**Historic Hoosier Hills RC&D,**

**DEED OF AGRICULTURAL CONSERVATION EASEMENT**

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT ("Easement") is granted this \_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_, 20\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_("Grantor"), to Historic Hoosier Hills Resource Conservation and Development Area, an Indiana nonprofit corporation, with a principal place of business at Versailles, Indiana (“Holder").

**W I T N E S S E T H:**

**1.** Grantor is the sole owner in fee simple of certain agricultural real property (the “Property”) in (County Name), Indiana, described in Exhibit A, Legal Description, attached hereto. The Property consists of approximately \_\_\_\_acres of land identified as Assessors Parcel Number[s] \_\_\_\_\_\_\_\_\_\_, together with buildings and other improvements.

**2.** “Grantor” means the current owner(s) as described above, and all subsequent owners, in accordance with property transfers described in Section 33. The Grantor is bound by all provisions herein.

**3.** The general conservation goal of this conveyance is the preservation of this open space and agricultural land for its significant public benefit. The grant of this Easement serves the following "conservation purpose," as such term is defined in Section 170(h)(4)(A) of the Internal Revenue Code: The protection of open space including farmland, which will yield a substantial public benefit, pursuant, but not limited to, the following clearly delineated governmental conservation policies:

**3.1**. The State of Indiana, with few exceptions, grants preferential tax treatment to agricultural land, when used for agricultural purposes: it is assessed at a lower value reflecting its agricultural use rather than a higher development value for property taxation purposes. Indiana Code Section 6-1.1-4-13.

**3.2**. The State of Indiana requires that real property that is subject to limits and affirmative obligations imposed for the purposes of retaining or protecting scenic and open space values, or assuring availability for agricultural, forest, recreational or open space, and which thereby satisfies the purposes of the Indiana Conservation Easement Act. Section 32-23-5-1, et seq., of the Indiana Code, be assessed for property tax purposes in a manner that reflects the diminution in value that results from the use restrictions.

**3.3**. (County Name) , Indiana has established farmland protection policies and programs reflected in Ordinances #\_\_\_\_\_\_\_; #\_\_\_\_\_\_\_; #\_\_\_\_\_\_\_, and the Property is among those that the policies and programs were designed to help protect.

**4.** The primary conservation purpose of this conveyance is to preserve and protect this land and the opportunity to utilize it or parts of it for agricultural purposes, as it exists at the time of the grant and as described in the inventory of relevant features. Additional conservation goals include preserving the wildlife, open space and scenic values of the property. These goals will be achieved by the development of and adherence to a management and conservation plan, as required by Section 15, for the Property. The area in which the Property is located, including this property, is subject to significant pressure to develop intensive urban and suburban uses, both commercial, and residential. Restrictions on development rights resulting from the creation of this Easement will provide a long-term opportunity to continue agricultural operations on the site, to support the regional agricultural economy, and to conserve and keep available for future production the valuable soils present on the site, and to preserve its scenic, wildlife, and open space values.

**5**. The supplementary conservation purpose is to preserve the land from commercial or residential development that is not consistent with the open space, wildlife, scenic, and agricultural purposes as set forth herein.

**6.** The Property includes productive agricultural land; approximately 34 percent of the soils on the Property have been classified as “Prime Farmland” by the Natural Resources Conservation Service, U.S. Department of Agriculture. The inventory of relevant features of the Property is further documented in Exhibit B, Map of Farm and Exhibit C, Baseline Document.

**7.** The conservation values of the Property and its current use and state of improvements are described in Section 14 herein and the Exhibit C, the Baseline Document, which Grantor and Holder acknowledge is accurate as of the date of this Easement. The Baseline Document may be used by Holder to establish that a change in the use or character of the Property has occurred, but that shall not preclude the Holder from presenting other evidence to establish the condition of the Property as of the date of this Easement.

**8.** The parties specifically acknowledge that the conservation values can be maintained if and as changes in farming techniques prove to be necessary or desirable to maintain economically viable agriculture operations, and therefore acknowledge that Grantor is not limited to those farming techniques currently known or foreseeable, but rather may utilize new farming techniques that do not violate any specific provision herein, and which are consistent with the Property’s Conservation Plan required in paragraph 15, and the maintenance of the conservation values of the Property.

**9.** Grantor intends that the agricultural and other conservation values of the Property be preserved and maintained, and Grantor intends to convey to Holder the right to preserve and protect the agricultural and other conservation values of the Property in perpetuity.

**10.** The parties agree that this non-exhaustive description, supporting documents, and information incorporated by reference accurately describe the property to be protected.

**11.** This perpetual Agricultural Conservation Easement gives rise to property rights, immediately vested in Holder, and any extinguishment of some or all of such rights gives rise to rights of compensation pursuant to the terms of Section 30 hereof.

**12.** Historic Hoosier Hills RC&D (“Holder”) is an organization described in Section 501(c)(3) of the Internal Revenue Code, and meets the requirements of Section 509(a)(2) of the Internal Revenue Code. Holder is a "qualified organization," as such term is defined in Section 170(h)(3) of the Internal Revenue Code, and is qualified to hold conservation easements.

**GRANT OF EASEMENT**

**13. Grant of Interest.** In consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the law of Indiana and in particular the Indiana Uniform Conservation Easement Act, Indiana Code 32-23-5-1, et seq., Grantor hereby grants and conveys to Holder, and Holder hereby accepts as a gift, a perpetual conservation easement, an immediately vested interest in real property defined by Section 32-23-5-1, et seq., of the Indiana Code, and of the nature and character described herein. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Holder to enforce these covenants in the manner described below.

