The failure of Holder to discover a violation or to take legal action when a violation is discovered shall not bar Holder from taking legal action at a later time.

**28.5. Application of Damages.** Without expanding or limiting Owner's liability therefore, Holder shall apply damages recovered to the cost of undertaking any corrective action on the Property. Should the restoration of lost values be impossible or impractical the Holder shall apply any and all damages recovered first to furthering the Conservation Values specified in the Easement, and if no opportunity is then available to conserve those values, then to Holder's mission, with primary emphasis on conservation easement acquisition, monitoring, enforcement, or defense.

**28.6 United States Right of Inspection and Enforcement.** Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the holder of the ALE. The Secretary of the United States Department of



Agriculture (the Secretary) or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement 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 ALE, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, 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, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, 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, attorney's 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 ALE.

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 ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence 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 ALE, the ALE Plan, and the United States Cooperative Agreement with the Grantee, the United States will have reasonable access to the Protected Property with advance notice to Grantee and Grantor or Grantor's representative.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor's representative at the earliest practicable time.

## **SUBORDINATION**

### **29. Subordination.**

Grantor represents that as required under Treasury Regulation §1.170A-14, as of the date of this grant, there are no liens or mortgages outstanding against the Property that are not subordinated to Holder's rights under this Easement. It is understood that the required subordination must be encompassing; for example, should an event occur against which the Property is insured occur that renders it impossible to maintain the Conservation Values and thus results in the full or partial extinguishment of the Easement, this subordination will result in Holder's priority with regard to satisfaction of losses through the payment of insurance proceeds. Owner has the right to use the Property (but only the entire Property) as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to Holder's rights under this Easement. No recording of any document, foreclosure, or any other action taken concerning any existing or subsequent lien or other interest in the Property shall compromise Holder's rights in the Property.

## **MAINTENANCE: COSTS, TAXES, AND ENVIRONMENTAL COMPLIANCE**

**30. Costs, Legal Requirements, and Liabilities.** Except as otherwise specified herein Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability

insurance coverage. Owner remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement.

**31. Taxes.** Owner shall be solely responsible for payment of all taxes and assessments levied against the Property. If the situation arises in which Holder can best protect its interest in the Property by itself paying due taxes or assessments, Owner will reimburse Holder for the same.

**32. Representations and Warranties.** Grantors represent and warrant that, after reasonable investigation and to the best of Grantors' knowledge:

**32.1. Hazardous Substances.** Except what is reasonable, customary, and lawfully used in the agricultural practices on the Property, no substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or harmful or threatening to human health or the environment ("Hazardous Waste") exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

**32.2. Storage Tanks.** There are not now any abandoned or decommissioned underground storage tanks located on the Property, and that there are no underground storage tanks that have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements

**33. Remediation.** If, at any time, there occurs, or has occurred, a release in, on, or about the Property of Hazardous Waste, Owner agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Holder, in which case Holder shall be responsible therefore.

**34. Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Holder to exercise physical or managerial control over the day-to-day operations of the Property, or any of Owner's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

**35. Hold Harmless.** Owner hereby releases and agrees to hold harmless, indemnify, and defend Holder and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with:

**35.1. Injuries and Damage.** 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, except to the extent caused by the negligence of any of the Indemnified Parties;

**35.2. Violations of Law.** The violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and Indiana Hazardous Substances Responsible Property Transfer Law, Indiana Code § 13-25-3-1, et seq., by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property;



**35.3 Releases of Hazardous Substances.** The presence or release in, on, from, or about the Property, at any time, of Hazardous Waste, except to the extent caused by any of the Indemnified Parties; and

**35.4 Breaches.** Breach of the obligations, covenants, representations, and warranties of paragraph 32.

**35.5 Indemnification and Environmental Warranty in Favor of the United States.** 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 ALE 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 incur relating to the Protected Property.

Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, 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 United States may be subject or 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, agreements contained in this Agricultural Land Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

Grantor warrants that it is in compliance with, and will 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, noncompliance or alleged noncompliance 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 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 noncompliance 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 will 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 on the Protected Property; provided, however, that

Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected 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 that may pose a present or potential hazard to human health or the environment.

