

Berkeley County Farmland Protection Board

P. O. Box 1243
Martinsburg, WV 25402

APPENDIX

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

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**Sale Of Conservation Easement
Application Form**

Date _____

General Information

Name of Owner(s) _____

Address _____

Home Phone () _____ Work Phone () _____

Property Information

Location of Property _____

Deed Reference Book _____ Page _____

Tax Map Numbers _____

Is the property:

- Subject to a sales contract? Yes (attach contract) No
- Currently listed for sale? Yes (attach details) No
- Listed for sale within the last two years? Yes No
- In the estate process or has been inherited within the last two years? Yes (attach details) No

Check the applicable development surrounding the property:

- 10 or more lots adjacent to the property
- 20 or more lots within 2,500 feet
- 20 or more lots within 5,000 feet
- Not applicable (none of the above)

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Check the applicable water/sewer characteristics:

- Public water and/or sewer available at the property
- Public water and/or sewer within 2,500 feet of the property
- Public water and/or sewer within 5,000 feet of the property
- No public sewer available, severe septic constraints
- No public sewer available, moderate septic constraints

Check the applicable road or rail frontage:

- 1,300 feet or more road frontage
- Less than 1,300 feet road frontage
- Rail frontage
- Not applicable

Fronts on the following type road:

- Federal or state
- County primary
- County secondary

Acreage Total Acreage _____ Acreage Offered for Easement _____

Farm Use Does the property have a current farm-use valuation for property tax purposes? Yes (attach most recent filing) No

Soil Evaluation Prime or unique soil State-wide or locally significant farmland
(attach soil maps)

Site Evaluation
(check all that apply)

- Property is on the National Register of Historical Places
- Property is of national, state or local significance
- Property is adjacent to an historical property
- Property is a symbol of West Virginia's identity or development patterns
- Property is a symbol of the Eastern Panhandle
- Property contains an historical structure
- Property contains an archeological site
- Property fronts on a major stream, creek or river
- Property fronts on a minor stream, creek or river
- Property contains mountainous terrain or scenic ridgelines
- Property contains mature forests

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- Property contains a cave
- Property contains limestone cliffs
- Property contains a shale barren
- Property is in 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
- Property has significant ground water recharge potential

Valuation

Owner's Estimate: Fair market value _____

Agricultural value _____

Has an appraisal been completed? Yes No

Offering Price _____

Secured Debt/Liens Holder _____ Amount _____

Holder _____ Amount _____

Will the lender agree to subordinate the loan? Yes No

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

Official Contact

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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 _____ Phone number (____) _____

Address _____

Signatures

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

Name _____ Signature _____ Date _____

Name _____ Signature _____ Date _____

Name _____ Signature _____ Date _____

Name _____ Signature _____ Date _____

Documentation Checklist. The following documents must be attached:

- Property plat
- Deed description
- Tax map (available from Berkeley County Clerk's Office)
- Soil map (available from the Eastern Panhandle Conservation District)

NOTE: All applications must be completed and signed to be considered. Additional information may be required from the applicant.

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**Donation Of Conservation Easement
Application Form**

Date _____

General Information:

Name of Owner(s) _____

Address _____

Home Phone () _____ Work Phone () _____

Property Information:

Location of Property _____

Deed Reference Book _____ Page _____

Tax Map Numbers _____

Acreage Total Acreage _____ Acreage Offered for Easement _____

Farm Use Does the property have a current farm-use valuation for property tax purposes? Yes No

Site Evaluation Prime or unique soil Other farmland Wetlands
Forestland

Secured Debt/Liens Holder _____ Amount _____

Holder _____ Amount _____

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Property Information (continued)

- Unique Features
- Stream frontage
 - Mountainous terrain
 - Mature forests
 - Cave
 - Limestone cliffs
 - Shale barren
 - Year-round spring
 - Archeological or historical significance (attach narrative)
 - Other _____

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 _____ Phone number () _____

Address _____

Signatures

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

Name _____ Signature _____ Date _____

Name _____ Signature _____ Date _____

Name _____ Signature _____ Date _____

Name _____ Signature _____ Date _____

Documentation Checklist. The following documents must be attached:

- Property plat
- Deed description
- Tax map (available from Berkeley County Clerk's Office)

NOTE: All applications must be completed and signed to be considered. Additional information may be required from the applicant.

