DEED OF CONSERVATION EASEMENT

Sample DOCE - Subject to Change

This **DEED OF CONSERVATION EASEMENT** ("Deed of Easement") is made this _____ day of _____, 2026, by **GRANTOR**, having an address at PROPERTY ADDRESS ("Grantor"), to the **BERKELEY COUNTY FARMLAND PROTECTION BOARD** ("FPB" or "Grantee") having its mailing address at P.O. Box 1243, Martinsburg, WV 25402. For purposes of this Deed of Easement, 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 Deed of Easement.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in [TAX DISTRICT] District, Berkeley County, West Virginia, consisting of XX.XXXX acres of land, more or less (the "Property"), which Property is more particularly described by metes and bounds on **Exhibit A** attached hereto and incorporated herein by this reference, and which is shown on that certain plat titled "Farmland Protection Easement From Lands of PROPERTY OWNERS NAME" recorded in the Office of the Clerk of the County Council of Berkeley County, West Virginia (the "Clerk's Office") in Plat Book _____, Slide _____, and incorporated herein by this reference (the "Plat"). The Property is a portion of the land conveyed to Grantor by two (2) deeds recorded in the Office of the Clerk of the County Council of Berkeley County, West Virginia at Deed Book XXX, Page XXX,;

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

WHEREAS, Grantee has provided $XXXXX under the Berkeley County Farmland Protection Program to purchase a conservation easement on the Property;

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

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

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

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

DEED OF CONSERVATION EASEMENT

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

WHEREAS, the County Commission of Berkeley County, West Virginia ("County Commission") has declared that the agriculture community of Berkeley 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 Berkeley County an opportunity to voluntarily protect agricultural land by creating the FPB and authorizing it to create and administer the Berkeley County Farmland Protection Program;

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

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

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

I. TERMS, CONDITIONS AND RESTRICTIONS

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

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

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

3. Agricultural Structures. Grantor has the right to maintain, construct, and place agricultural structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the Property All agricultural structures shall be limited by the maximum square footage as described in Article I, Section 10 (*Maximum Impervious Surface Coverage*) or this Easement Deed.

4. Retail Sale of Farm Products. Businesses directly related to the retail sale of farm products produced primarily on the Property that are supportive and agriculturally compatible may be established on the Property. Such businesses 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.

5. Activities for Religious, Charitable or Educational Purposes or to Foster Tourism. Activities or businesses undertaken for charitable or educational purposes or to foster tourism may be conducted on the Property in order to foster rural economic uses while protecting the rural character of the Property. Such activities or businesses must be compatible with and supportive of the rural character of the Property, and must remain incidental to the agricultural and open space character of the Property.

(a) Non-agricultural commercial and industrial structures and uses are prohibited. Activities or businesses undertaken for charitable or education purposes or to foster tourism must be undertaken in the agricultural structures permitted under Article I, Section 3 (*Agricultural Structures*) or Article I, Section 7 (*Residential Dwellings*) of this Easement Deed; no other structures are permitted on the Property.

(b) Stables, horseback riding arenas, and supporting pavilion(s) and buildings are considered agricultural buildings. Such buildings shall be limited by the maximum square feet as described in Article I, Section 10 (*Maximum Impervious Surface Coverage*) of this Easement Deed.

(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) Commercial operation of dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles whether or not considered to foster tourism is prohibited.

(f) Extensive commitment of land resources as required by golf courses, racetracks, tennis clubs, baseball, soccer and other ball fields and similar uses whether or not considered to foster tourism is prohibited.

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

(a) The occupation or business use must be conducted entirely within the single residential dwelling or appurtenances allowable under Article I, Section 7 (*Residential Dwellings*) of this Easement Deed.

(b) The use of the dwelling for the home occupation shall be clearly incidental and subordinate to the use of the dwelling for residential purposes.

7. **Residential Dwellings**. Grantor and Grantee acknowledge that existence of one single residential dwelling on the Property as shown on the Plat. Grantor may construct no additional single residential dwellings on the Property. The residential dwelling and all related appurtenances must be contained within the residential envelope described by metes and bounds on Exhibit A hereto and shown on the Plat (the "Residential Area").

(a) Grantor has the right to maintain, repair, enlarge or replace the allowed single residential dwelling as they may so desire, except that the impervious surface of such single residential dwelling is limited to 5,000 square feet.

