

Pendleton County  
Farmland Protection Program

**Voluntary Land Use Options for Our Future**

# APPENDIX

The forms in this Appendix are samples only, and should not be used for application purposes. Forms are subject to revision by the Pendleton County Farmland Protection Board without prior notice.

## **Appendix I. Glossary of Terms**

**Acquisition of easement:** The holding or co-holding of land-use restrictions under a Deed of Conservation Easement, whether obtained through purchase, gift, bequest, grant or contract to co-hold with another holder.

**Ad Valorem:** In proportion to the estimated value of the goods taxed according to value

**Agriculture:** 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 and vegetables of all kinds; nursery, floral and greenhouse products; Christmas tree growing; aquaculture; a winery, microbrewery or grain mill; and the primary processing and storage of the agricultural production of the Property.

**Agricultural value:** The agricultural value of land is the price at the valuation date which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property subject to the restrictions placed upon it by the Deed of Conservation Easement.

**Archeological significance:** The parcel of property contains a site which has been designated or determined as significant to understanding past human or animal life. Such designation shall be made by a recognizable authority such as the Smithsonian Institute or a qualified archeologist.

**Biological significance:** Areas designated by local, state, or Federal officials as containing plants, animals or ecosystems that are rare or unique in the state and/or the nation; or an area designated as such by a recognized authority such as the West Virginia Department of Natural Resources, U.S. Fish and Wildlife Service, or Nature Conservancy.

**Cave:** An underground passage of at least 50 feet in length. Caves have a unique and fragile ecosystem that provides safe harborage for many species of flora and fauna. They are also unique in that they are direct vectors to the groundwater, and therefore must be protected from opportunities for surface contamination.

**Co-hold:** The act of having more than one grantee listed on the Deed of Conservation Easement.

**Commercial (structures):** Any wholesale, retail, or service business, or housing activity excluding single residential dwellings, but including apartment buildings, condominiums, or similar housing types. Structures needed for agricultural activities shall not be considered commercial structures.

**Commercial forestry:** The harvesting of timber, whether such trees are naturally present on the property or have been planted and grown for commercial purposes, for profit or trade. The growing of Christmas trees, orchards and nursery stock; or the removal, sale and renewal of such, shall not be deemed to be commercial forestry. In addition, ornamental plants and woodland products grown for human consumption are not considered commercial forestry. Uses of timber products on-site are allowable as permitted under the Deed of Conservation Easement.

**Conservation easement:** A non-possessory interest of a holder in real property, whether appurtenant or in gross, imposing limitations or affirmative obligations, the purposes of which include, but are not limited to, (a) retaining or protecting for the public benefit the natural scenic or open-space values of real property; (b) assuring its availability for agricultural, forest, recreation or open-space use; (c) protecting natural resources and wildlife; (d) maintaining or enhancing land, air or water quality; and/or (e) preserving the historical, archeological or cultural aspects of real property. Conservation easements under Article 24 – Voluntary Farmland Protection Programs must be perpetual and must be held by at least one “holder.”

**Estate Process:** The legal procedure for the administration and distribution of the decedent’s property to the decedent’s heirs

**Farm, farmland, or agricultural land:** A tract, or contiguous tracts of land, of any size, used or useable for agriculture, horticulture or grazing; and includes all real property designated as woodlands and/or wetlands that are part of a property used or usable as farmland.

**Fair market value:** The fair market value of the land is the price at the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated by buy, would pay for the property if the property was not subject to any restriction imposed under the Deed of Conservation Easement.

**Geological Significance:** Areas of geological significance Pendleton County

include caverns, sinkholes, quarries, old iron ore excavations, fossil collecting areas, mineral collecting localities, igneous rocks, unusual sedimentary rocks, and unusual geological structures such as faults, fold, bedding surfaces and contacts between rock units. Unusual geological landforms, both ancient and modern, are also considered significant. These include cliffs, erosional remnants, stream terraces, crossbedding, and major stream valleys. Any well exposed rocks are significant geologically especially if the outcrop is laterally extensive or photogenic.

**Groundwater recharge potential:** Areas that have certain hydro-geologic soil characteristics that contribute to a significant replenishment of the groundwater aquifers, as determined by the Potomac Valley Conservation District.

**Grantor:** The landowner(s) offering and/or placing a conservation easement on their property.

**Holder:** A grantee in the Deed of Conservation Easement is defined as (a) a governmental body empowered to hold an interest in real property under the laws of the state of West Virginia; or (b) a charitable corporation, charitable association or charitable trust registered with the secretary of state and exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, or other Federal or state statutes or rules, the purposes or powers of which include retaining or protecting the natural, scenic, agricultural or open-spaces values of real property; assuring the availability of real property for agricultural, forest, recreational or open-space use; protecting natural resources and wildlife; maintaining or enhancing land, air or water quality; or preserving the historical, archaeological or cultural aspects of real property.

**Home-based Businesses:** Any occupation or business conducted entirely within the single residential structure or allowable accessory buildings, which is clearly incidental to the residential use of the building. Any occupation or business requiring a West Virginia Division of Environmental Protection permit to operate, such as an auto-repair business or a dry cleaning business, shall not be considered an allowable home-based business. In addition, any business requiring the on-site use of explosives or highly flammable or extremely hazardous materials as defined by the U.S. Environmental Protection Agency shall be disallowed.

**Industrial (structures):** Any manufacturing process, material processing, warehousing, research and testing laboratories, product distribution centers, industrial utility production sites, furniture assembly, machine shops, recycling centers and uses of a similar nature. Structures needed for agricultural activities shall not be considered industrial structures.

**Locally Significant Soils:** A complete listing of the locally significant soils, as determined by the NRCS, is available in Appendix III, supplemental information.

**Karst:** A type of topography formed over limestone, dolomite, or gypsum resulting in dissolving the underlying calcareous rock.

**Major streams:** A complete listing of the county's major streams is available in Appendix III, supplemental information.

**Mature Forest:** The classification of a mature forest in Pendleton County is site specific and shall be determined through a review by a forester from the West Virginia Division of Forestry.

**Maximum easement value:** The maximum easement value is the difference between the *fair market value* of the land and *the agricultural value* of the land. The maximum easement value is determined by a licensed appraiser.

**Minor stream:** Any stream or creek which flows year round, not listed as a major stream. List is available in Appendix III.

**NRCS** Natural Resources Conservation Service.

**Offering price:** The amount the landowner is asking to be reimbursed for the sale of the conservation easement to the Pendleton County Farmland Protection Board. The offering price can be the maximum easement value, or it can be some fraction of this value.

**Open Space:** Property left undeveloped in order to preserve natural features or scenic qualities.

**Other farmland:** Farmland having soils not otherwise classified as prime, unique, or of state-wide or local significance.

**Perpetuity:** Continuing forever

**Prime farmland/soil:** Land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses. It includes cropland, pasture land, rangeland, and forest land. Properties containing prime or unique soils can be identified through the most recent soils map prepared by the U.S.D.A. and maintained by the Potomac Valley Conservation District. The property must contain at least 50 percent of one or more of these soil types and land contours to be eligible for federal matching funds.

**Public property-unimproved parkland, wildlife management areas:**

Lands including public parklands that are substantially unimproved or state-designated wildlife management areas. Unimproved parkland can include open space areas designated for hiking, horseback riding, or general recreation. Parkland shall be considered to be improved, if the park consists primarily of lighted ball fields, skate parks, pool areas, or similar facilities.

**Qualifying property:** Property which meets the minimum eligibility requirements and the donation guidelines (if applicable) to be considered for sale or donation to the Pendleton County Farmland Protection Board. Qualifying property must be ranked by the Farmland Protection Ranking Criteria as established by the Pendleton County Farmland Protection Board. Status as qualifying property does not guarantee acceptance into the Pendleton County Farmland Protection Program.

**Retained development right:** The right to construct a single residential dwelling at some point in the future. Retained development rights must be recorded with the Deed of Conservation Easement

**Single residential dwelling:** A detached residential dwelling, excluding apartment buildings, townhouses and condominiums. The residential dwelling must appear as a single family home, but may house one or more families or occupants. The residential dwelling shall in no case exceed 12,000 square feet.

**Single residential dwelling, existing at time of sale of easement:** A single residential dwelling which (a) is either completed at the time the conservation or preservation easement is executed; or (b) meets the requirements of a retained development right.

**Sink or sinkhole:** A depression in the land surface formed by solution or collapse which directs surface runoff into the subsurface or to an underground drainage flow. They are common in areas of limestone, carbonate rock, or salt beds. The karst areas of Pendleton County contain a substantial number of sinkholes.

**State-wide or locally-significant farmland/soil:** Other productive farmland that is important either locally or to the state. To be considered for federal funding, the property must contain at least 50 percent of one or more of these soil types and land contours, or must be otherwise designated as significant farmland by the Potomac Valley Conservation District.

**Subordinated loan:** A loan secured by easement property where the lender has agreed to abide by the terms of the Deed of Conservation Easement in the event of foreclosure of the property.

**Subsurface mineral rights:** The right to mine or otherwise extract minerals, oil or gas from below the surface estate. Mineral rights separated from the fee simple ownership of the property are know as third-party mineral rights.

**Wetlands:** The collective term for marshes, swamps, bogs, and similar areas found in generally flat vegetated areas, in depressions in the landscape, and between dry land and water along the edges of streams, rivers and lakes.

**Woodland(s):** Areas of substantial tree cover that are not currently usable for farming. Woodland shall be considered land of a farm only if it is part of or appurtenant to a tract of land which is a farm or held by common ownership of a person or entity owning a farm, but in no event may woodland include land used primarily in commercial forestry or the growing of timber for commercial purposes or any other use inconsistent with farm use.