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Baseline Documentation Form and Checklist

To be completed by the Berkeley County Farmland Protection Board

PART ONE: ACQUISITION DATA

Background Information

Property owner(s) _____ Telephone _____

Address _____

City _____ State _____ Zip _____

Property name (if any) _____

Location _____

Deed Reference Book _____ Parcel _____

Tax Map Numbers _____

County _____ Title search _____

Total acreage _____ Acreage offered for easement _____

Other notes _____

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Parcel Identification

Property Size _____ acres Determined by: Survey Deed
 Tax Map Estimate

Parcel A Easement _____ acres Determined by: Survey
 Natural Boundaries

Describe _____

Parcel B Easement _____ acres Determined by: Survey
 Natural Boundaries

Describe _____

Parcel C Easement _____ acres Determined by: Survey
 Natural Boundaries

Describe _____

Other notes _____

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PART TWO: RESOURCE EVALUATION

Property Specifics

Survey information: Recent boundary survey available
 Property corners marked
 Boundaries marked

Frontage on a public road? Yes No Extent of frontage _____

Describe road _____

Right(s) of way: Roadway for vehicles
 Pathway for pedestrians
 Utilities
 Other _____

Comprehensive Plan information _____

Development information:

Property subdivided
Surrounding properties developed
 10 lots adjacent
 20 lots within 2,500 feet
 20 lots within 5,000 feet
Property in natural state

Current annual tax assessment _____

Land _____

Residences _____

Public water available Distance _____

Public sewer available Distance _____

Septic constraints: Severe Moderate

Soil types on property: _____

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

History of property s uses: (see building department; local government real estate office; neighbors)

List improvements on property: (buildings; stone walls; barns; shelters; gates; dams bridges; fences; trails; roads; etc.)

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Natural Resource Inventory

Natural Features

Scenic quality _____

Vegetation or flora _____

Forested land _____

Mountainous land _____

Caves _____

Sink holes _____

Shale barrens, limestone cliffs _____

Other natural features _____

Agricultural

Farmland _____

Orchards _____

Water Resources

Streams, creeks or rivers _____

Springs _____

Wetlands _____

Ground water recharge potential _____

Other

Size adequate to support wildlife _____

Local wildlife _____

Endangered species _____

Archeological site _____

Historical significance _____

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PART THREE: DOCUMENTATION REVIEW

Conservation Easement - Attachments

Deed

Title search

Assessors map

Property survey

Easement location survey

Highway map

USGS map

Photographs

Professional natural resource evaluation

Conservation district evaluation

FOR OFFICE USE ONLY

Date completed _____

Completed by _____

Approved FPB _____

 Date _____

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MONITORING INSPECTION FORM

Deed of Conservation Easement _____

Background Information

Inspection date _____

Owner(s) name _____

Owner(s) address _____

Owner(s) telephone # _____

Location of property _____

Conservation Easement Description

Summary of easement provisions _____

Date conservation easement acquired _____

Name and address of conservation easement donor _____

Name and address of current owner (if different) _____

Length of ownership of present owner _____

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On-Site Inspection

Names of inspection team _____

Name of owner/representative to whom inspection notice sent _____

Did the owner/representative accompany the inspection team? Yes No

Name _____

Time spent on the property _____

Are the terms of the conservation easement agreement being adhered to? Yes No

Describe _____

Were any violation or potential violations observed? Yes No

Describe _____

Describe acts or uses now taking place permitted under the terms of the conservation easement agreement that were not previously observed _____

Improvements (including structures, pipelines, powerlines, etc.) _____

Present use of the property _____

Uses of surrounding properties _____

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Conclusions

Recommended next visit: Next scheduled visit Near future visit

Remarks _____

Inspection team supervisor Name _____

Signature _____

Attachments (check all included)

- Photographs
- Assessor a parcel map
- Local map or direction notes
- Right-of-way, utility or water easements
- Property survey
- U. S. Geological Survey quadrant map
- Other topographical maps

**FOR BERKELEY COUNTY FARMLAND PROTECTION BOARD
ONLY**

Accepted by Board of Directors _____

Action to be taken (if any) _____

Next inspection date _____

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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 Form 8038-GC
- Internal Revenue Service Form 1099-S (if applicable)
- Disclosure statements
- Approval of County Commission for purchase transactions