## AMENDMENT OF EASEMENTS

### 36. Amendment.

#### 36.1. Agreement and Limitations.

If circumstances arise under which an amendment to or modification of this Easement would be appropriate and would comply with this paragraph, Owner and Holder may jointly amend this Easement. Holder shall only agree to an amendment that meets the standards required by this paragraph, and is under no obligation to agree to any proposed amendment, and cannot and shall not propose or agree to an amendment that would affect the qualifications of this Easement under Indiana Code Section 32-23-5-1, et seq., and 26 U.S.C Section 170(h). Any amendment must be consistent with the conservation purpose of this Easement, must not affect its perpetual duration, must not result in any private benefit prohibited under the Internal Revenue Code, and must enhance or have no net adverse effect on the Conservation Values which are protected by this Easement. Any Easement amendment must be in writing, signed by both parties, and recorded in the Public Records of the county in which this Easement is recorded.

#### 36.2. Standards. Standards for Approval of Conservation Easement Amendments:

36.2.1. Correction of an error or clarification of an ambiguity.

36.2.2. Modifications consistent with the conservation purpose(s), if:

36.2.2.1. The amendment creates a condition that strengthens or has no net effect on the protection of the Conservation Values identified in the easement; and

36.2.2.2. The amendment does not undermine the public's perception of reliability of conservation easements as a land conservation tool; and

36.2.2.3 The amendment upholds the intent of the original Grantors, except as provided in sub-paragraph 36.2.3, and the fiduciary obligation of the Holder to protect the Property for the benefit of the public in perpetuity; or

36.2.3. Modification or elimination of a prohibition or administrative term of this Easement that is necessary to preserve any of the Conservation Values identified herein.



## TERMINATION OF EASEMENT

### 37. Termination, Condemnation, Eminent Domain, and Division of Proceeds.

#### 37.1. Standards for Termination.

Unless terminated in whole or part in connection with the proper exercise of eminent domain rights, this Easement may only be terminated or extinguished, in whole or in part, by a court of competent jurisdiction. The Easement shall be terminated only if there are circumstances so changed that the conservation purpose of this Agricultural Conservation Easement is manifestly impracticable to accomplish, because it is impossible or impracticable to maintain any of the Conservation Values, or any other significant conservation values. If the Easement is terminated, in whole or in part, whether in connection with eminent domain, or judicial order, Holder, as owner of a vested property right as defined in paragraph 12, is entitled, upon subsequent sale of the formerly restricted property, to compensation to be determined in accordance with sub-section 37.3 for the value of the rights that were dormant (as specified in paragraph 19 herein) when the Easement was in existence. That compensation is to be used in a manner that accomplishes as closely as possible under the changed circumstances the purposes of this Easement. Any termination proceedings not initiated by the United States requires the authorized consent of the United States.

**37.2 Proper Amendment Not a Termination.** An amendment pursuant to paragraph 36 herein is not a partial termination or extinguishment.

**37.3. Proceeds From Termination Event.** Proceeds upon the subsequent sale of formerly restricted property after whole or partial termination, condemnation, eminent domain, or proceeds paid on a claim on an insurance policy involving casualty, damage, harm or compromise to the property interest conveyed through this Easement shall be divided between Holder, Owner, and the United States in accordance with the following method:

37.3.1. The fair market value of the Property subject to the event shall be determined, as of the time of the event, by an appraisal that meets the Uniform Standards of Professional Appraisal Practice or the Uniform Acquisition Standards of Standards of Federal Land Acquisition.

37.3.2. The remaining proceeds shall be divided between Owner and Holder. Holder shall receive a proportion of the proceeds equal to that of the diminished value of Owner's property attributable to this Conservation Easement at the time it was conveyed divided by the unrestricted value of the Property at the time it was conveyed.

37.3.2.1. That proportionate share, determined by appraisal and approved by the Parties is     %. (Calculated as             divided by             which equals     %)

37.3.2.2. If no appraisal was obtained at the time of the granting of this Easement, or if no such diminished value was determined at the time of the grant of the Easement, or if it cannot be determined what value was then determined, then the proceeds will be divided evenly between Owner and Holder.

37.3.3 If the United States Supreme Court decides that division of proceeds may be calculated after the value of permitted improvements is accounted for or the Internal Revenue Service of the United States Department of the Treasury adopts a rule or guidance to the same effect, then proceeds upon termination shall be divided after the value of post-closing permitted improvements is accounted for.

37.3.4 The Proportionate share of the proceeds shall be divided equally between the United States and the Holder.

37.3.5 If sufficient funds are not immediately available upon extinguishment for Holder and the United States to be paid their full share of proceeds, or if for any other reason

Holder and the United States do not immediately receive their full share, either has the right to recover its share of proceeds from Owner, and each has a lien and the right to record that lien on the Property pending subsequent sale, and to record such other liens on Owner's assets as are permitted under state law and as are necessary to secure its recovery.