## Appendix II. Ranking Criteria

CRITERIA	POINTS AWARDED IF	POINTS
<p>I. The Imminence of Residential, Commercial or Industrial Development</p> <p>(36 points maximum)</p>	<p>Property is offered by buyer who holds current sales contract on the property OR</p> <p>Property is listed for sale; <b>(20)</b></p> <p>Property is in the estate process or has been inherited within the last two years; <b>( 8 )</b></p> <p>Property has ceased being used for agricultural purposes for two years or more; <b>( 8 )</b></p>	
<p>II. The Total Acreage Offered for Conservation or Preservation Easement:</p> <p>(84 points maximum)</p>	<p>1000 acres or more = <b>(80)</b>            750 to 999 acres = <b>(70)</b>            500 to 749 acres = <b>(60)</b>            250 to 499 acres = <b>(50)</b>            100 to 249 acres = <b>(40)</b>            50 to 99 acres = <b>(30)</b>            25 to 49 acres = <b>(10)</b>            Less than 25 acres = <b>( 5 )</b></p> <p>Plus, an extra (20) points if entire fee simple property is placed under the easement.</p>	
	<p><u>Farmland categorized as any of the following:</u></p>	

<p>III. Farmland Significance</p> <p>(96 points maximum)</p>	<p>Prime or unique soils (30)  State-wide or locally significant farmland (20)  Other farmland (10)</p> <p><u>Currently in farm use</u> (20)</p> <p><u>Owner has a conservation plan</u> (6)</p> <p><u>Owner has put the conservation plan into action</u> (10)</p>	
<p>IV. Contiguous to working farms or protected areas</p> <p>(39 points maximum)</p>	<p><u>Proximity of working farms</u>  Contiguous with properties under easement with the PCFPB OR Within 2,500 feet of properties under easement with the PCFPB (13)</p> <p>Contiguous with properties that have a farm-use valuation for ad valorem tax purposes OR Within 2,500 feet of properties that have a farm-use valuation for ad valorem tax purposes (13)</p> <p><u>Proximity of protected property</u>  Contiguous with other property with a perpetual conservation easement, or public property (unimproved parkland, wildlife management area)  OR Within 2,500 feet of other property with a perpetual conservation easement, or public property (unimproved parkland, wildlife management area) (13)</p>	
<p>V. Special Characteristics of Public Value</p> <p>(39 Points Maximum)</p>	<p><b>Historical, Archeological Uniqueness</b></p> <p>Property is of National, State or Local Significance (Includes cemeteries and sites important to the Native American, Pioneer, Civil War, and Great Depression history of the county) ( 9 )</p> <p><b>Natural, Ecological Value ( 30points maximum)</b></p> <p><u>Property contains one or more of the following unique natural features or habitat (15)</u></p> <ul style="list-style-type: none"> <li>•1 Contains mature forests</li> <li>•2 Contains a Cave</li> <li>•3 Has features of geological significance</li> <li>•4 Is an area of biological significance</li> <li>•5 Contains or is contiguous to endangered or threatened species habitat</li> </ul> <p><u>Property contains one or more of the following characteristics of Source water protection (15)</u></p> <ul style="list-style-type: none"> <li>•1 Fronts on a major stream</li> <li>•2 Fronts on a minor stream</li> <li>•3 Contains a year-round spring</li> </ul>	



	<ul style="list-style-type: none"> <li>•4 Contains a seasonal or wet-weather spring</li> <li>•5 Contains wetlands</li> <li>•6 Contains a sink or a sink hole</li> </ul>																							
<b>VI. Debt (6 points maximum)</b>	Currently, has no debt on real estate (6)																							
<b><i>Subtotal (maximum 300)</i></b>																								
<b>Landowner Offering Price</b>	<p>If donating 100% of the full value of the conservation easement, add 100 points to the total score above.</p> <p>If the asking price falls between the following percentage of the fair market value, (which is the difference between the fair-market value and the agricultural value) add the following to the score.</p> <table style="margin-left: 20px;"> <tr><td>ADD</td><td></td></tr> <tr><td>1 and 10%</td><td>90</td></tr> <tr><td>11% and 20%</td><td>80</td></tr> <tr><td>21% and 30%</td><td>70</td></tr> <tr><td>31% and 40%</td><td>60</td></tr> <tr><td>41% and 50%</td><td>50</td></tr> <tr><td>51% and 60%</td><td>40</td></tr> <tr><td>61% and 70%</td><td>30</td></tr> <tr><td>71% and 80%</td><td>20</td></tr> <tr><td>81% and 90%</td><td>10</td></tr> <tr><td>91% to 99%</td><td>0</td></tr> </table> <p>*For example, the value of Landowner A's conservation easement is \$1,000,000. But landowner A is willing to sell the conservation easement for \$200,000. \$200,000 is 20% of the total value. Farmer A adds 80 points.</p> <p>Note: Land that qualifies for other guaranteed or likely funding sources, such as Federal, state, foundation and/or private grants, etc, will be automatically moved up in the ranking process</p>	ADD		1 and 10%	90	11% and 20%	80	21% and 30%	70	31% and 40%	60	41% and 50%	50	51% and 60%	40	61% and 70%	30	71% and 80%	20	81% and 90%	10	91% to 99%	0	
ADD																								
1 and 10%	90																							
11% and 20%	80																							
21% and 30%	70																							
31% and 40%	60																							
41% and 50%	50																							
51% and 60%	40																							
61% and 70%	30																							
71% and 80%	20																							
81% and 90%	10																							
91% to 99%	0																							

<p><b>Total (maximum 400 points)</b></p>		
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## **Appendix III. Supplemental Information for Ranking Criteria and Application Forms**

For clarification on how to rank your property according to this criteria and to answer the questions on your application form, the following details are provided. Please review the glossary definitions or contact the Pendleton County Farmland Protection Board if you have additional questions.

### **Farmland Significance**

#### **Prime or unique soils**

- AgB Allegheny loam, 3 to 8 percent slopes
- BuB Buchanan channery loam, 3 to 8 percent slopes
- Ch Chagrin loam
- CkB Clarksburg channery silt loam, 3 to 8 percent slopes
- Lo Lodell loam
- Mn Massanetta silt loam
- Tg Tioga loam

#### **State-wide significant farmland**

- BrC Blackthorn channery sandy loam, 8 to 15 percent slopes
- BrD Blackthorn channery sandy loam, 15 to 25 percent slopes
- BuC Buchanan channery loam, 8 to 15 percent slopes

CeC Cateache silt loam, 8 to 15 percent slopes  
 CkC Clarksburg channery silt loam, 8 to 15 percent slopes  
 EdC Edom channery silt loam, 8 to 15 percent slopes  
 EdD Edom channery silt loam, 15 to 25 percent slopes  
 ErB Ernest silt loam, 3 to 8 percent slopes  
 ErC Ernest silt loam, 8 to 15 percent slopes  
 ErD Ernest silt loam, 15 to 25 percent slopes  
 LaC Laidig channery loam, 8 to 15 percent slopes  
 LaD Laidig channery loam, 15 to 25 percent slopes  
 MoB Monongahela silt loam, 3 to 8 percent slopes  
 MoC Monongahela silt loam, 8 to 15 percent slopes  
 Or Orrville loam  
 ToB Toms silt loam, 3 to 8 percent slopes  
 TyB Tygart silt loam, 3 to 8 percent slopes

### **Locally significant farmland**

BeC Belmont-Cateache silt loam, 3 to 15 percent slopes  
 BkC Berks channery silt loam, 8 to 15 percent slopes  
 BkD Berks channery silt loam, 15 to 25 percent slopes  
 BnC Berks-Weikert channery silt loam, 8 to 15 percent slopes  
 BnD Berks-Weikert channery silt loam, 15 to 25 percent slopes  
 BsC Blackthorn channery sandy loam, 3 to 15 percent slopes, stony  
 CaC Calvin channery silt loam, 3 to 15 percent slopes  
 CaD Calvin channery silt loam, 15 to 25 percent slopes  
 CdC Calvin-Dekalb-Hazleton complex, 3 to 15 percent slopes, stony  
 CfC Cateache channery silt loam, 3 to 15 percent slopes, stony  
 CIC Clarksburg channery silt loam, 3 to 15 percent slopes, stony  
 CID Clarksburg channery silt loam, 15 to 25 percent slopes, stony  
 Du Dunning silt loam  
 EIC Elliber extremely channery loam, 8 to 15 percent slopes  
 EID Elliber extremely channery loam, 15 to 25 percent slopes  
 HdC Hazleton-Dekalb complex, 3 to 15 percent slopes, stony  
 LgC Laidig and Buchanan soils, 3 to 15 percent slopes, stony  
 LhC Lehew and Dekalb soils, 8 to 15 percent slopes  
 LhD Lehew and Dekalb soils, 15 to 25 percent slopes  
 LkC Lehew, Hazleton, and Dekalb soils, 3 to 15 percent slopes, stony  
 MaC Mandy channery silt loam, 8 to 15 percent slopes  
 MaD Mandy channery silt loam, 15 to 25 percent slopes  
 OeC Opequon silt loam, 3 to 15 percent slopes, very rocky  
 OnC3 Opequon-Caneyville silty clay loams, 8 to 15 percent slopes, severely eroded  
 Po Potomac fine sandy loam  
 Pt Potomac very cobbly fine sandy loam  
 Pu Purdy silt loam  
 ShC Shouns channery loam, 3 to 15 percent slopes, stony  
 TrC Trussel channery loam, 3 to 15 percent slopes

**Farm Use** must show evidence of farm-use tax status

**Conservation Plan** provide the date of approval of your NRCS conservation

plan

**Evidence of Conservation Plan in Action** obtain a statement from NRCS

## **Special Characteristics**

**Historical, Archeological Uniqueness:** These sites span the county's early history from Native American settlements and the founding of pioneer settlers in 1748, to the county's distinction as a border state during the Civil War of the 1860s, to the Depression and CCC camps of the 1930s, to the greater than one-hundred year flood of 1985. The Pendleton County Historical Society will be pleased to assist landowners in identifying and verifying historical sites on their property.

### **Natural Ecological Values:**

**Biological Significance:** Areas designated by local, state, or Federal officials as containing plants, animals or ecosystems that are rare or unique in the state and/or the nation; or an area designated as such by a recognized authority such as the West Virginia Department of Natural Resources, U.S. Fish and Wildlife Service, or Nature Conservancy.

**Geological Significance:** Areas of geological significance in the Pendleton County include caverns, sinkholes, quarries, old iron ore excavations, fossil collecting areas, mineral collecting localities, igneous rocks, unusual sedimentary rocks, and unusual geological structures such as faults, fold, bedding surfaces and contacts between rock units. Unusual geological landforms, both ancient and modern, are also considered significant. These include cliffs, erosional remnants, stream terraces, crossbedding, and major stream valleys. Any well exposed rocks are significant geologically especially if the outcrop is laterally extensive or photogenic.