Approval for closing: _____

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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

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Model 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 _____, _____, by _____ and _____, (Husband and Wife/Owners) OR _____ a [type of legal entity] having an address at _____ (Grantors), to the Berkeley County Farmland Protection Board having its mailing address at P. O. Box 1243, Martinsburg, WV 25402 (Grantee), and _____ having the same rights conveyed to the Grantee, and having its mailing address at _____ (Co-holder). 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 the Property

WITNESSETH:

WHEREAS, grantors are the sole owners in fee simple of certain real property in Berkeley 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 Berkeley 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 Berkeley 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

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

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8 Grantee s Commitment

WHEREAS, Grantee affirms that this Easement represents a unique and valuable asset to the quality of life in Berkeley 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 Purpose **10**

NOW, THEREFORE, in consideration of [amount of consideration, if any] 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

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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 Quiet Enjoyment. The Property Owner has the right to reside on the property and to benefit from all aspects of the quiet 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; that require no development of the land.

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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 Religious, Charitable or Education Purposes or to Foster Tourism.** Activities or businesses undertaken for religious, 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, hang gliders, aircraft, jet skis, motorized boats or any other types of 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 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*.

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6. Residential Dwellings. The Grantors and Grantee acknowledge the existence of ___ single residential dwelling(s) 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 locations described in Exhibit B, the parcels which have been excluded from this Deed of Conservation Easement. 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 as more fully described In Exhibits A and B.
- (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 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 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 as described in Section 6 above, which shall not be subdivided further. 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 _____ square feet.
- (c) The total surface coverage of the Property by impervious surfaces for all driveways and parking areas shall not exceed _____ square feet.

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.

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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 Water Bodies. There shall be no pollution, alteration, depletion of surface water, natural water courses, lakes, ponds, marshes, wetlands, springs, subsurface water or any other water bodies, nor shall there be activities conducted on the Property which would be detrimental to water purity or which could alter natural water level and/or flow in or over the Property. Nothing in this paragraph shall prohibit the creation or dredging of farm ponds. Water may be extracted for agricultural operations from the on-site _____ not to exceed _____ gallons per day.

16. Open Space of Planned Unit Developments (or Residential Subdivisions). The Property subject to this Easement is designated as common area in the _____ planned unit development or residential subdivision (Planned Unit Development). As required by this Easement, property consisting of _____ acres or fifty (50) percent of the Planned Unit Development must remain as open space, designated as the Property under this Easement. For the purposes of this Easement, open space shall be defined as property left undeveloped in order to preserve natural features or scenic qualities. Portions of the Property designated as common area and consisting of areas which are natural (meadows, fields or forested areas), agricultural areas, wetlands, streams or bodies of water, stormwater management areas, and common area lawns (with or without trees). Uses of the Property requiring an extensive commitment of land resources as required by golf courses, racetracks for uses other than equestrian use, tennis clubs, pools and recreational facilities, baseball, soccer and other ball fields and similar uses shall not be allowed on the Property.

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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.

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(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 and/or Co-holder 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 and/or Co-holder as the case may be. Any costs incurred by Grantee and/or Co-holder in enforcing the terms of this Easement against any third party shall be borne by Grantee or Co-holder as the case may be.

(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.

Subject to the terms and conditions set forth hereinabove in 4(c), 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 Co-holder 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, except that the Co-holder may exercise its rights as set forth in 4(c) above.

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.

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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.) and the Hazardous Waste Management Act (WV Code 22-18-1, 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

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(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 an/or any contribution action relating to any state or Federal environmental statute or regulation including, but not limited to, the Hazardous Waste Management Act (WV Code 22-18-1, et seq.) 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 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**
- Net 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**
- Net sale price of the Property **Minus** payments to the Grantee under (A) above.

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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 Berkeley 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, including an estoppel certificate, 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.

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

To Co-holder _____

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 Berkeley County, West Virginia and may re-record it at any time as may be required to preserve its rights in this Easement.

29 [Amendment](#)

18. Amendment. If compelling 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.

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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:

Name

Signature

Date

GRANTOR:

Name

Signature

Date

GRANTEE:

Berkeley County Farmland Protection Board

Signature

Date

CO-HOLDER:

Name

Company

Signature

Date

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STATE OF _____

COUNTY OF _____, to-wit:

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

My commission expires: _____

Notary Public

STATE OF _____

COUNTY OF _____, to-wit:

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

My commission expires: _____

Notary Public

STATE OF _____

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, _____ by _____, President on behalf of the _____.