### ASSIGNMENT OF EASEMENT

#### 38. Assignment.

**38.1. Notification.** If Holder should desire to transfer its interest in the Easement created by this Deed, Holder shall notify Owner at least 30 days before any transfer may take place. Further, Holder may transfer the Easement only to a qualifying organization under 26 U.S.C. §170(h) which has a commitment to the conservation purposes of the Easement, resources available to enforce the restrictions, and which expressly agrees to assume the responsibility imposed on Holder by this Easements. The assignment and assumption agreement shall be duly recorded.

**38.2. Guidance For Court.** If the Holder, or its successors, ever ceases to exist or no longer qualifies under Section 170(h) of the Internal Revenue Code, or applicable state law, to hold this Easement, and the Easement interest has not been assigned to a qualified successor, a court of competent jurisdiction shall transfer, upon consultation with Owner, Holder's interest in this Easement to another qualified organization or unit of government that is committed to the conservation purposes of the Easement, has resources available to enforce the restrictions, and agrees to assume the responsibilities imposed in this Deed.

### GRANTORS' TITLE WARRANTY

**39. Grantors' Title Warranty and Title Opinion.** Prior to the signing of this Deed, Holder will acquire a title opinion, and provide a copy of the opinion to Grantors. Grantors represents and warrants that Grantors have good fee simple title to the Property, subject only to any liens, encumbrances or defects reflected in that title opinion. To the best of Grantors' knowledge there are no off-record liens or encumbrances affecting the Property not reflected in that commitment. If Owner discovers at any time that any old or new interest in the land exists that is not disclosed herein, Owner shall immediately notify Holder of the discovery of the interest, and shall take all necessary steps to assist Holder to make the discovered interest subject to this Easements.

### TRANSFER OF PROPERTY

**40. Subsequent Transfers by Owner.** Owner agrees to disclose this Easement to all prospective buyers of the Property and to inform Holder in the manner described herein of a prospective sale. Owner agrees that the terms of the Easement shall be incorporated by reference in any deed or other legal instrument by which Owner transfers any interest in all or a portion of the Property or by which Owner grants to a third party a right or privilege to use the Property, including, without limitation, any easement, leasehold interest, or license agreement. The incorporation by reference shall include the placement of the following statement into the documents by which the interest being transferred is conveyed: *This conveyance is subject to the terms of a Deed of Conservation Easement dated the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, recorded in the Office of the Recorder of \_\_\_\_\_ County, Indiana on the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, and identified as an instrument in those records as follows:\_\_\_\_\_.* Upon the



recording of document by which any such transfer is accomplished, this deed of easement shall also be rerecorded. No attempted transfer of the Property shall be effective before and until the Easement is re-recorded. The required notice to Holder of intent to transfer shall be provided in writing at least 30 days prior to the date of such transfer or grant. The failure of Owner to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability. If Property subject to this Easement is transferred while a violation remains uncured, Owner who transfers remains liable for the violation jointly and severally with the transferee(s)/successor Owner(s)

### **SUBSEQUENT EASEMENTS OR RESTRICTIONS**

**41. Subsequent Easements or Restrictions.** The grant of any easements or use restrictions that might diminish or impair the Conservation Values of the Property is prohibited except as specifically permitted under the terms of this Deed. Owner shall notify Holder and seek approval, following the procedures set forth in paragraph 26 at least 30 days before the date Owner proposes to execute any such easements or restrictions on the Property. Unless Holder agrees otherwise (and Holder may not give a discretionary approval that compromises the Conservation Values), any such easements or use restrictions, and any subsequent encumbrances, shall be subordinate to this Easement and make reference to it in any documents submitted for recording.

### **ESTOPPEL CERTIFICATES**

**42. Estoppel Certificates.** Upon request by Owner, Holder shall within thirty (30) days execute and deliver to Owner, or to any party designated by Owner, a document, including an estoppel certificate, which certifies, to the best of Holder's knowledge if it is so, Owner's compliance with any obligation of Grantors or Owner contained in this Easement. Such certification shall be limited to the condition of the Property as of Holder's most recent inspection. If Owner requests more current documentation, Holder shall conduct an inspection, at Owner's expense, within thirty (30) days of receipt of Owner's written request therefore.