### **Rare, Threatened, or Endangered Species listing:**

#### Endangered Species:

<i>Arabis serotina</i>	Shale Barren Rockcress
<i>Corynorhinus townsendii virginianus</i>	Virginia Big-eared bat
<i>Glaucomys sabrinus fuscus</i>	WV Northern flying Squirrel
<i>Myotis grisescens</i>	Grey Bat
<i>Myotis sodalis</i>	Indiana Bat
<i>Trifolium stoloniferum</i>	Running Buffalo Clover

#### Threatened Species:

<i>Haliaeetus leucocephalus</i>	Bald Eagle
<i>Plethodon nettingi</i>	Cheat Mountain Salamander

### **Rare Species & Unique Natural Communities**

A five-page detailed list is available through the Department of Natural Resources, Natural Heritage Program.

### Major Stream and Minor Streams

River	Major Streams	Minor Streams
South Branch of the Potomac		
	East Dry Run	
	Hammer Run	
	Thorn Creek	Black Thorn Creek
		Long Run
		Stouffles Run
		Dry Run
		White Thorn Creek
	Smith Creek	
	Friends Run	
	Trout Run	
	Reeds Creek	
	Mill Run	
	Brushy Run	
	North Mill Creek	
South Fork of the South Branch of the Potomac		Crummetts Run
		Brushy Fork
		* Fleishers Run
		Stony Run
		Little Fork
		George's Run
		Millers Run
		Broad Run
		Hawes Run
		Sugar Run
		Dettimer Run
		Road Run
		Wagner Run
		Dice Run
		Fisher Run
		Rough Run
		Buck Lick Run
		Camp Run
		Wilson Run
		Kettle Creek
North Fork of the South Branch of the Potomac River		Laurel Fork
		Dry Run
		Teeter Camp Run
		Big Run
		Sawmill Run
		Pike Gap Run
		Red Lick Run
		Roots Run
		Powdermill Run
		Zeke Run

		Shuckle Ford Run
		Mill Creek
	Seneca Creek	
		Roaring Creek
		Horse Camp Run
		Whites Run
		Strauder Run
		Brushy Run

**Significant groundwater recharge potential** as determined by the NRCS

**Appendix IV. Donation of a Conservation Easement Form** **Sample Application**

**Date:** \_\_\_\_\_

**General Information:**

Name of Owner(s): \_\_\_\_\_  
 \_\_\_\_\_

Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_ Email: \_\_\_\_\_

## Property Information:

Location of Property (please describe):

Deed Reference: \_\_\_\_\_ Book \_\_\_\_\_ Page \_\_\_\_\_

Tax Map Numbers: \_\_\_\_\_

County:

Total Acreage: \_\_\_\_\_ Acreage Offered for Easement: \_\_\_\_\_

Is the property:

- |   |                       |    |
|---|-----------------------|----|
| • Subject to a sales contract?  | Yes (attach contract) | No |
| • Currently listed for sale?  | Yes (attach details)  | No |
| • Ceased being used for agricultural purposes within the last two years?    | Yes (attach details)  | No |
| • In the estate process or has it been inherited within the last two years? | Yes (attach details)  | No |

## Farm Use

Does the property have a current farm-use valuation for property tax purposes?

Yes (attach most recent filing)      No

Does the property have a current conservation plan?

Yes (Date of NRCS approval \_\_\_\_\_)      No

Is the conservation plan being implemented ?

Yes (attach evidence of implementation)      No

## Soil Evaluation (attach soil maps)

Can the property be described as:

Prime or unique soil State-wide significant farmland  
or locally significant farmland

**Location to working farms or protected areas** (check all that apply)

Property adjoins or is within 2,500 feet of a property under a perpetual conservation easement  
Property adjoins or is within 2,500 feet of a property that has a farm-use valuation  
Property adjoins or is within 2,500 feet of the national forest or a wildlife management area

**Site Evaluation** (check all that apply)

Property is on the National Register of Historical Places  
Property contains a site of historical significance  
Property contains an archeological site  
Property has features of geological significance  
Property fronts on a major stream, creek or river  
Property fronts on a minor stream  
Property contains mature forests  
Property contains a cave  
Property is in an area or is contiguous to an area of biological significance  
Property contains endangered or threatened species habitat  
Property contains a year-round spring  
Property contains a seasonal or wet-weather spring  
Property contains wetlands  
Property contains a sink or sink hole

**Valuation**

Owner's Estimate: Fair market value \$  
Agricultural value \$  
Has an appraisal been completed? Yes No

Offering Price \$

Are there secured debts or liens on property?

Yes (list holder) No

Holder \_\_\_\_\_ Amount \$ \_\_\_\_\_  
Holder \_\_\_\_\_ Amount \$ \_\_\_\_\_



Will the lender agree to subordinate the loan? Yes No

**Other Land Use Considerations**

Status of Mineral Rights

Landowner currently owns mineral rights	Yes	No
Landowner has leased mineral rights	Yes	No
Third party owns mineral rights	Yes	No

Hazardous Wastes and Contaminants

To your knowledge, does your property contain any hazardous waste sites Yes  
No

Intended Forestry Use

Will timber harvesting be allowed or excluded on your property? Circle One

**Intended Property Restrictions and Uses:**

Briefly describe the owner(s) intent for the property. Include intended uses, protections to be applied to various portions, residential sites and reserved residential sites, etc.

**Official Contact**

Name, address, and phone number of the contact person who is authorized by all property owners to receive correspondence from the county and negotiate the terms of the easement:

Name: \_\_\_\_\_ Telephone number: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**Signatures**

All owners must sign this application giving consent to make application to the Pendleton County Farmland Protection Board for a sale of conservation easement:

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print  
name: \_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print  
name: \_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print  
name: \_\_\_\_\_

**Documentation Checklist:** (the following must be attached)

- Property plat
- Deed description
- Tax map (available from the Pendleton County Assessor's Office)
- Soil map (available from the Potomac Valley Conservation District)

**Pendleton County Farmland Protection Board  
P.O. Box 187  
Franklin, WV 26807**

**Appendix V.            Sale of a Conservation Easement  
   Sample Application  
Form**

**Date:** \_\_\_\_\_

## General Information:

Name of Owner(s): \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_ Email:  
\_\_\_\_\_

## Property Information:

Location of Property (please describe):

Deed Reference: \_\_\_\_\_ Book \_\_\_\_\_ Page  
\_\_\_\_\_

Tax Map Numbers: \_\_\_\_\_

County:

Total Acreage: \_\_\_\_\_ Acreage Offered for  
Easement: \_\_\_\_\_

Is the property:

- |   |                       |    |
|---|-----------------------|----|
| • Subject to a sales contract?  | Yes (attach contract) | No |
| • Currently listed for sale?  | Yes (attach details)  | No |
| • Ceased being used for agricultural purposes within the last two years?    | Yes (attach details)  | No |
| • In the estate process or has it been inherited within the last two years? | Yes (attach details)  | No |

## Farm Use

Does the property have a current farm-use valuation for property tax purposes?

Yes (attach most recent filing)      No



Has an appraisal been completed?    Yes            No

Offering Price            \$

Are there secured debts or liens on property?

Yes (list holder)                      No

Holder \_\_\_\_\_                      Amount \$ \_\_\_\_\_  
Holder \_\_\_\_\_                      Amount \$ \_\_\_\_\_

Will the lender agree to subordinate the loan?    Yes    No

### **Other Land Use Considerations**

Status of Mineral Rights

Landowner currently owns mineral rights	Yes	No
Landowner has leased mineral rights	Yes	No
Third party owns mineral rights	Yes	No

Hazardous Wastes and Contaminants

To your knowledge, does your property contain any hazardous waste sites    Yes  
No

Intended Forestry Use

Will timber harvesting be allowed or excluded on your property? Circle One

### **Intended Property Restrictions and Uses:**

Briefly describe the owner(s) intent for the property. Include intended uses, protections to be applied to various portions, residential sites and reserved residential sites, etc.

### **Official Contact**

Name, address, and phone number of the contact person who is authorized by all property

owners to receive correspondence from the county and negotiate the terms of the easement:

Name: \_\_\_\_\_ Telephone number: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**Signatures**

All owners must sign this application giving consent to make application to the Pendleton County Farmland Protection Board for a sale of conservation easement:

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print  
name: \_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print  
name: \_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print  
name: \_\_\_\_\_

**Documentation Checklist:** (the following must be attached)

- Property plat
- Deed description
- Tax map (available from the Pendleton County Assessor's Office)
- Soil map (available from the Potomac Valley Conservation District)

**Pendleton County Farmland Protection Board  
P.O. Box 187  
Franklin, WV 26807**

## **Appendix VI. Example of How a Conservation Easement is Valued**

The fair market value of a 100-acre parcel of unrestricted land suitable for a housing development in Pendleton County is \$5,000 an acre and valued at \$500,000. The agricultural value of the land is \$2,000 an acre or \$200,000 for the entire parcel. The maximum value of the conservation easement on this parcel is \$300,000 (\$500,000 fair market value less the \$200,000 agricultural value).

The offering price is \$100,000. The landowner scores additional points under the Pendleton County Farmland Protection Ranking criteria by offering the easement for one-third of its maximum value.

Subject to the availability of funds, the owner would be compensated \$100,000 for the conservation easement.

# Appendix VII. Administrative Process Flowchart

Process	Description
<p>Public Outreach (ongoing)</p> <p>this for public programs.</p>	<p>Funds appropriated for the administration of program shall include a component education and information</p>
<p>Applications for sale or donation easements will be ongoing basis. All be dated. Those properties not for sale or donation at the end of the fiscal year may be re-submitted for consideration during the next fiscal year.</p>	<p>Applications for sale or donation of accepted by the FPB on an applications must accepted</p>
<p>Property Eligible?</p> <p>make an eligibility criteria have been Only completed applications will be considered.</p>	<p>The FPB shall review each application and initial determination if the met.</p>
<p>Eligible Ineligible</p> <p>landowner if a property is ineligible for made. The FPB will review each offered for donation for acceptability into the program based on the donation guidelines as outlined in the program and also after consideration of all facts and circumstances.</p>	<p>Written notice shall be given to any determination that the consideration is property</p>
<p>Contact Landowner</p> <p>receive such Landowner with any further program for that fiscal</p> <p>ineligible or notified, and may appeal within thirty (30) days with the FPB.</p> <p>If such outcome is still not satisfactory to the landowner, an appeal may also be made to the</p>	<p>Owners with accepted applications will notice of acceptance from the FPB information regarding the year.</p> <p>Landowners of parcels determined to be unacceptable will also be such decision</p> <p>Appeals Process</p>
<p>Farmland Protection Ranking Criteria</p> <p>farmland protection each application. Ranking Criteria process for</p>	<p>The FPB shall complete and review a ranking criteria sheet for</p> <p>The landowner may be contacted during this more information and a farm visit.</p>



FPB Submits Completed Ranking  
sent to Landowner

The completed ranking criteria sheet will be  
each landowner(s) for review.

