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DEED OF CONSERVATION EASEMENT

This **DEED OF CONSERVATION EASEMENT** ("Easement") ~~is made this~~
~~22th~~ day of ~~December~~ 2013 by, Albert H. Gelderman and Martha J. Gelderman
having an address at HC 76, Box 70, Union, WV 24983 ("Grantor"), to the MONROE
COUNTY FARMLAND PROTECTION BOARD ("MCFPB", "Grantee") having its
mailing address at PO Box 574, Union, WV 24983, for the purpose of forever conserving
the agricultural productivity of the Property and its value for resource preservation and as
open space. For purposes of this agreement, references to the rights, duties and obligations
of Grantor and Grantees apply equally and in full force to any successors to the parties to
this agreement.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in
Monroe County, West Virginia, consisting of 20.056 acres of land, more or less, and more
particularly described in Exhibit A, incorporated herein by reference (the "Property"). The
Property is also described in a deed of record in the office of the Clerk of the County
Commission, Monroe County at Deed Book 222, Page 521;

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

WHEREAS, the Grantors are donating this Conservation Easement to the Grantee
pursuant to the Monroe County Farmland Protection Program for the permanent protection
of the Conservation Values of 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 Grantees and
incorporated by reference ("Baseline Documentation"), which consists of reports, maps,
photographs, and other documentation that the parties agree provide an accurate
representation of the Property at the time of this contract and which is intended to serve as
an objective information baseline for monitoring compliance with the terms of this
Easement;

WHEREAS, Grantor and Grantees 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
Grantees 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;

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

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

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

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

To achieve these objectives, the terms, conditions, and restrictions of this Easement are hereinafter set forth. The parties agree that the United States is granted the same rights as the Grantees under the terms of this Easement. However, the United States will only exercise its rights set forth below at section II 4 (e). Until such time, if ever, the United States exercises its rights under this Easement, Grantees are the primary manager and enforcer of this Easement.

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I. TERMS, CONDITIONS AND RESTRICTIONS

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

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

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

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

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

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- (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 *Agricultural Structures* or *Residential Dwellings*; no other structures are permitted on the Property.
- (b) The stables, horseback riding arenas both within and outside the barn, and supporting pavilion(s) and buildings are considered agricultural buildings. Such buildings shall be located within the Farmstead Complex Area described in Exhibit C, and shall be limited by the maximum square feet as described in *Terms, Conditions and Restrictions-Maximum Impervious Surface Coverage*.
- (c) Accommodation of tourists and visitors is permitted but only within 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 *Terms, Conditions and Restrictions-Residential Dwellings*.
- (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 Grantees acknowledge that there is not an existing residential dwelling on the Property. Grantor may construct one single residential dwelling on the Property, to be located within a separate two acre building envelope as indicated in Exhibit D (the "Retained Development Rights"). No other single residential dwellings shall be constructed or placed on the Property.

- (a) Each single residential dwelling shall be contained in a building envelope ("Residential Area") no greater than two (2) acres per each dwelling. The Retained Development Rights may be constructed anywhere within the building envelopes described in Exhibit D.
- (b) Grantor has the right to maintain, repair, enlarge or replace each allowed residential dwelling as they may so desire, except that the impervious surface of each such single residential dwelling is limited to 5,000 square feet.
- (c) Grantor has the right to construct appurtenances such as garages, sheds and recreational facilities within each building envelope, except that the total allowed

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impervious surface within each building envelope, including the single residential dwelling(s), shall not exceed 9,000 square feet.

- (d) 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 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. It is the intention of Grantor to protect the open space values of the Property. Accordingly, subdivision of land is prohibited except the single residential dwellings permitted above in *Terms, Conditions and Restrictions – Residential Dwellings*, may be subdivided to create the Residential Areas as described in Exhibits B and D, attached. The Residential Areas may not be conveyed separately from the remainder of the Property.

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

- (a) Impervious surfaces shall be defined as any material which covers land and inhibits the percolation of stormwater 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 17,472.78 square feet, which is less than 2% of the total Conservation Easement area.

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 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. Easement property with contiguous forest that exceeds the greater of 40 acres or 20 percent of the easement area will have a forest management plan. The agricultural use of timber and woodland products on the Property is permitted under a current forest management plan subject to approval by the Grantees and the United States of America.

Forest management plan shall not be required for the following permitted non-commercial activities and do not require prior approval of the Grantees or the United States of America:

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

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

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

13. Other Construction. Except as specifically permitted above, there shall be no constructing or placing of any buildings; manufactured homes; swimming pools or other recreational facilities; commercial lighting or any other temporary or permanent structure or facility on or above the premises. Existing roads as identified in the Baseline Documentation Report may be maintained and repaired in their current state. New roads may be constructed only if they are necessary for agricultural operations or access to the retained development rights (Exhibit D) on the Property. Paved roads are subject to the impervious surface limitations referenced above.