### **NOTICES**

**43. Notices.** Except as otherwise provided herein, 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 first class mail, postage prepaid, addressed as follows:

#### **43.1. To Grantors:**

#### **43.2. To Holder:**

George Rogers Clark Land Trust

### **NO MERGER OF TITLE**

**44. No Merger of Title.** Except as expressly otherwise provided herein, this Easement shall be of perpetual duration. No merger of title, estate, or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Holder, or Holder's successor or assignee, it being the express intent of the parties that

this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Holder, or Holder's successor or assignee.

### **WAIVER**

**45. Waiver.** No waiver by Holder of any default, or breach hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default or breach hereunder or affect any rights arising by virtue of any prior or subsequent occurrence. Unless otherwise provided herein, no waiver shall be binding unless executed in writing by the party making the waiver.

### **RECORDATION**

**46. Recordation.** This Deed shall be recorded in the Recorder's Office of the county or counties in which the Property is located. In addition to the re-recording provisions associated with the provisions herein on transfer, re-recording is permitted by either party at any time for any purpose, and the Deed shall be re-recorded upon any transfer of Owner's interest or any element thereof.

### **ACCEPTANCE OF EASEMENTS**

**47. Acceptance.** As attested by the authorized signature affixed hereto, Holder hereby accepts the rights and responsibilities conveyed in this Easement.

### **GENERAL PROVISIONS**

#### **48. General Provisions.**

**48.1. Interpretation.** The provisions of this Deed shall be interpreted under the laws of the State of Indiana or federal law as appropriate, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes. References to authorities in this document are to the statute, rule, regulation, ordinance, or other legal provision that is in effect at the date of signing. No provision of this Deed shall constitute governmental approval of any improvements, construction, or other activities.

**48.2. Severability.** If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, 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.

**48.3. Integration.** This Easement, with respect to the subject matter hereof, is the final and complete expression of and the entire agreement between the parties with respect to the subject matter hereof. Any and all prior or contemporaneous agreements with respect to the subject matter hereof, written or oral, are merged into this written instrument.



**48.4. No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantors' title.

**48.5. Joint Obligation.** In the event that title to the Property is held by more than one entity, the responsibility for fulfilling the obligations imposed by this Easement upon Grantors and Owner shall be joint and several.

**48.6. Successors.** As is clear from other provisions herein, the provisions of this Easement that apply to Grantors, Owner or Holder shall also apply to, and this Easement shall bind and inure to the benefit of, their respective agents, heirs, executors, administrators, assigns, and other successors in interest.

**48.7. Exhibits.** All Exhibits attached hereto are hereby incorporated herein by this reference.

**48.8. Counterparts.** This Easement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same document.

**48.9. Holder Not Tax Adviser.** Grantors affirms that Holder has made no representation regarding whether Grantors are entitled to state or federal tax benefits associated with the charitable contribution of this Easement. Holder and Grantors agree that Grantors will rely solely on Grantors' evaluation of Grantors' entitlement to any such benefits, or on the advice of consultants retained by Grantors. Grantors affirm that any statement by Holder regarding tax or other legal issues was, at most, general introductory or background information or an invitation to seek independent counsel, and Grantors did not, does not, and will not rely on any such information or background provided by Holder concerning Grantors' entitlement to a deduction as a result of this gift, or any other matter. Grantors agree to hold Holder harmless from any claim of any sort related to Grantors' entitlement to a charitable deduction, with the sole exception being that Holder is a qualified holder of a conservation easement as set forth in paragraph 11.

**48.10. Liberal Construction.** Building upon the foundation for interpretation in sub-section 48.1, (any general rule of construction to the contrary notwithstanding), this Easement shall be liberally construed in favor of the grant to achieve the conservation purposes set forth above. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the conservation purposes of this Easement and maintaining the Conservation Values shall be favored over any alternative interpretation. The terms of this Deed have been open to negotiation and are now fully settled and accepted by the Parties.

**48.11. Authority.** Grantors represent that the persons signing on behalf of Grantors have authority to sign and convey the Easement, and Holder represents that the person signing on behalf of Holder has authority to sign and accept the Easement.

**48.12 Agricultural Conservation Easement Program (ACEP).** This Agricultural Land Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). EXHIBIT E attached hereto and incorporated herein by reference and will run with the land *in perpetuity*. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, and as a condition of receiving ACEP funds, all present and future use of the Protected Property identified in EXHIBIT A is and will remain subject to the terms and conditions described forthwith in this Addendum entitled Minimum Deed Terms For The Protection Of Agricultural Use in EXHIBIT E that is appended to and made a part of this easement deed.

[SIGNATURES TO FOLLOW ON NEXT PAGE]