Applicant Agrees      Applicant Disagrees  
submit in w/assessment      with assessment  
modifications to  
The FPB will respond to  
with a modification of the criteria  
or inform the landowner of the reasons the  
ranking will not be adjusted.

The landowner shall have thirty (30) days to  
writing any proposed corrections or  
the ranking criteria sheet.  
the landowner  
Response in writing      ranking

County      Appeals Process

The landowner may appeal to the Pendleton  
Commission.

FBP Ranking  
review list  
easements for sale and the  
donated. All discussions and  
deliberations concerning the evaluation of  
applications and assigning of points by the FPB shall  
be conducted in open session.

The FPB will provide an ongoing ranking  
prioritizing separately the  
easements to be

Easements Offered      Easements offered  
separate      for sale  
as donations      offer to

All easement applications will be handled in  
categories, either as an offer to sell or an  
donate by the landowner.

\*(Skip to top of next page)

Reimbursement of Costs?

No  
requiring or  
reimbursement may immediately begin  
closing process.

Easement donations if accepted and not  
requesting cost      the

Closing Process  
Yes  
with a request  
costs, funds will be  
are available. Offers of donations  
annually  
year (May or June).  
are not available, landowners  
conditioning the donation on cost reimbursement  
will be put on a standby list.

If easement donations are to be accepted  
for reimbursement for closing  
allocated as they  
during the fiscal year will be prioritized  
near the close of the fiscal  
If adequate funds

<p>asked in apply.</p> <p><b>Standby list</b></p> <p>Enter Easement Agreement agreeing to</p> <p>donation of rescinded before closing is complete. County Commission signs off on agreement, giving approval of expenditure.</p> <p><b>Closing Process</b></p>	<p>Landowners on the standby list will be subsequent years if they wish to re-</p> <p>Landowner signs Easement contract,  reimburse the FPB for costs, if offer of conservation easement is</p>
--	---

<p>* Easements offered for sale summarized and the farmland protection and an initial ranking list produced.</p> <p>the assigning of points by conducted in open session. Create initial list, based on ranking</p>	<p>Easements offered for sale will be prioritized according to ranking criteria,</p> <p>All discussions and deliberations concerning evaluation of applications and the FPB shall be</p>
---	--

**Requested amount accepted?**

<p>if funds  be  offers</p>	<p>No</p>	<p>The FPB may make a lesser “counter-offer”  are insufficient or if the board feels it would  advisable to offer a lesser amount. Counter shall be fair and proportionate.</p>
---	-----------	---

<p>days by notice to the FPB.</p>	<p><b>Counter offer accepted?</b></p>	<p>Counter offers must be accepted within 60 the landowner providing written</p>
---------------------------------------	---	--

<p>related placed on the standby</p>	<p>No</p>	<p>Rejection of the counter offer shall cause the easement sale application to be list for the next fiscal year.</p>
<p>Yes</p>	<p>Yes</p>	<p><b>Standby list</b></p>

<p><b>Tentative Acceptance List</b> prepared offers and /or the accepted The list for offers of sale of</p>	<p>A tentative purchase acceptance list will be based on the application counter offers.</p>
---	--

<p>fiscal</p> <p>time frame</p> <p>motion list.</p> <p>Enter Easement Agreement agreeing to</p> <p>of before closing is Submission to County Commission Commission signs off on agreement, giving approval of expenditure.</p> <p>Final Acceptance List approved, the</p> <p>begin.</p> <p>funds</p> <p>pool for</p> <p>grant an</p> <p>Closing Process</p>	<p>conservation easements received during the</p> <p>year will be finalized near the end of said</p> <p>(May or June). The FPB will make a formal to endorse the tentative acceptance</p> <p>Landowner signs easement contract,</p> <p>reimburse the FPB for costs, if offer of sale conservation easement is rescinded complete. County</p> <p>Once the final acceptance list has been</p> <p>closing process for each easement sale may</p> <p>If closure is not made on approved easement purchases within two (2) years of approval,</p> <p>allocated will be returned to the available</p> <p>other easement purchases. The FPB may</p> <p>extension if appropriate circumstances exist.</p>
---	---

## Appendix VIII. Sample Baseline Documentation Form and Checklist

*(To be completed by the Pendleton County Farmland Protection Board)*

### Part I - Acquisition Data

**Background Information:**

Name of Owner(s): \_\_\_\_\_  
 \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Property name (if any): \_\_\_\_\_

Location of Property:

Deed Reference: \_\_\_\_\_ Book \_\_\_\_\_ Page \_\_\_\_\_

Tax Map Numbers: \_\_\_\_\_

County: \_\_\_\_\_ Title search: \_\_\_\_\_

Total Acreage: \_\_\_\_\_ Acreage Offered for Easement: \_\_\_\_\_

Other Notes:

**Parcel Identification:**

Property size: \_\_\_\_\_ Total Acreage \_\_\_\_\_

Determined by:  
Survey      Deed   Tax Map      Estimate

Parcel A Easement:      Total Acreage:

Determined by:  
Survey      Natural Boundaries

Describe:

Parcel B Easement:      Total Acreage

Determined by:  
Survey                  Natural Boundaries

Describe:

Parcel C Easement:                  Total Acreage

Determined by:  
Survey                  Natural Boundaries

Describe:

Other Notes:

## **Part II - Resource Evaluation**

### **Property Specifics:**

Survey Information:

Recent boundary survey                  Corners marked                  Boundaries marked

Frontage on a public road:

Yes                  Extent of frontage:

Describe road:

No

Rights of way:

Roadway for vehicles          Pedestrian path                  Utilities

Other:

Development information:

10 or more lots adjacent      20 or more parcels within 2,500 feet  
20 or more parcels within 5,000 feet      fewer than 20 parcels within 5,000  
feet      The surrounding property is in a natural state  
The surrounding property is in an agricultural state

Current annual tax assessment:

Total:

Land:

Residences:

Public water available:

Yes      Distance:

No

Public sewer available:

Yes      Distance:

No      Septic constraints: Severe      Moderate

Soil types on property:

Describe surrounding land use (residential, commercial, industrial development;  
highways; farming; logging; water control; drainage, etc.):

History of property uses.:

List improvements on property (buildings, barns, shelters, fences, gates, dams, bridges,

trails, roads, ponds, etc.):

**Natural Resource Inventory:**

Natural features:

- \_\_\_\_\_ Scenic quality
- \_\_\_\_\_ Vegetation
- \_\_\_\_\_ Forested land
- \_\_\_\_\_ Mountainous land
- \_\_\_\_\_ Caves or Sinks
- \_\_\_\_\_ Limestone cliffs, shale barrens
- \_\_\_\_\_ Other natural features

Agricultural:

- \_\_\_\_\_ Farmland
- \_\_\_\_\_ Orchards
- \_\_\_\_\_ Forested land

Water resources:

- \_\_\_\_\_ Streams, creeks, rivers
- \_\_\_\_\_ Springs
- \_\_\_\_\_ Wetlands
- \_\_\_\_\_ Groundwater recharge potential

Other:

- \_\_\_\_\_ Local wildlife
- \_\_\_\_\_ Threatened and Endangered species
- \_\_\_\_\_ Archeological sites
- \_\_\_\_\_ Historical significance

**Part III - Documentation Review**

**Conservation Easement Attachments:**

Deed            Title search            Assessors map            Property survey  
USGS map            Highway map            Photographs            Easement survey  
Natural resource evaluation            Conservation district evaluation

Board use only

Date completed \_\_\_\_\_

Completed by \_\_\_\_\_

Approved \_\_\_\_\_

Date \_\_\_\_\_

**Pendleton County Farmland Protection Board  
P.O. Box 187  
Franklin, WV 26807**

**Appendix IX. Sample Monitoring Inspection Form**

**Inspection date:** \_\_\_\_\_

**Background information:**

Name of Owner(s): \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_



---

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

Property name (if any): \_\_\_\_\_

Location of Property:

### **Conservation Easement Description:**

Summary of easement provisions:

Date easement acquired:

Name and address of easement donor:

Name and address of current owner:

Length of ownership of present owner:

Name of owner / representative receiving notice:

Did owner / representative accompany inspection team?

Yes      Name:

No

Persons on inspection team:

Time spent on property:

Are the terms of the conservation easement being adhered to?

Yes

No      Describe:

Were any violations or potential violations observed?

Yes      Describe:

No

Describe acts or uses which are permitted under the terms of the easement, and which have not been observed previously:

Improvements (structures, utilities, etc.):

Present use of the property:

Use of surrounding properties:

Recommended next visit:

Standard schedule

Follow-up visit     within 1 month     within 3 months     within 6 months

Additional remarks:

Inspection team supervisor    Name:

Signature:

**Attachments pertaining to inspection:**

- Photographs       Directions       Assessors map       Property  
survey
- USGS map       Highway map       Right of way or utility easements
- Other: \_\_\_\_\_

Board use only

Action to be taken:

Next inspection date:

Approved:

Date:

**Pendleton County Farmland Protection Board  
P.O. Box 187  
Franklin, WV 26807**

## **Appendix X. Sample Closing Checklist**

Date:

Property:

Board approval:

- Application
- Copy of deed

- Property plat
- Soil map
- Tax map
- Subordination agreement (if applicable)
- Deed of conservation easement
- Appraisal
- Survey
- Title search
- Environmental assessment
- Baseline documentation report
- Internal Revenue Service form 8038-G or 8038-GC
- Internal Revenue Service form 1099-S (if applicable)
- Disclosure Statements
- Approval of County Commission (Easement Purchase Agreement)

Approval for closing:

**Pendleton County Farmland Protection Board  
P.O. Box 187  
Franklin, WV 26807**

## **Appendix XI. Model Conservation Easement Checklist**

**Caption:**

- #1 Title of document
- #2 Identification of parties

**Recitals:**

- #3 Title representation and legal description of property
- #4 Specific conservation values
- #5 Baseline documentation
- #6 Affirmative purpose of the conveyance: conservation values
- #7 Purpose or directive of the Grantee / Co-holder
- #8 Grantee's commitment

**Grant:**

#9 Grant

**Purpose:**

#10 Purpose

**Terms, conditions, and restrictions:**

#11 Terms, conditions, and restrictions

**General provisions:**

#12 Access

#13 Rights of the Grantee

#14 Grantee notification / approval

#15 Grantee's remedies

#16 Multiple grantees

#17 Acts beyond the Grantor's control

#18 Costs, legal requirements, and liabilities

#19 Control

#20 Taxes

#21 Hold harmless

#22 Extinguishment

#23 Condemnation

#24 Assignment

#25 Subsequent transfers

#26 Estoppel certificates

#27 Notices

#28 Recordation

#29 Amendment

#30 Other provisions: controlling law; severability; no forfeiture; successors;

captions.