My commission expires: _____

Notary Public

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SCHEDULE OF EXHIBITS

- A.** Legal Description of Property Subject to Easement
- B.** Legal Description of Areas of Retained Development Rights
- C.** Site Descriptions/Map

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Subordination Agreement and 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 Berkeley 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 a deed of trust.

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

(Legal description of the 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 Berkeley County, West Virginia, which constitutes a lien against the Property, hereinafter 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 against 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 Berkeley County Farmland Protection Board; (2) acknowledges that the Property is burdened by the right of access granted to the Berkeley County Farmland Protection Board and agrees that this right of

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Areas of Biological Significance

See page IV — 4 — 27 of the Berkeley County Comprehensive Plan, May 1990

See page IV — 4 — 28 of the Berkeley County Comprehensive Plan, May 1990

See page IV — 4 — 29 of the Berkeley County Comprehensive Plan, May 1990

See page IV — 4 — 30 of the Berkeley County Comprehensive Plan, May 1990

Location of Known Populations of Rare and Endangered Species

See Map IV — 4 — 7 of the Berkeley County Comprehensive Plan, July 1988

Unique Geology of Berkeley County

See Map IV — 4 — 5 of the Berkeley County Comprehensive Plan, July 1988

Soil: Septic Constraints

See Map IV — 4 — 4 of the Berkeley County Comprehensive Plan, July 1988

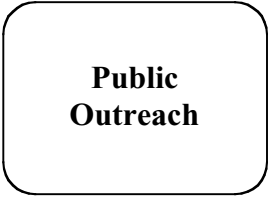

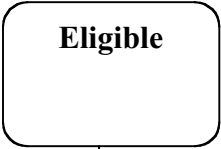
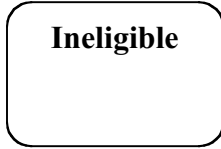

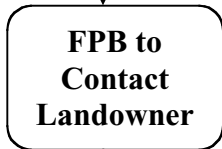
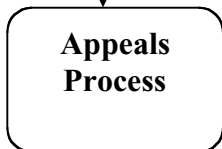

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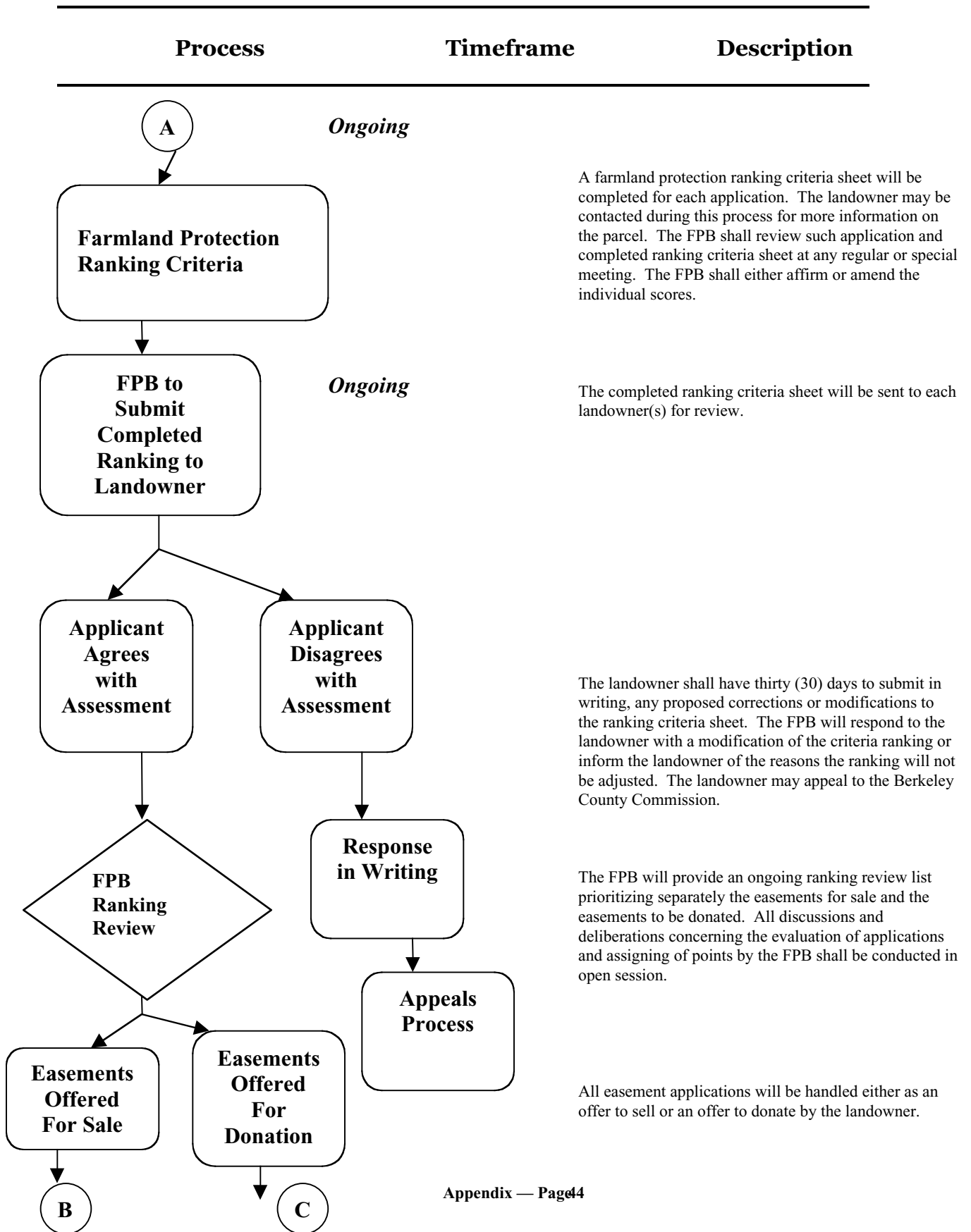
Administrative Process Flowchart