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

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

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

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17. **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.

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

II. GENERAL PROVISIONS

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

2. **Rights of the Grantees.** To accomplish the purpose of this Easement the following rights are conveyed to Grantees or their agent by this 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 Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantees shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and
- (c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to *General Provision—Grantees' Remedies*.

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

4. **Grantees' Remedies.**

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(a) **Notice of Violation; Corrective Action.** If Grantees determine that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees 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 Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantees.

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

(c) **Costs of Enforcement.** Any costs incurred by Grantees in enforcing the terms of this Easement against Grantor, including without limitation costs of suit and attorneys' fees, and costs or restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantees. Costs incurred by Grantees in enforcing the terms of this Easement against third party shall be borne by Grantees. The preceding two sentences shall not apply to the United States should the United States exercise its rights under (e) below.

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

(e) **Rights of Enforcement.** Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his assigns, on behalf of the United States, may exercise these rights under the following circumstances: In the event that the Grantees fail to enforce any terms of this Conservation Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation Easement through any and all authorities available under Federal or State Law. The notice will set forth the nature of the noncompliance by the Grantee and a 60-day period to cure. If Grantee fails to cure within the 60-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS

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determines that imminent harm may result to the conservation values or other interest in the land it seeks to protect.

(f) **Conservation Plan.** As required by section 12381 of the Food Security Act of 1985, as amended, the Grantor, his heirs, successors, or assigns, shall conduct all agricultural operations on the highly erodible lands within the Property in a manner consistent with a conservation plan prepared in consultation with the NRCS and approved by the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the date of this Easement. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. The NRCS shall have the right to enter upon the Property, with advance notice to the Grantor and Grantees, in order to monitor compliance with the conservation plan.

The United States, acting by and through the Natural Resources Conservation Service its successors or assigns, shall have the right to enter the Property after notifying Grantor for the purposes of ensuring that the Conservation Plan is being implemented appropriately. All notices to the Grantor under this Section may be made either in writing or verbally, at the discretion of the party providing the notice.

In the event of noncompliance with the conservation plan, the NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, the NRCS will inform Grantees of the Grantor's noncompliance. The Grantees shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event of circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

Grantor shall be liable for any costs incurred by NRCS as a result of the Grantor's negligence or failure to comply with the Conservation Easement's requirements as it relates to conservation plan violations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant Based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the grantor may be or become subject.

The conservation plan described above, and all provisions of this section, apply only to the highly erodible land and wetlands conservation requirements. Such highly erodible land and wetlands, if any, is described in the Baseline Documentation and incorporated here by reference. The Grantor agrees that the NRCS shall share, through

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written communication with the Grantees, information related to monitoring for compliance with the conservation plan; findings of compliance or noncompliance; and any proceedings under appeal rights applicable under NRCS regulations related to a violation of the conservation plan.

In addition, as of the date of this Easement, the Grantor and NRCS certify that the Grantor is in compliance with all highly erodible land and wetland conservation provisions.

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

6. **Costs, Legal Requirements and Liabilities.** Grantor, his 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 Easement shall be construed as giving rise to any right or ability of Grantees or the United States to exercise physical or managerial control over the day-to-day operations of the Property, or any responsibility to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (42 U.S.C. §§ 9602 et seq.).

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

9. **Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantees and the United States 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

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

Grantor warrants that he has 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 United States against all costs, claims, demands, penalties and damages, including reasonable attorney 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 Grantees to Grantor with respect to the Property or any restoration activities carried out by Grantees at the Property; provided, however, that Grantees shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantees.

11. Proceeds for Extinguishment. The conveyance of this Easement gives rise to a property right immediately vested in the Grantee. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, upon approval by the Grantee 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 easement to the unrestricted fair market value of the Property as these values are determined on the date of such sale, exchange, or involuntary conversion. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

In making this Easement, Grantors have considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such

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prohibited uses. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of continuation of this Easement, and Grantor and Grantees intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement.

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

13. Assignment. This Easement is not transferable by the Grantee to any other local, county or state department, board, agency, commission or successor. In the event that the MCFPB ceases to operate or exist, and the United States declines to take sole title as set forth above at under II. 4. (e) herein, the rights of the Grantee under this Easement shall be transferred to an organization that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and is a West Virginia-domiciled organization authorized to acquire and hold conservation easements under the West Virginia Conservation and Preservation Easements Act, (WV Code 20-12-1, et seq., 1995). The USDA-NRCS or its successor must approve any such transfer in advance.

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

14. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which 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, Grantees shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

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

To Grantor: Albert H. and Martha J. Gelderman
HC 76, Box 70
Union, WV 24983

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To Grantees: MONROE COUNTY LPB
PO Box 572
Union, WV 26083

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

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

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

19. Other Provisions.

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

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

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

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

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

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

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

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

DEED OF CONSERVATION EASEMENT

eliminate these conservation easement terms, or any portion thereof, pursuant to the doctrine of "merger" or any other legal doctrine.