**Signatures, acknowledgments, and exhibits**

#31 Signatures, acknowledgments, and exhibits

**Pendleton County Farmland Protection Board**

**P.O. Box 187**

**Franklin, WV 26807**

**Appendix XII. A Sample Conservation Easement**

#1 *Title of document*

**DEED OF CONSERVATION EASEMENT**

#2 *Identification of parties*

THIS DEED OF CONSERVATION EASEMENT ("Easement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, owner(s); having an address at \_\_\_\_\_(Grantor(s)), to the

Pendleton County Farmland Protection Board, having its mailing address at PO Box 187 Franklin, WV 26807 (Grantee), and also to

\_\_\_\_\_ (coholder(s)), having its mailing address at \_\_\_\_\_ and having the same rights conveyed to the Grantee. For purposes of this agreement, references to the rights, duties and obligations of the Grantors and Grantee apply equally and in full force to any successors to the parties to this agreement.

*#3 Title representation and legal description of property*

WITNESSETH:

WHEREAS, grantors are the sole owners in fee simple of certain real property in Pendleton County, West Virginia, consisting of \_\_\_\_\_ acres of land, more or less, being Tax Map Parcel # \_\_\_\_\_ and more particularly described in Exhibit A, incorporated by reference (the "Property"). The Property is also described in a deed of record in the Office of the Clerk of the County Commission of Pendleton County at (deed book / page); and

*#4 Specific conservation values*

WHEREAS, the property possesses agricultural, open space and natural values (collectively, "conservation values") of great importance to the Grantors, the people of Pendleton County, and the people of the State of West Virginia, and all current and future generations of mankind; and

WHEREAS, in particular, \_\_\_\_\_ (describe specific conservation values) \_\_\_\_\_; and

*#5 Baseline documentation*

WHEREAS, the specific conservation values of the Property are documented in an inventory of relevant features of the Property, dated \_\_\_\_\_, on file at the offices of Grantee and incorporated by reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide an accurate representation of the 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; and

*#6 Affirmative Purpose of the Conveyance: Conservation Values*

WHEREAS, Grantors, Grantee and Co-holder have the exclusive common purpose of preserving the agriculture and open space character of the Property; and

WHEREAS, Grantors further intend, as owners of the Property, to convey to Grantee and Co-holder the right to preserve and protect the conservation values of the Property in perpetuity; and

*#7 Purpose or directive of the Grantee / Co-holder*

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; and

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; and

WHEREAS, the County Commission of Pendleton County, West Virginia ("County Commission") has declared that the agriculture community of Pendleton County provides sources of agriculture 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 the urban expansion which is consuming land, topsoil and woodland of the county; and

WHEREAS, the County Commission has resolved to provide persons of Pendleton County an

opportunity to voluntarily protect agricultural land by creating the Pendleton County Farmland Protection Board and authorizing it to create and administer the Pendleton County Farmland Protection Program; and

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

WHEREAS, the Co-holder is a non-profit corporation incorporated under the laws of the State of West Virginia and a tax-exempt public charity under Section 501(c)(3) of the Internal Revenue Code and qualified under Section 170(h) of the Internal Revenue Code to receive qualified conservation contributions, whose purpose is to preserve land for natural, historic, open space, scenic, recreational, environmental, agricultural, scientific, charitable, educational and aesthetic purposes; and

*#8 Grantee's Commitment*

WHEREAS, Grantee affirms that this Easement represents a unique and valuable asset to the quality of life in Pendleton County 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; it agrees by accepting this grant to honor the intentions of Grantors 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;

*#9 Grant  
and  
#10 Purpose*

NOW, THEREFORE, in consideration of the sum of \$\_\_\_\_\_, receipt of which is hereby acknowledged, the above recitals and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of West Virginia, Grantors 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 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.

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

**I. TERMS, CONDITIONS AND RESTRICTIONS**

*#11 Terms, Conditions and Restrictions*

Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns

(Property Owner), 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 the Grantor and Grantee:

**1. Use and Enjoyment.** The Property Owner has the right to reside on the property and to benefit from all aspects of the enjoyment of the Property. The Property Owner has the right to engage in any and all personal recreational uses of the property, including but not limited to hiking; touring; swimming; biking; hunting and fishing; which require no development of the land.

**2. Agricultural Uses of the Land.** The Property Owner may engage in any and all agricultural uses of the Property.

(a) These agricultural uses include the production of plants and animals useful to man, including, but not limited to, forage, grain and field crops; pasturage, dairy and dairy products; poultry and poultry products; equestrian uses; livestock and fowl uses and livestock and fowl products; bees and apiary products; fruits, nuts and vegetables of all kinds; nursery, floral and greenhouse products; aquaculture; a winery, microbrewery or grain mill; and the primary processing and storage of the agricultural production of the Property.

(b) Any structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the Property shall be considered an agricultural use of the land.

(c) Structures and facilities associated with irrigation, farm pond impoundment, and soil and water conservation on the Property shall be considered an agricultural use.

**3. Retail Sale of Farm Products.** Businesses directly related to the retail sale of farm products 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 two thousand (2,000) square feet of structures are erected to facilitate such retail sales.

**4. Activities for Charitable or Education Purposes or to Foster Tourism.** Activities or businesses undertaken for charitable or education 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 are prohibited.

(b) Accommodation of tourists and visitors shall take place within permitted residential structures

and appurtenances, and/or agricultural structures.

(c) Accommodation of overnight guests shall take place within permitted residential structures.

(d) Any commercial operation of dune buggies, motorcycles, all-terrain vehicles, aircraft, jet skis, motorized boats or any other types of non-farm mechanized vehicles whether or not considered to foster tourism shall be prohibited.

(e) Extensive commitment of land resources as required by golf courses, racetracks for uses other

than equestrian use, tennis clubs, baseball, soccer and other public ball fields and similar uses whether or not considered to foster tourism shall be prohibited.

**5. 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, except 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.

(c) Notwithstanding the above, any secondary agricultural activity, including but not limited to farm

mechanics, blacksmithing, riding instructions, or related activities, shall be considered an agricultural activity under Terms, Conditions and Restrictions - Agricultural Uses of the

Land

**6. Residential Dwellings.** The Grantors and Grantee acknowledge the existence of a single residential dwelling currently existing on the property, as more fully described in Exhibit A. In addition, the Property Owner reserves the right to construct \_\_\_\_\_ additional single residential dwellings (Retained Development Rights) in the location described in Exhibit B. No other single residential dwellings shall be constructed or placed on the Property.



(a) Each existing single residential dwelling and Retained Development Right shall be contained in a building envelope no greater than two (2) acres per each dwelling or Retained Development Right.

(b) The Property Owner has the right to maintain, repair, enlarge or replace such single residential dwellings as they so desire, except that single residential dwelling shall not exceed 12,000 square feet.

(c) The Property Owner has the right to construct appurtenances such as garages, sheds and recreational facilities within the two-acre building envelope, except that such structures shall be subject to the impervious surface restrictions under *Terms, Conditions and Restrictions Maximum Impervious Surface Coverage*.

(d) Notwithstanding the above, each single residential dwelling may house one or more families or occupants.

(e) Development rights which have been extinguished through this Easement shall not be transferred to any other properties pursuant to a transfer of development rights program.

**7. Subdivision.** It is the intention of the Grantors to protect the open space values of the Property. Accordingly, subdivision of land shall not be permitted except for each single residential dwelling or Retained Development Right.

(a) The Property Owner shall obtain the written approval, which shall not be unreasonably withheld, of the Grantee prior to filing any sketch, preliminary plat or final plat for such subdivision.

(b) Grantee may refuse such written approval if such subdivision of the Property is inconsistent with or potentially detrimental to the expressed purposes of this Easement.

(c) All terms, conditions and restrictions under this Easement, including the impervious surface restrictions under *Terms, Conditions and Restrictions-Maximum Impervious Surface Coverage*, shall continue to apply to the Property as a whole and not independently to each subdivided portion of the Property.

**8. 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, the area covered by permanent or nonpermanent structures, macadam and pavement, gravel and stone driveways and parking areas.

(b) The impervious surface area for single residential dwellings, both existing and those constructed under Retained Development Rights, structures considered as an appurtenance to such dwellings, and structures associated with agricultural uses shall not exceed what would be considered reasonable for driveways, parking, walkways, patios, etc.

**9. Removal of Natural Resources.** The commercial extraction of minerals by surface mining and the extraction and removal from the Property of topsoil, either by bulk or sod-farming practices, shall be prohibited. The commercial extraction of subsurface or deep-mined minerals shall be prohibited. With the prior written approval of the Grantee, the Property Owner may extract natural gas and oil, limestone, shale, and similar resources for private use. Such permitted use may occupy no more than one percent (1%) of the total surface acreage of the Property.

**10. Commercial Forestry.** The harvesting of timber, either existing naturally on the Property or grown for commercial purposes, for trade or profit shall be prohibited. The growing of Christmas trees, orchards and nursery stock; or the removal, sale and renewal of such, shall not be deemed to be commercial forestry or harvesting of timber. In addition, ornamental plants and woodland products grown for human consumption are not considered commercial forestry or harvesting of timber.

**11. Non-Commercial Forestry.** The use of timber and woodland products on site is permitted, providing any such usage in excess of one percent (1%) of the available timber during any two-year period

is subject to prior approval by the Grantee. Any on site use for trade or profit shall be considered commercial forestry. Nothing in this paragraph shall prohibit the right to cut and remove dead trees or to cut emergency fire breaks. Diseased or insect-infected trees may be removed subject to a written evaluation by a qualified forester and approval of the Grantee.