Process	Timeframe	Description
	<i>Ongoing</i>	Funds appropriated for the administration of this program shall include a component for public education and information program.
	<i>Ongoing</i>	Applications for sale or donation of easements will be accepted by the FPB on an ongoing basis. All applications must be dated. Those properties not accepted for sale or donation at the end of the fiscal year must be re-submitted for consideration during the next fiscal year.
	<i>Ongoing</i>	The FPB shall review each application and make an initial determination if the eligibility criteria have been met. Only completed applications will be considered.
		Written notice shall be given to any landowner if a determination that the property is ineligible for consideration is made. The FPB will review each property 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.
		Owners with accepted applications will receive such notice of acceptance from the FPB with any further information regarding the program for that fiscal year.
		Landowners of parcels determined to be ineligible or unacceptable may appeal such decision within thirty (30) days with the FPB, and if such outcome is not satisfactory to the landowner, to the Berkeley County Commission.
		
		
		

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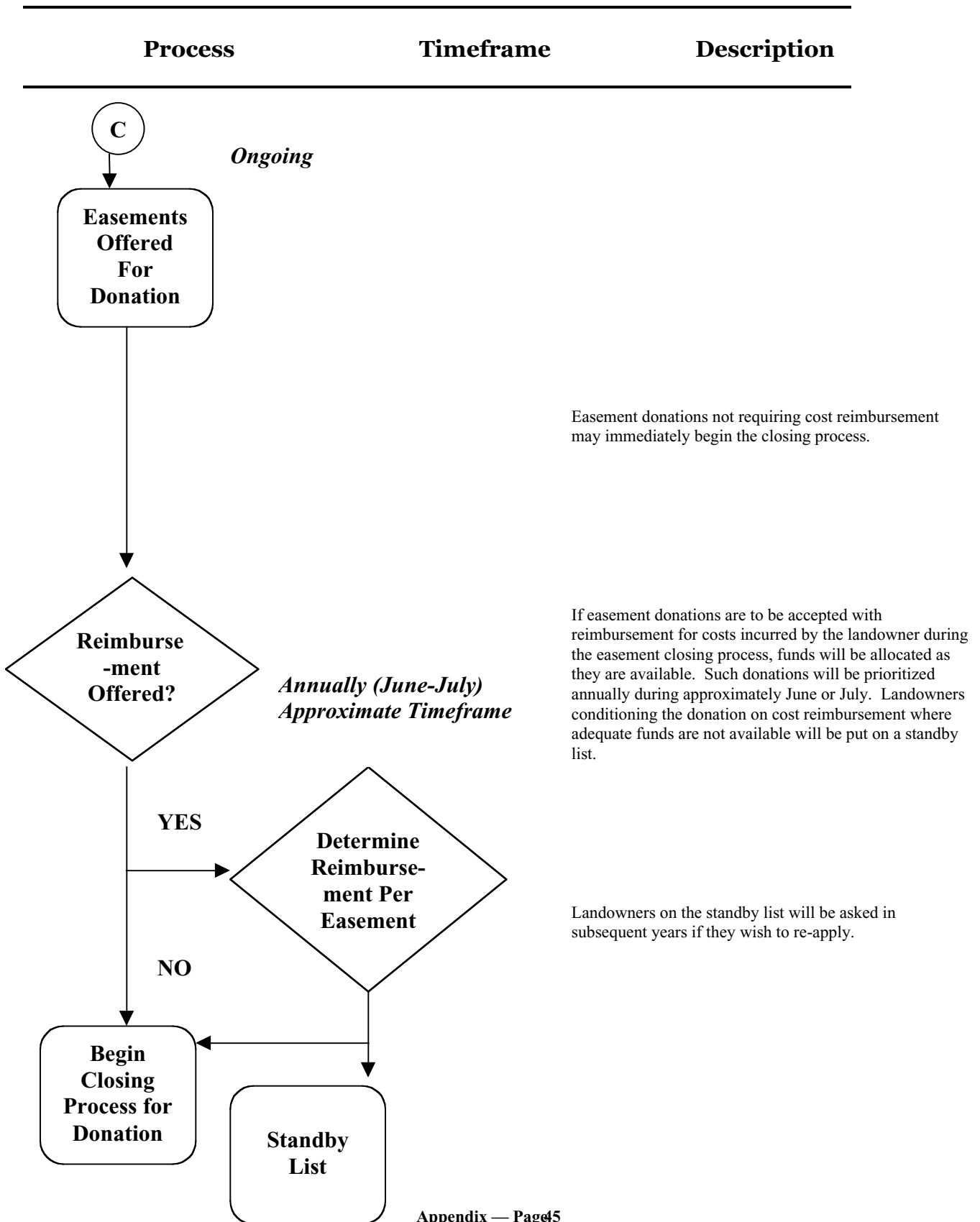
Administrative Process Flowchart



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Administrative Process Flowchart