(b) Grantor has the right to construct appurtenances such as garages, sheds and recreational facilities within the Residential Area, except that the total allowed impervious surface within the Residential Area, including such single residential dwelling, shall not exceed 9,000 square feet.

(c) The single residential dwelling may house one or more families or occupants, but shall not be converted to a multi-family dwelling.

8. **Transfer of Development Rights.** All other development rights not specifically reserved under this Deed of 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.

9. **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 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 on this Easement will apply to the Protected Property as a whole.

[or] (add any specific exceptions here or if twice the average farm size and multiple parcels)

The Protected Property must not be divided into, or separately conveyed as, more than xx [x] farm or ranch parcels (one (1) division allowed), the boundaries and the allocation of the impervious surface limitation of which have been identified in **Exhibit B** , which is appended to and made a part of this Deed of Conservation Easement: The Northern Tract (tax parcels x and x) can be sold separately from the Southern Tract (tax parcels x and x). Tax parcel x and tax parcel xcannot be conveyed separately. Tax parcel x and tax parcel x cannot be conveyed separately. To protect the agricultural use and future agricultural viability, and related conservation values of the Protected Property, the boundaries of such divisions have been preapproved in writing by the Grantee. Deviations from the identified boundaries will not be allowed. Grantor must give Grantee written notice prior to subdividing, dividing, or separately conveying a parcel of the Protected Property. The resulting parcel or parcels will not be below the median size of farms in the county as determined by most recent United States Department of Agriculture's National Agricultural Statistical Survey (NASS). In the case of conveyance of one or more of the parcels, the terms and conditions of this Deed of Conservation Easement shall continue to apply to all of the parcels, including the total impervious surface limitations.

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

(a) Impervious surfaces shall be defined as any material which covers land and inhibits the percolation of storm water directly into the soil, including, but not limited to, buildings, roofs, the area covered by permanent or nonpermanent structures, macadam and pavement, gravel and stone driveways and parking areas.

(b) The total surface coverage of the 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, shall not exceed XXXXXX square feet.

11. **Removal of Natural Resources.** Ditching, draining, diking, filling, excavating, removal of topsoil or sand, gravel or rock on the Property is prohibited, except when such activities are conducted in order to carry out activities permitted under this Deed of Easement, are in accordance with a conservation plan, do not exceed one (1) acre in total area and are restored within a reasonable time period. The exploration, development, mining or extraction of minerals, oil, gas or any other hydrocarbon substance from the Property is prohibited.

12. **Management of Woodland Resources.** The sale of timber and woodland products from the Property, or any on-site use for trade or profit, is permitted under a Forest Stewardship Plan (or a similar plan meeting the same requirements) approved by the West Virginia Division of Forestry

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

The use of timber and woodland products of not more than one percent (1%) in any two-year period on site is permitted without a Forest Stewardship Plan and will not require acceptance by the Grantee. A Forest Stewardship Plan shall not be required for the following permitted activities and do not require prior acceptance by the Grantee:

(a) removal of trees posing an imminent hazard to the health or safety of persons or livestock;

(b) cutting of trees for the construction or maintenance of permitted structures or landscaping within the Residential Area or for access otherwise permitted in this Deed of Easement;

(c) removal of trees for the maintenance or the improvement to existing pastures or fence lines as noted in the baseline documentation;

(d) removal of invasive species both plant and insect; and

(e) removal of storm-damaged trees.

The Grantor reserves the right to remove all trees on a portion of the Property as indicated in the Easement Documentation Report that has a Conservation Value of qualifying soil (soil of prime, unique, or locally significant value) but was forested at the time this Easement Deed was recorded. Such tree removal may only occur as an act of converting woodland to agriculture. Such tree removal shall be carried out under a Conservation Plan approved by the Grantee. [if applicable]

13. **Other Construction.** Except as specifically permitted above, there shall be no constructing or placing of any buildings; manufactured homes; swimming pools or other recreational facilities; commercial lighting or any other temporary or permanent structure or facility on or above the premises.

14. **Signs.** Except for no trespassing signs, for-sale signs, signs identifying this Deed of 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.

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

16. Utilities. Grantor shall not sell, lease or grant an easement covering any portion of the Property where such sale, lease or easement is for the purpose of construction and 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. Grantor may install utilities necessary for the permitted residential and agricultural structures.