**12. Other Construction.** Except for the single residential dwellings and appurtenances allowable under Terms, Conditions and Restrictions-Residential Dwellings, and the agricultural structures allowable under Terms, Conditions and Restrictions-Agricultural Uses of the Land, there shall be no constructing or placing of any buildings; manufactured homes; swimming pools or other recreational facilities; commercial lighting or signs, except for sign(s) the combined area not to exceed twenty-five (25) square feet to advertise an on-site activity or business; or any other temporary or permanent structure or facility on or above the premises.

**13. Hazardous Wastes.** There shall be no storage or dumping of garbage, hazardous substance or toxic waste, nor any placement of underground storage tanks in, on or under the Property; there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils.

**14. Utilities.** The Property Owner 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 storage tank or above-ground public utility systems, including, but not limited to, water, sewer, power, fuel, sewerage pumping stations and cellular telephone or other communication towers.

**15. Streams, Wetlands and Bodies of Water.** 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. Water may be extracted for agricultural operations from the site not to exceed what would be considered reasonable for the operation.

## II. GENERAL PROVISIONS

### *#12 Access*

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

### *#13 Rights of the Grantee*

**2. Rights of the Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee 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 Grantors' compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantors, 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 Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to General Provision-Grantee's Remedies.

### *#14 Grantee Notification / Approval*

**3. Grantee Notification / Approval.** The Grantors reserve for themselves 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 the Grantee.

## #15 *Grantee's Remedies*

### **4. Grantee's Remedies.**

**(a) Notice of Violation:** Corrective Action. If Grantee determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation

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

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

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

**(d) Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by

Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

## #16 *Multiple Grantees*

**5. Grantee and Co-holder's Rights and Obligations.** The Grantee shall have the primary responsibility for stewardship and monitoring of this Easement, determining if a violation has occurred, and for approving any amendments to the Deed of Conservation Easement. These duties may be fulfilled directly by the Grantee or its agent, or the Grantee may arrange to have the Co-holder fulfill these duties. Grantee will share with the Co-holder monitoring and stewardship information, including but not limited to written notices to Grantee and monitoring reports, in the event that the Co-holder is not acting to complete these duties through an arrangement with the Grantee.

The Grantee is responsible for any costs incurred in enforcing the terms of the Easement, including any attorney's fees and any costs of a suit. The Grantee and Co-holder shall make every good faith effort to determine a unified course of action should a potential or actual violation of the Easement arise.

The Co-holder shall have the right to enforce the terms of the easement if the Grantee becomes unable or refuses to enforce the Easement, or if the Co-holder in its sole discretion finds that Grantee's enforcement action or consent fails to protect the conservation purposes of this Easement. In such case where the Coholder individually enforces the terms of the Easement without the agreement or consent of the Grantee, then the Co-holder shall be individually responsible for its own costs.

If successful in enforcement efforts against Grantors, the Grantee and/or Co-holder may seek indemnification from such Grantor, The allocation of the same between Grantee and Co-holder shall be the

same as the allocation of responsibilities and costs referred to herein.

*#17 Acts Beyond the Grantor's Control.*

**6. Acts Beyond the Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee or the Co-holder to bring any action against Grantors 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 Grantors 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 Grantors could not reasonably have anticipated or prevented, Grantors agree that Grantee has the right to pursue enforcement action against the responsible parties.

*#18 Costs, legal Requirements, and Liabilities*

**7. Costs, Legal Requirements and Liabilities.** Grantors, their 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.

*#19 Control*

**8. Control.** Nothing in this Easement shall be construed as giving rise to any right or ability of Grantee or Co-holder 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.).

*#20 Taxes*

**9. Taxes.** Grantors 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.

*#21 Hold Harmless*

**10. Hold Harmless.** Grantors shall hold harmless, indemnify, and defend Grantee and Co-holder 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

(a) 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;

(b) the result of a violation or alleged violation of, the enforcement of and/or any contribution action relating to any state or Federal environmental statute or regulation and statutes or regulation concerning the storage or disposal of hazardous or toxic chemicals or materials;

(c) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter 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 in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties and only that negligent party shall be deprived of this protection.

*#22 Extinguishment*

**11. Extinguishment.** 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, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which the Grantor, Grantee, and Co-holder 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 determined in accordance with the formulas below.

This Easement constitutes a real property interest immediately vested in Grantee and the Co-holder, which, for the purpose of extinguishment, the parties stipulate to have a fair market value determined as the difference in the Property's fair market value on a before easement and after easement basis. An appraisal made on the Before and After Method is to be obtained from a qualified appraiser, as defined under Section 155 of the Tax Reform Act of 1984. The Grantor, Co-holder and Grantee shall select a single appraiser. If the parties are unable to agree on the selection of a single appraiser, then each party shall name one appraiser and the three appraisers thus selected shall select a fourth appraiser.

(a) The value to be paid to the Grantee:

Reimbursements for the value of payments previously made to purchase the Easement, or amounts previously expended in order to complete the Easement acquisition process.

(b) The value to be paid to the Grantor is to be based upon the following formula:

Fair market value of the Property as encumbered by the Easement  
divided by

Fair market value of the Property unencumbered by the Easement  
multiplied by

Sale price of the Property Minus payments to the Grantee under (A) above.

(c) The value to be paid to the Co-holder is to be based upon the following formula:

Fair market value of the Property unencumbered by the Easement minus Fair market  
value of the Property as encumbered by the Easement  
divided by

Fair market value of the Property unencumbered by the Easement  
multiplied by

Sale price of the Property Minus payments to the Grantee under (A) above.

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

### *#23 Condemnation*

**12. Condemnation.** If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantors 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. The Grantee and the Co-holder shall be entitled to no compensation under the exercise of eminent domain.

### *#24 Assignment*

**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 Pendleton County Farmland Protection Board ceases to operate or exist, the rights of the Grantee under this Easement shall be transferred to the Co-holder. If there is no Co-holder, or the Co-holder has ceased to exist, the rights of the Grantee under this Easement shall be transferred to an organization that is qualified under Section 170(h) of the Internal Revenue Code of 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., 1995).

Any Co-holder to the Easement may assign its rights and obligations under the Easement only

with the written approval of both the Grantee and the Grantor.

The Grantee and Co-holder 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 Grantors.

*#25 Subsequent Transfers*

**14. Subsequent Transfers.** Grantors agree 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.

*#26 Estoppel Certificates*

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

*#27 Notices*

**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 Grantors: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Grantees: Pendleton County Farmland Protection Board  
P.O. Box 187  
Franklin, WV 26807

To Coholder \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

*#28 Recordation*

**17. Recordation.** Grantee shall record this instrument in timely fashion with the Office of the Clerk of the County Commission of Pendleton County, West Virginia and may rerecord it at any time as may be required to preserve its rights in this Easement.

*#29 Amendment*

**18. Amendment.** If circumstances arise under which an amendment to or modification of this

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

#30 *Other Provisions*

**19. Other Provisions.**

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

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

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

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

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

#31 *Signatures, Acknowledgments, and Exhibits*

IN WITNESS WHEREOF Grantors and Grantee have set their hand:

GRANTOR : _____	GRANTOR: _____
(name)	(name)
_____	_____
(signature)	(signature)
_____	_____
(date)	(date)

GRANTEE: Pendleton County	CO-HOLDER: _____
Farmland Protection Board	(organization)
_____	_____
(signature)	(signature)
_____	_____
(date)	(date)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_  
by \_\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

by \_\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_

Notary Public

**SCHEDULE OF EXHIBITS**

- A. Legal Description of Property Subject to Easement
- B. Legal Description of Area(s) of Retained Development Rights
- C. Site Descriptions and/or Map

**Appendix XIII. Subordination Agreement & Limited Lien Waiver**

This Subordination Agreement and Limited Lien Waiver, effective \_\_\_\_\_,

is signed by \_\_\_\_\_ (Subordinating Party) who hereby grants, to the

extent specified in part II of this document, the following subordination and limited lien waiver

to the Pendleton County Farmland Protection Board. The Property described below is encumbered

with a farmland protection easement as described in the Deed of Conservation Easement. The

Subordinating Party has loaned or has agreed to loan

\_\_\_\_\_



(borrower) certain funds secured by deed of trust.

The easement is located in Pendleton County, West Virginia, and is identified as follows:

*(Legal description of eased property or recordable plat)*

**Part I - General Terms**

A. The Subordinating Party is the holder of a note secured by a deed of trust recorded in the Land Records of Pendleton County, West Virginia, which constitutes a lien against the property, hereafter called the "Deed of Trust." Such Deed of Trust may be modified, supplemented, extended, or removed from time to time.

B. The Subordination Agreement and Limited Lien Waiver is required to ensure that the farmland protection easement on the Property, as described in the Deed of Conservation Easement, is upheld in the event of loan foreclosure.

C. The farmland protection easement shall continue in perpetuity. The subordination and limited lien waiver shall be effective during any such time that the Subordinating Party or its heirs, agents, assigns, or successors, has any Deed of Trust outstanding on the property.

**Part II - Subordination and Limited Lien Waiver for Deed of Trust**

The Subordinating Party:  
1). Subordinates its interest in the Property to the Deed of Conservation Easement held by the Pendleton County Farmland Protection Board;  
2). Acknowledges that the Property is burdened by the right of access granted to the Pendleton County Farmland Protection Board and agrees that this right of access shall be superior to any rights of the Subordinating Party;  
3). Subordinates its financial interest in the Property to the conservation purposes outlined in the Deed of Conservation Easement; and  
4). Agrees that the Pendleton County Farmland Protection Board or its agent may make payments in regard to the recorded Deed of Trust for such Property in order to prevent foreclosure.

This Subordination Agreement and Limited Lien Waiver is limited to the amount actually loaned by the Subordination Party to the Borrower.

This Subordination Agreement and Limited Lien Waiver  
1). Binds the Subordinating Party and its heirs, agents, assigns, and successors

persons with respect to the interest that the Subordinating Party and such other  
interest in the have, or may have, in the Property or against any persons having an  
Property, and  
its 2). Insures in favor of the Pendleton County Farmland Protection Board,  
co-holders, if any, agents, successors, or assigns, of any kind.