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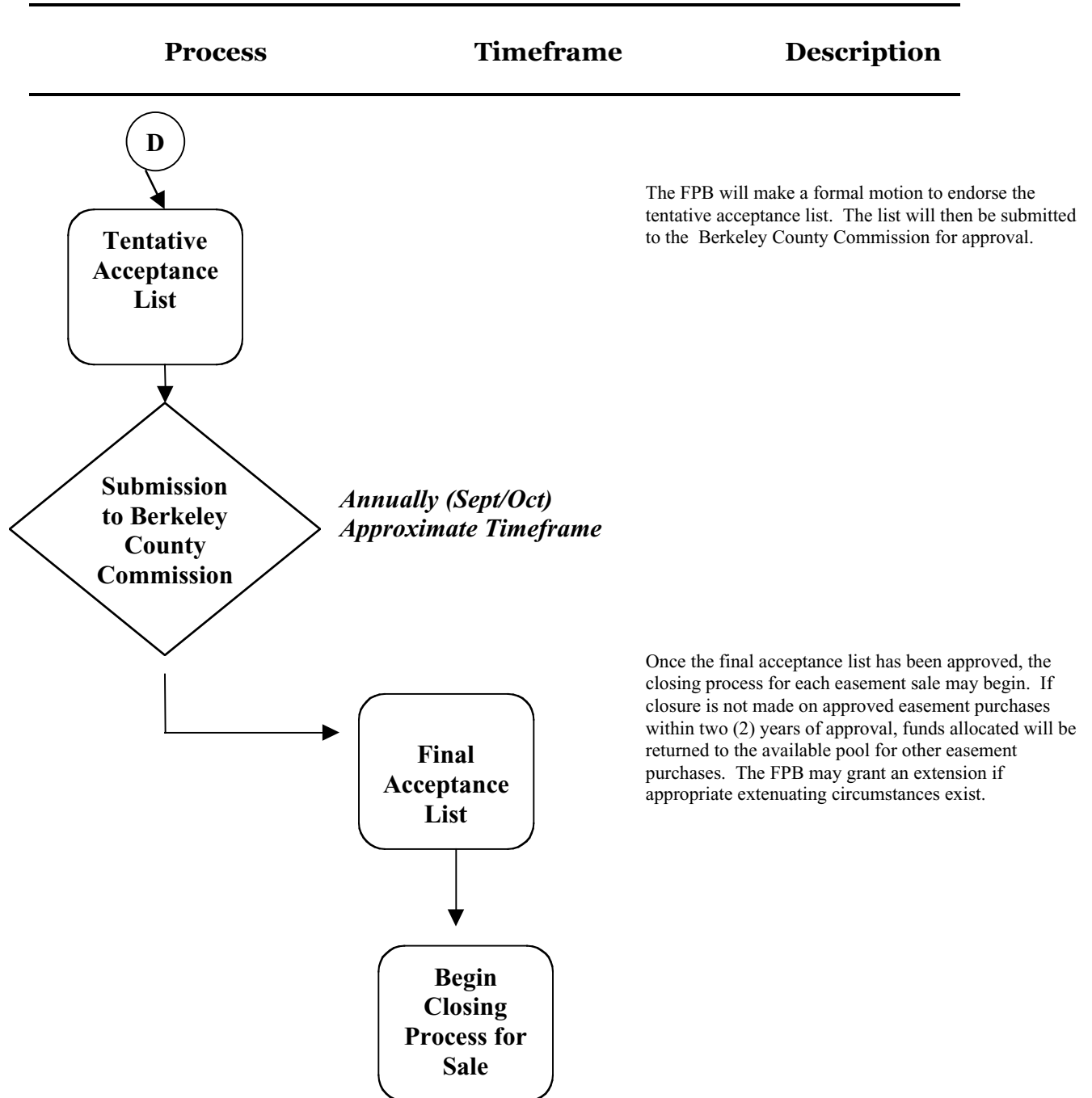
Administrative Process Flowchart

Process	Timeframe	Description
<pre> graph TD B((B)) --> A[Easements Offered For Sale] A --> B{Initial List Based on Ranking} B --> C{Counter-Offer?} C -- YES --> D{Counter-Offer Accepted?} C -- NO --> E[Tentative Acceptance List] D -- YES --> E D -- NO --> F[Standby List] E --> G((D)) </pre>	<p style="text-align: center;"><i>Annually (June/July)</i> <i>Approximate Timeframe</i></p>	<p>Easements offered for sale will be summarized and prioritized according to the farmland protection ranking criteria, and an initial ranking list produced.</p> <p>All discussions and deliberations concerning the evaluation of applications and assigning of points by the FPB shall be conducted in open session.</p> <p>Counteroffers shall be fair and proportionate.</p> <p>Counteroffers must be accepted within 60 days by providing written notice to the FPB. Rejection of the counteroffer shall cause the related easement sale application to be placed on the standby list for the next fiscal year.</p> <p>A tentative purchase acceptance list will be prepared based on the application offers and/or for accepted counteroffers.</p>

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Administrative Process Flowchart



END

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WHEREAS, the Berkeley County Commission on June 15, 2000 by resolution created the Berkeley County Farmland Protection Board; and

WHEREAS, the Berkeley County Farmland Protection Board is required by WV Code 8-24-73(2000) to develop a farmland protection program which is consistent with the intention of the Act; and

WHEREAS, the Berkeley County Farmland Protection Board approved the Berkeley County Farmland Protection Program on December 19, 2002; and

THEREFORE BE IT RESOLVED, by the County Commission of Berkeley County and the Berkeley County Farmland Protection Board that the enclosed Berkeley County Farmland Protection Program is hereby adopted and enacted.

Berkeley County Commission

**Berkeley County
Farmland Protection Board**

Dated this 16th day of January, 2003

Dated this 19th day of December, 2002

Howard Strauss, President

James L. Moore, Chairman

Steve Teufel, Commissioner

Clint R. Hogbin, Vice Chairman

John E. Wright, Commissioner

David Malatt, Secretary

Lavonne Paden, Treasurer

Robert Crawford, Member

Robert Sperow, Member