(i) **Boundary Line Adjustments.** Boundary line adjustments are permitted in the case of technical errors made in the survey or legal description. In such cases, boundary line adjustments cannot exceed two (2) acres for the entire Property.

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, state and county governmental entities, and therefore, is exempt from the West Virginia excise tax due on the transfer of real property.

IN WITNESS WHEREOF Grantor and Grantees have set their hand:

GRANTOR:

Albert H. Gelderman

Albert H. Gelderman
Signature

12/20/13
Date

Martha J. Gelderman

Martha J. Gelderman
Signature

12/20/13
Date

GRANTEE:

Monroe County Farmland Protection Board

E. Elizabeth McGee, President
Signature

12/20/13
Date

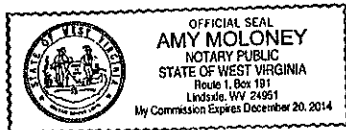
DEED OF CONSERVATION EASEMENT

STATE OF WEST VIRGINIA

COUNTY OF MONROE, to-wit:

The foregoing instrument was acknowledged before me this 20th day of Dec, 2013 by Albert H. Gelderman.

My commission expires: 12/20/14



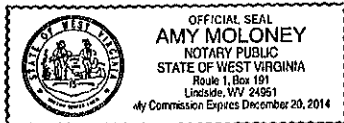
Amy Moloney
Notary Public

STATE OF WEST VIRGINIA

COUNTY OF MONROE, to-wit:

The foregoing instrument was acknowledged before me this 20th day of Dec, 2013 by Martha J. Gelderman.

My commission expires: 12/20/14



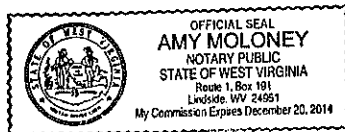
Amy Moloney
Notary Public

STATE OF WEST VIRGINIA

COUNTY OF Monroe, to-wit:

The foregoing instrument was acknowledged before me this 20th day of Dec, 2013 by Elizabeth McLaughlin-Jones, Chairman on behalf of the MCFPB.

My commission expires: 12/20/14



Amy Moloney
Notary Public

DEED OF CONSERVATION EASEMENT

SCHEDULE OF EXHIBITS

- A.** Legal Description of Property Subject to Easement
- B.** Residential Dwelling(s)
- C.** Farmstead Complex Area
- D.** Retained Development (Residential) Rights

ALL that certain tract or parcel of land with improvements thereon situate in Second Creek District, Monroe County, West Virginia, designated as Tax Map 15 Parcel 38.1, and plat of survey prepared by David O. Holz, PS, in December, 2013, and detailed on a plat of the same entitled "Plat Prepared for Albert H. & Martha J. Gelderman", and which is further detailed by metes and bounds as follows:

BEGINNING at the northwest fence post corner of this tract and the R. C. Miller tract (DB 199 PG 282), thence S 58° 40' 59" E 548.79 feet to fence corner found, thence with Miller S 86° 12' 55" E 546.99 feet to an iron pipe found at mutual corner Miller tract, this 20.056 acres remaining tract and the 5.774 acres tract conveyed to Burnette (DB 209 PG 296); thence with the next five calls with the said Burnette 5.774 acres tract: S 01° 25' 42" E 176.30 feet, S 04° 27' 03" E 325.77 feet, S 09° 42' 39" E 390.47 feet, S 06° 06' 02" E 58.37 feet to a corner, N 59° 40' 04" W 319.17 feet to mutual corner Burnette 5.774 acres, this tract and Marcia L. Burnette tract (DB 268 PG 539); thence with Marcia L. Burnette tract, the following calls: N 81° 45' 59" W 209.61 feet, S 02° 40' 25" W 106.56 feet, N 68° 54' 45" W 117.53 feet to a 18-inch sugar maple called for, N 03° 35' 35" W 252.17 feet, N 44° 43' 01" W 201.05 feet to an iron pipe the southern side of the common gravel access road; thence with the meanders of the common gravel access road the next six calls: N 75° 48' 43" W 176.39', N 16° 59' 16" W 164.49 feet, N 28° 43' 09" W 268.12 feet, N 06° 16' 08" E 150.18 feet, N 11° 24' 01" W 230.31 feet, N 11° 36' 41" E _____ feet to the point of BEGINNING; containing 20.056 acres, more or less. Original survey 1976 by J. D. Breckinridge & Associates, access road and home site development area surveyed by David O. Holz, PS, in December, 2013.

BEING ALL and the SAME acquired by Albert H. Gelderman and Martha J. Gelderman by deed dated April 28, 2000, from Donnie P. Fick et ux, of record in the Monroe County Clerk's Offices in Deed Book 222 at Page 521.