17. Streams, Wetland and Water Bodies. There shall be no pollution, alteration, depletion of surface water, natural water courses, lakes, ponds, marshes, wetlands, springs, subsurface water or any other water bodies, nor shall there be activities conducted on the Property which would be detrimental to water purity or which could alter natural water level and/or flow in or over the Property. Nothing in this paragraph shall prohibit the creation or dredging of farm ponds and allow the reasonable use of the available water of the property for agricultural purposes permitted by this Deed of Easement. Structures and facilities associated with irrigation, farm pond impoundment, and soil and water conservation on the Property shall be considered an agricultural use. Expansion and construction of ponds and structures shall have the consent of the Grantee.

II. GENERAL PROVISIONS

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

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

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

(b) To enter upon the Property on a yearly basis (or more frequently if violations are observed or suspected) in order to monitor Grantors' compliance with and otherwise enforce the terms of this Deed of Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantors' use and quiet enjoyment of the Property; and

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Deed of 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 Article II, Section 4 (*Grantee's Remedies*) of this Easement Deed.

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

4. Grantee's Remedies.

(a) Notice of Violation; Corrective Action. If Grantee determines that the Grantor is in violation of the terms of this Deed of Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action within 60 days

sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Deed of Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) Injunctive Relief. The Grantee, its successors or assigns, jointly or severally shall have the right to enforce these restrictions by injunction and other appropriate proceedings, including, but not limited to, the right to require Grantor to restore the Property to the condition existing at the time of this Deed of Easement in order to correct any violation(s) of this Deed of Easement. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Deed of 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 Deed of 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 Deed of Easement against Grantor, including without limitation costs of suit and attorneys' fees, and costs or restoration necessitated by Grantors' violation of the terms of this Deed of Easement shall be borne by Grantor. If Grantor prevails in action to enforce the terms of this Deed of Easement, Grantors' costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee. Costs incurred by Grantee in enforcing the terms of this Deed of Easement against third party shall be borne by Grantee.

(d) Forbearance. Forbearance by Grantee to exercise its rights under this Deed of Easement in the event of any breach of any term of this Deed of 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 Deed of Easement or of any of Grantee's rights under this Deed of Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

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

6. Costs, Legal Requirements and Liabilities. Grantor, her 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 Property.

7. Control. Nothing in this Deed of Easement shall be construed as giving rise to any right or ability of Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any responsibility to the Property within the meaning of the Comprehensive

Environmental Response, Compensation, and Liability Act of 1980 as amended (42 U.S.C. §§ 9602 et seq.).

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

8.2. **Payment of Delinquent Taxes by Grantee; Reimbursement**.

8.2.1. **Authorization; No Obligation**. In the event any such taxes, assessments, fees or charges become delinquent, Grantee may, but shall have no duty or obligation to, pay all (but not less than all) such delinquent amounts to the extent Grantee determines, in its sole discretion, that such payment is necessary or advisable to protect Grantee's rights and interests under this Deed of Easement and/or to preserve the Conservation Values of the Property. This authorization is intended to be consistent with, and in addition to, Grantee's rights as a person having an interest in the land under West Virginia Code § 11A-1-9, and as the holder of a conservation easement under West Virginia Code § 20-12-3(a).

8.2.2. **Reimbursement**. If Grantee pays any delinquent taxes, assessments, fees or charges pursuant to this Section 8.2, Grantor shall reimburse Grantee for the full amount paid by Grantee, including any penalties, interest and other charges included in such payment, within twenty-one (21) days after Grantor's receipt of written notice from Grantee that includes reasonable evidence of such payment (which may include a tax receipt or other proof of payment). Any such notice shall be provided in accordance with the notice requirements set forth in Section 16 of this Deed of Easement.

8.2.3. **Default**. Any amounts not reimbursed within the twenty-one (21) day period shall constitute a default by Grantor under this Deed of Easement. In addition to any other rights and remedies available to Grantee under this Deed of Easement, at law, or in equity, Grantee shall be entitled to recover all costs incurred in collecting such amounts, including reasonable attorneys' fees and costs.