\_\_\_\_\_  
(Name of Subordinating Party)

\_\_\_\_\_  
(signature) (title) (date)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_, to wit:

The foregoing agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_  
on behalf of \_\_\_\_\_, an (individual, company, corporation),  
by \_\_\_\_\_, its \_\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

## Appendix XIV. Bylaws of the Pendleton County Farmland Protection Board

## **ARTICLE I - NAME**

The name of the organization shall be "Pendleton County Farmland Protection Board", hereinafter referred to as the "Board".

## **ARTICLE II - PURPOSE**

The Board is a nonprofit public agency, for the benefit of the unique "life support" agricultural industry and is established to:

- 1) Provide landowners an opportunity to voluntarily protect agricultural land in Pendleton County by the voluntary placement of conservation or preservation easements on farmland as defined under *Definitions* (West Virginia Code §8A-12-11, 2004); and
- 2) Promote protection of agriculture within the county by offering information and assistance to landowners with respect to the acquisition of easements; and
- 3) Seek and apply for all available funds from federal, state, county and private sources to accomplish the purposes of the voluntary farmland protection programs; and
- 4) Promote and support public policy, laws and action toward farmland protection and the improvement of agriculture.

## **ARTICLE III- ESTABLISHMENT AND POWERS**

**Section 1: Establishment.** The Board is established under *Voluntary Farmland Protection Programs – Legislative findings and purpose* (West Virginia Code §8A-12-1, 2004) et. seg.; and the resolution dated September 7, 2004 by the Pendleton County Commission authorizing the creation of a Pendleton County Farmland Protection Program (Farmland Protection Program) and Board.

**Section 2: Powers.** The Members of the Board (Members) shall operate and manage the affairs, funds and property of the Pendleton County Farmland Protection Board and disburse the Board's monies and dispose of property in fulfillment of its legislative purpose. In accordance with *Farmland protection boards – powers* (West Virginia Code §8A-12-5, 2004), the Board affirms its powers to sue; to contract; to acquire and co-hold easements in gross, fee or other rights to restrict the use of land; to implement rules under the Farmland Protection Program; to disseminate information; and to seek funding.

## **ARTICLE IV - SEAL**

The official seal of the Board shall be circular in form and shall have inscribed thereon the name of the Board and the year of its creation. Said seal may be used by causing it or a facsimile thereof to be impressed on, affixed to or otherwise reproduced on any document, instrument or writing.

## ARTICLE V - MEETINGS

**Section 1: Regular Meetings.** The Board shall meet a minimum of four (4) times annually at predetermined fixed dates, times and places as the Members may determine.

**Section 2: Order of Business.** At the regular meetings of the Board the following shall be the order of business:

- (a) Call to Order
- (b) Roll Call
- (c) Meeting Notice/Agenda
- (d) Approval of Minutes of Previous Meeting(s)
- (e) Reports
- (f) Business Items
- (g) Other Business Items
- (h) Public Comment
- (i) Adjournment

In all other respects not otherwise specifically provided for in these Bylaws, Roberts' Rules of Order shall generally govern the conduct of all meetings of the Board. The Chairman will rule on points of order and may consult with any person with knowledge of Roberts' Rules of Order.

**Section 3: Special/Emergency Meetings.** Special and/or Emergency meetings of the Board may be called at anytime by the Chairman. Upon the written or verbal request of any three Members of the Board, the Chairman shall call a special and/or an emergency meeting to be held not more than seven days after the receipt of such request. Notice of the special/emergency meeting shall set forth the purpose(s) of such meeting.

**Section 4: Adjournment.** Any regular, special or emergency meeting of the Board shall be adjourned to the predetermined date, hour and place of the next regular meeting.

**Section 5: Quorum.** Unless provided for to the contrary elsewhere in these Bylaws, a majority, defined as four (4) of the voting Members of the Board then serving in office, shall constitute a quorum for the transaction of all business of the Board.

In the absence of a quorum, a majority of the Members present may, without giving notice other than announcement of the meeting, adjourn the meeting until such time when a quorum is present. At any such reconvened meeting at which a quorum is then present, any business may be transacted which might have been transacted at the meeting as originally called.

**Section 6: Voting.** Every voting Member of the Board present in person or telephonic presence at such meeting shall be entitled to one vote and, except as otherwise provided by law or by these

Bylaws, the act of a majority of the Members present in person at any meeting at which a quorum is present shall be the act of the Board.

The voting on all questions at meetings of the Board shall be by yeas or nays. A Member shall abstain from a vote if a conflict of interest, as defined by law, exists; or the Member states a substantive reason for the abstention. The vote of each Member present and voting shall be announced by the Chairman and entered upon the minutes of such meeting, except that the election of officers need not be accompanied by entry of the individual votes upon the minutes.

The Chairman shall protect his impartial position by exercising his voting right only when his vote would affect the outcome, that is, he can vote to break or to cause a tie; or in a case where a two-thirds or greater vote is required.

**Section 7: Proxy Voting.** Voting by proxy shall not be permitted for any purpose.

**Section 8: Member Notice.** Written notice of the time and place of the regular meetings along with the agenda shall be delivered to each Member personally, by first class mail, facsimile or electronic mail, at least three (3) days prior to the date of such meetings.

Notice shall be addressed to each Member at the physical, facsimile, and/or electronic address of record by the Board, or, in default of such address, to a public Member at his official office and to a private Member at his residence or usual place of business. Such notice shall be deemed given at the time when the same shall be deposited in the United States mail, sent via facsimile, and/or sent via electronic mail.

**Section 9: Public Notice.** The agenda of each Board meeting shall be printed on a document and posted in the Pendleton County Courthouse. At a minimum, the meeting agenda shall include the date, time, place, and purpose of said meeting. Notice of said meetings shall be made available to the public according to following schedule.

REGULAR MEETINGS: The agenda shall be posted to the public a minimum of 72 hours in advance.

SPECIAL MEETINGS: The agenda shall be posted to the public a minimum of 48 hours in advance. Discussion can only include matters specifically designated on the agenda.

EMERGENCY MEETINGS: The agenda shall include only the item(s) of emergency. Public notice shall be posted no later than at the initiation of the meeting.

Each agenda shall devote time to items from the public. Except in emergency situations, the Board shall not take official action on an issue raised in the public comment period unless the issue is specifically on the agenda. If the issue is not on the agenda nor deemed an emergency and official action is desired, the issue shall be placed on the agenda of the next meeting and addressed at the subsequent meeting.

After the posting of the agenda to the public or the three (3) day written notice to each Member before a regular meeting, no amendment to the agenda shall be made on which a decision or official action is to be taken. Emergency matters shall be handled through emergency amendment to a regular meeting agenda, or the calling of a special or emergency meeting.

#### Emergency amendments

to a regular meeting agenda shall be approved by a majority vote of the Board and the meeting minutes shall explain the facts and circumstances of the emergency. Notwithstanding such majority vote at a regular meeting, and for all special or emergency meetings, all Members shall be given the opportunity to sign or reject a Waiver of Notice under Section 10. Rejection of such Waiver of Notice by any Member shall cause a re-vote of such emergency item(s).

Discussion of any topic not on the agenda shall take place under "Other Business Items", but no decision or official action shall be taken until such item is placed on the agenda at a subsequent meeting.

Any agenda item may be tabled by majority vote of the Board without prior notification of the public. Tabling of an agenda item shall not be considered an emergency matter. In addition, the Chairman may revise the order in which agenda items are discussed. Such revision of the order of the agenda shall not be considered an amendment to the agenda.

**Section 10: Waiver of Notice.** Unless otherwise provided for by law or in the provisions of these Bylaws, whenever notice is required to be given to the Members under the provisions of these Bylaws or under law, a waiver therein in writing, signed by the person entitled to such notice, whether before or after the time stated therein, shall be deemed to be the equivalent to the giving of such notice and attendance of the person at a meeting shall constitute a waiver of notice, unless such person attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Waiver of notice shall be recorded in the minutes of such meeting.

## **ARTICLE VI - STATUTORY OFFICERS AND MEMBERS**

**Section 1: Election of Principal Officers.** The principal officers of the Board shall be a Chairman, Vice-Chairman, a Treasurer and a Secretary. The Chairman, Vice-Chairman, Secretary and Treasurer shall be elected by the Members. The first election of the Board officers shall occur immediately after the adoption of the Board Bylaws. The annual election of the Chairman, Vice-Chairman, Secretary and Treasurer of the Board shall be held at the regular meeting occurring in, or closest to the month of July. No person may serve in more than one office.

**Section 2: Chairman.** The Chairman shall be the Chief Executive Officer of the Board, preside at all meetings of the Board, sign the rules and regulations of the Board, and appoint any committees of the Board and serve on such committees as an Ex-officio Member. The Chairman shall create the meeting agenda and forward to the Board Secretary for distribution.

**Section 3: Vice-Chairman.** The Vice-Chairman, in the absence of the Chairman, shall act as and assume the duties of the Chairman of the Board.

**Section 4: Secretary.** The Secretary shall keep the minutes of all meetings of the Board, in accordance with the West Virginia Open Governmental Proceedings Act, Chapter 6-9A et seq.; give notice of meetings of the Board as and when required by these Bylaws, give notice of adjourned meetings of the Board and certify, when necessary, the records, proceedings, documents and resolutions of the Board. The Secretary shall tape record all Board meetings and retain those tapes for at least one year. The Secretary shall have charge of the seal, attested by their signature, to such instruments as may require the same. The Secretary shall provide for each

Member an orientation packet, including, but not limited to, the Bylaws, statutory regulations concerning the operation of the Board, rules, and other materials necessary to facilitate education and ease of reference of the Members. The Secretary shall have charge of the minute records and records of the proceedings of the Board, maintain a separate record containing the Bylaws, rules and regulations, and resolutions of the Board and shall perform such other duties as may be conferred upon them from time to time by the Board.

**Section 5: Treasurer.** The Treasurer shall act under the supervision of and be bonded by the Board. The Treasurer shall have charge and custody of, and be responsible for, all the funds of the Board and shall keep or cause to be kept, and shall be responsible for the keeping of, accurate and adequate records of the assets, liabilities, and transactions of the Board. The Treasurer shall deposit, or cause to be deposited, all monies and other valuable effect of the Board in the name of and to the credit of the Board in such banks, trust companies, or other depositories as may be designated from time to time by the Board. The Treasurer shall disburse, or cause to be disbursed; the funds of the Board based upon proper vouchers for such disbursement or such conservation or preservation easement purchase as approved by the Board.

The Treasurer shall prepare a written financial report to the Board before each meeting and at such other times as the Board may require. The Treasurer shall annually prepare and submit to the Board at the close of each fiscal year a full and complete report in writing or statement of all monies received and expended and of the existing condition of the funds and assets of the Board for such year. The Treasurer's books, accounts and records shall be subject to the inspection of the Members of the Board as a body at any time. When required or requested by the Board, an audit shall be undertaken by an independent certified public accountant or accountants as selected by the Board. The audit may be made annually at the close of each fiscal year and/or at such other times and for such other periods as the Board may determine.

**Section 6: Terms of Office.** The Board shall be composed of seven (7) Members in accordance with – *Farmland protection boards—appointment, composition, terms; Composition* (West Virginia Code §8A-12-4, 2004). Members of the Board shall serve a term of four (4) years except for two initial appointments of two (2) years. No Member may serve for more than two consecutive terms.

**Section 7: Appointments.** The Board may appoint persons, who need not be a Member of the Board, to fulfill the functions and duties of the Secretary and/or Treasurer. Any non-Board designee appointed to fulfill the duties of Treasurer shall be bonded.

**Section 8: Resignation of Members.** Any Member may resign by giving written notice of his or her resignation to the Board or to the Chairman or Secretary of the Board. Such resignation shall take effect at the time specified in such notice and the acceptance of such resignation shall not be necessary to make it effective.

**Section 9: Vacancies and Removal of Members.** The Chairman shall through written request, immediately notify the County Commission of any vacancies in the Members of the Board and any Member skills or qualification needed by the Board. The Board may fill a vacancy in any statutory officer position at any emergency, special or regular meeting of the Board for any period of time determined necessary. The Chairman may request the County Commission to remove any Member who fails to attend or give notice of nonattendance at two (2) or more regular meetings in any calendar year.

**Section 10: Compensation and Reimbursement.** Members shall receive no compensation for their services. By resolution of the Board, each Member shall be reimbursed for out-of-pocket expenses.

## **ARTICLE VII – CONTRACTORS, CONSULTANTS AND EMPLOYEES OF THE BOARD.**

**Section 1: Contractors and Consultants.** The Board may contract with such individuals or engage such consultants as it deems advisable at such compensation and with such duties and for such times as the Board may from time to time prescribe.

**Section 2: Employees.** The Board may prescribe personnel guidelines, establish salary levels, by duly adopted general or special resolution, to hire employees of the Board. All personnel promotions, salary increases, suspension, and dismissals shall be authorized by the Board, unless it empowers others to fulfill this function by duly adopted, joint or special resolution.

**Section 3: Professional and Other Services.** The Board may contract with outside entities, public or private, to perform any duty over which the Board has an obligation. This includes, but is not limited to, such professional activities as annual property reviews; legal defense enforcing easement restrictions; and preparation of baseline documentation.

## **ARTICLE VIII – PENDLETON COUNTY VOLUNTARY FARMLAND PROTECTION PROGRAM**

**Section 1: Purpose of Protection Program.** The Board shall develop the Farmland Protection Program to enable landowners to voluntarily protect agricultural land and woodland and to control the urban expansion, which is consuming the agricultural land, topsoil and woodland of the county. The program goals are to assist in sustaining the farming community; protect agricultural land and woodland as open-space land; enhance tourism; and protect worthwhile community values, institutions and landscapes that are inseparably associated with traditional farming.

**Section 2: Criteria for Purchase of Easements.** The Board shall develop uniform standards and guidelines in order to rank applications for the purchase of easements. Criteria to be considered shall be in accordance with *Criteria for acquisition of conservation and preservation easements by county farmland protection boards and the authority* (West Virginia Code §8A-12-15, 2004). Prioritization of the program criteria may be changed by the Board from time to time to reflect the conservation emphasis within the county.

**Section 3: Donation and Co-holding of Easements.** The Board shall adopt policies and procedures for the donation of easements into the Farmland Protection Program; and for the co-holding of purchased or donated easements with other private land conservation organizations.

## **ARTICLE IX – FARMLAND PROTECTION FUND**

**I. Section 1: Farmland Protection Fund.** The Board shall create a Farmland Protection Fund (Protection Fund) to carry out the purposes of the Farmland Protection Program. The Protection Fund is authorized to accept money or property from general or special fund



appropriations by the county or state; a distribution from the West Virginia Agricultural Land Protection Authority; private or governmental grants; private contributions, fundraising or gifts; or earnings from investments, interest, dividends or distributions. The Board shall seek or shall authorize the seeking of any and all county, state, federal and private funding available, consistent with the purpose of the Farmland Protection Program. However, the Board is authorized to decline, reject or deny private grants, contributions or gifts that represent or have the appearance of representing an impropriety which could result in the temporary or permanent loss of public faith and trustworthiness in the Farmland Protection Program or the Board.

**Section 2: Deposits.** All funding and other sources of income of the Farmland Protection Program shall be deposited in one or more accounts maintained by the Board in such banks, trust companies, or other depositories as the Board may select. Such monies shall not be commingled with other public funds, except as provided under Article XI, Section 3 of these Bylaws.

**Section 3: Disbursements.** All payments or withdrawals of funds shall be based upon proper vouchers, invoices or documentation for such disbursements; or shall be a conservation or preservation easement purchase approved by the Board. Disbursements are required to have two (2) of the following three (3) member signatures: Treasurer and Chairman or Vice-Chairman.

**Section 4: Facsimile Signatures.** Facsimile signatures of any Officer or Officers of the Board may be used whenever and as authorized by the Board.

**Section 5: Funding through Bonds.** The Board may act on its own authority or in cooperation with another governmental authority to issue general or special revenue bonds or other funding to facilitate the purchase of conservation or preservation easements.

## **ARTICLE X – CONFLICTS OF INTEREST**

**Section 1: Voting.** No Member may vote for any expenditure for a conservation or preservation easement pursuant to any program established under *Voluntary Farmland Protection Programs* (West Virginia Article 12, 2004) in which the person, a member of the person's family or extended family, or an organization with whom the person is affiliated has a financial interest. Members with a potential conflict shall obtain a written opinion from the West Virginia Ethics Commission prior to the casting of any vote.

**Section 2: Protected Properties.** Properties protected by a conservation or preservation easement represent a unique and valuable asset to the quality of life in the county. The Board shall hold the conservation of such properties as its highest duty, and shall not entertain or engage in any agreement, contract or transaction which could diminish these intangible conservation values. The Board or its designee(s) shall monitor, defend, and protect, in perpetuity, these conservation values as recorded through the deed of conservation easement, against any and all actual or potential violations or encroachments.

**Section 3: Non-profit Status.** No part of the net earnings of the Pendleton County Farmland Protection Board shall inure to the benefit of, or be distributable to, its members, trustees, officers or other private persons, except that the Pendleton County Farmland Protection shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth under the Pendleton County Farmland Protection Program. No substantial part of the activities of the Pendleton County

Farmland Protection Board shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Pendleton County Farmland Protection Board shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this document or the Pendleton County Farmland Protection Program, the Pendleton County Farmland Protection Board shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

## **ARTICLE XI - MISCELLANEOUS**

**Section 1: Fiscal Year.** The fiscal year of the Board shall commence on the first day of July and shall end on the next thirtieth day of June.

**Section 2: Standing and Special Committees.** The Members may, by duly adopted resolution, designate standing and/or special Committees of the Board. Each such Committee shall have power to the extent delegated to it by the Members and in accordance with the laws of the State of West Virginia. Each Committee shall keep minutes of proceedings and report to the Members of the Board.

**Section 3: State/County Controlled Monies.** The Chairman or the Treasurer are hereby empowered to act on behalf of the Board in all matters and transactions relating to any monies granted or appropriated to the Board by the Governor or legislature of the State of West Virginia but held by the State or County in accounts subject to the State or County's fiscal responsibility and control, in such manner as shall be prescribed by resolution of the Board.

**Section 4: Contracts.** By resolution of the Board, all agreements, deeds, instruments, contracts, documents, certificates and other writings of the Board shall be signed by the Chairman or the Vice-Chairman, under the seal of the Board, attested by the Secretary or the Treasurer, unless, by resolution of the Board, other officers of the Board are authorized to execute contracts or other obligations of the Board.

**Section 5: Telephonic Attendance/Voting.** Notwithstanding anything to the contrary, one or more Members may participate and vote in a meeting of the Board or a Committee of the Board by means of conference telephone or similar electronic communications equipment by means of which all persons participating in the meeting can hear each other.

**Section 6: Indemnification.** The Board shall, to the fullest extent permitted by law, indemnify any person or entity made, or threatened to be made, a party to any action or proceeding, other than a criminal action, by reason of the fact that such person or entity, his executor or administrator, was a Member, officer, or employee of the Board, or a co-holder of an easement against judgments, fines, amounts paid in settlement and reasonable expenses, including attorney's fees, actually and necessarily incurred as a result of such action or proceeding (including any appeal therein), if (a) such Member, officer or employee of the Board; or co-holder of an easement acted in good faith for a purpose which he reasonably believed to be in the best interests of the Board, and (b) it is not determined in such action or proceeding that such Member, officer or employee of the Board; or co-holder of an easement acted with willful or gross negligence.

**Section 7: Public Access to Minutes.** Copies of minutes of the Board shall be kept at a secure public location in order to permit access by the public. Copies may be obtained by the public for a reasonable fee.

**Section 8: Distribution of Assets.** Upon the dissolution of the Pendleton County Farmland Protection Board, all of the assets and property of the corporation shall be distributed to the Pendleton County government, if exempt within the meaning of section 501(c)(3) at the time of dissolution, for a public purpose. If named beneficiary is not qualified, or not in existence, or unwilling or unable to accept the assets, then assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) if the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

## **ARTICLE XII- BYLAWS**

**Section 1: Amendments.** The Board shall have power to make, alter, amend, suspend or repeal Bylaws in whole or in part, by a vote of not less than four (4) Members of the Board after two duly organized meetings of the Members of the Board. Any proposal to amend these Bylaws shall be included with the Notice to Board Members at which the amendment is proposed.

**Section 2: Inconsistency.** Whenever a provision of these Bylaws is inconsistent with West Virginia law, the provisions of the law shall be controlling.

**Section 3: Severability.** Whenever a section, subsection, subdivision, sentence or clause of these Bylaws is adjudged to be invalid, such adjudication shall not affect the validity of the remaining portions of these Bylaws, and, to this end, each provision of these Bylaws are hereby declared to be severable.