8.2.4. **Statutory Lien/Subrogation Rights Preserved**. Grantor acknowledges and agrees that any payment made by Grantee pursuant to this Section 8.2 is made to protect Grantee's interest in the Property. Grantor further acknowledges and agrees that, to the extent permitted under applicable West Virginia law, Grantee shall be entitled to subrogation to the lien of the State of West Virginia securing such taxes and related charges, as provided in West Virginia Code § 11A-1-9, and Grantee may take such actions as are authorized by law to preserve, perfect, docket and enforce such lien rights, including the filing of any written claim and tax receipt, or duplicate thereof, with the Clerk of the County Commission of Berkeley County, West Virginia.

8.2.5. Covenant Running with the Land. The obligations of Grantor under this Section 8.2 shall be binding upon Grantor and Grantor's heirs, successors and assigns.

8.2.6. No Waiver. Grantee's decision not to pay any delinquent taxes, assessments, fees or charges shall not be deemed a waiver of Grantor's obligations under this Deed of Easement, nor shall Grantee's payment of any such delinquent amounts be deemed a waiver of any rights or remedies available to Grantee.

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

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

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

Grantor warrants that they are 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 Property.

Grantor warrants that they have no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property exceeding regulatory limits. Moreover, Grantor hereby promises to indemnify and hold harmless the Grantee against all costs, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous

Materials contributed after this date to the Property by Grantee.

11. Proceeds for Extinguishment. The conveyance of this Deed of Easement gives rise to a property right immediately vested in the Grantee. If circumstances arise in the future that render the purpose of this Deed of Easement impossible to accomplish, this Deed of Easement can only be terminated or extinguished, whether in whole or in part, upon approval by the Grantee or its successors and by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which the Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be an amount equal to the ratio of the appraised value of this Deed of Easement to the unrestricted fair market value of the Property as these values are determined on the date of this Deed of Easement, or XX% of the net proceeds. The Grantor is entitled to XX% of the gross sale proceeds or condemnation award. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

In making this Deed of Easement, Grantor has considered the possibility that uses prohibited by the terms of this Deed of 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 Deed of Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Deed of Easement.

12. Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantor shall be entitled to compensation at not less than the fair market value of the Property determined without regard to the existence of the Easement.

13. Assignment. This Deed of 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 FPB ceases to operate or exist, the rights of the Grantee under this Deed of Easement shall be transferred to 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, WV Code 20-12-1, et seq., as amended.

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

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

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

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

To Grantor:

To Grantee: Berkeley County Farmland Protection Board
P. O. Box 1243
Martinsburg, WV 25402

17. **Recordation.** Grantee shall record this instrument in timely fashion with the Clerk of the County Council of Berkeley County, West Virginia and may re-record it at any time as may be required to preserve its rights in this Deed of Easement.

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

19. **Other Provisions.**

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

(b) **Severability.** If any provision of this Deed of Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed of 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 Grantors' title in any respect.

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

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

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

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

(h) Merger. If Grantee at some future time acquires the underlying fee title in the Property, the interest conveyed by this Deed of Easement will not merge with fee title but will continue to exist and be managed as a separate estate.

(i) Boundary Line Adjustments. Pursuant to IRS Notice 2023-30, Grantor and Grantee agree that boundary line adjustments to the real property subject to the Easement may be made only pursuant to a judicial proceeding to resolve a bona fide dispute regarding a boundary line's location. Any such boundary line adjustment must also be approved by the Grantee as an amendment to the Easement in accordance with Section 18.

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[Signatures Appear on Next Page]

DEED OF CONSERVATION EASEMENT

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 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:

GRANTOR NAME

_____
Signature

_____
Date

GRANTEE:

BERKELEY COUNTY FARMLAND PROTECTION BOARD

_____
Name:

_____
Title:

_____
Date

DEED OF CONSERVATION EASEMENT

STATE OF WEST VIRGINIA

COUNTY OF BERKELEY, to-wit:

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

My commission expires: _____

_____
Notary Public

STATE OF WEST VIRGINIA

COUNTY OF BERKELEY, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____ , _____ by _____, _____ on behalf of the Berkeley County Farmland Protection Board.

My commission expires: _____

_____
Notary Public

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DEED OF CONSERVATION EASEMENT

SCHEDULE OF EXHIBITS

A. Legal Description of Property Subject to Easement

DEED OF CONSERVATION EASEMENT

EXHIBIT A. LEGAL DESCRIPTION OF PROPERJTY SUBJECT TO EASEMENT

DEED OF CONSERVATION EASEMENT