**CONSERVATION VALUES**

**14. Conservation Values.**

**14.1. Primary Value, Agricultural.** The primary conservation value this Easement is designed to preserve is to ensure that the Property remains available for agricultural use by preserving and protecting its agricultural soils and agricultural viability and productivity, as well as its scenic and open space characteristics. Except as specified herein, no activity that significantly impairs the actual or potential agricultural use of the Property shall be permitted, provided, however, that permitting the property to undergo ecological succession shall not be deemed an impermissible impairment of the actual or potential agricultural use of the Property. Further, certain agricultural uses or practices that are inconsistent with the open space and scenic conservation values may be restricted herein by specific provision or the Conservation Plan required in Section 15. As such, use of this land for Confined Animal Feeding operations, as defined in Indiana Code 13-11-2-38.3, or Confined Feeding Operations, as defined in Article 16 of Title 327 of the Indiana Administrative Code, or a successor statute, is prohibited.

**14.2. Secondary Values, Wildlife, Scenic, Open Space.** In addition to agricultural values, and secondary to them, if agricultural values and these secondary values cannot be protected at the same time, the Property has important scenic, wildlife, and open space value that would be compromised by residential or commercial development. In the event that agricultural use of the land ceases, the nonresidential portions of the property may be managed principally to protect those wildlife, scenic, and open space values. Such management may include: (1) planting the Property in whole or part, to native trees and/or managed wildlife habitat or other uses approved in advance by the holder; (2) be allowed to revert to wild land through the process of natural succession; unless and until returned to agricultural uses. Timber management and harvesting as further described in sub-paragraph 16.3, through practices that provide for sustained harvest and minimum adverse environmental impact, is also permitted, and it is specifically acknowledged that neither invasive species management, nor wildlife management that is consistent with generally accepted practice among professional wildlife managers is inconsistent with the protection of the secondary conservation values.

**14.3. The Conservation Values.** The agricultural soils, agricultural viability and productivity, wildlife habitat, scenic value, and open space character of the Property are collectively referred herein as the “Conservation Values” of the Property

**MANAGEMENT AND CONSERVATION PLAN**

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

**RESERVED RIGHTS**

**16. Reserved Rights.** Grantors reserve certain rights that can be exercised in a manner consistent with the Conservation Values.

**16.1. Reserved Rights, General.** Activities not prohibited by this Conservation Easement and not inconsistent with the Conservation Values are retained by Grant, but shall be exercised so as to prevent damage to the Conservation Values identified above and minimize impact on water quality, air quality, land/soil stability, cultural values, and the natural topographic and open space character of the Property. The Grantor reserves the right to sell or lease the Property. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any act of God or other event over which Grantor had no reasonable control. Nothing in this Easement relieves Grantor of any obligation with respect to the Property or restriction on the use of the Property imposed by law.

**16.2. Reserved Right: Use of the Property for Agricultural Purposes.** Grantor retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, consistent with applicable law, the conservation purposes of this Easement, the specific prohibitions incorporated in this Easement, and the Management and Conservation Plan required by Section 15.

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

**16.2.2.** Limitation. Certain uses that might broadly be considered agricultural are prohibited: Grantor and Holder hereby affirm, that as implied in sub-paragraph 14.1, large confined animal feeding operations, as well as large greenhouse production and like intensive industrialized agricultural operations are inconsistent with the soil productivity and open space values the Easement is meant to protect.

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

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

**16.2.5.** Uses and Activities Related to Agriculture. The following agriculturally related activities and uses are permitted: farm machine repair shop or seed and mineral shop (utilizing buildings permitted under the terms of paragraph 21); seasonal or occasional outdoor commercial activities that are accessory to the agricultural uses of the Property, for example: hay rides, corn maze, farm animal petting zoo, pick your own produce, sale of agricultural products produced off of the Property but associated with such seasonal or occasional activities (for example: the sale of apple cider on a hay ride; production/processing (within a permitted structure) of Agricultural products, a majority of which are produced on the property or another property owned by Grantors, into derivatives thereof; the commercial retail and/or non-retail sale of (i) Agricultural products, a majority of which are produced on the property or another property owned by Grantors, or (ii) derivatives; services related to Agriculture limited to equestrian sports, events, and shows, boarding, the training of horses/ponies and riders, and the provision of recreational or therapeutic riding opportunities; and recreational uses that do not compromise the conservation purposes and values of this Easement offered and operated by a resident of a permitted Dwelling Unit on the Property, or by the Grantors. Activities not described in this sub-paragraph that are not analogous to those described (or more minimal) in impact on the conservation purposes and values of the Easement are prohibited, unless approved by Holder as set forth in paragraph 25.

**16.3. Reserved Rights: Forestry.** The following forest management activities may be conducted on the Property in a manner which complies with the provisions and purposes of this Conservation Easement and which is consistent with the standards, customs and practices that are current and generally accepted by professional forest resource managers, and which generally meet the standard of best timber management practices: timber stand improvement practices such as thinning and culling trees and grapevine deadening; timber harvesting and regeneration of forest stands; firewood harvesting; wildlife habitat management; tree planting; pruning; maple syruping, and sugaring; and construction and maintenance of necessary log landings, skid trails and haul/access roads. All such activities shall be in accordance with a forest management plan for the Property, which must be in accordance with the conservation purposes of this Easement, and which must be approved by the Land Trust prior to carrying out any timber harvesting under such plan. Such approval, as further specified in paragraph 25, will not be unreasonably withheld. Any draining structures such as culverts, bridges or waterbars constructed on trails and roads shall be removed or maintained by the Grantor as needed to protect the conservation values of the Property. Notwithstanding the above, the Property shall not be subjected to “clear cut” logging or any similar practice.

**16.4. Reserved Rights: Recreational Uses**. Grantor retains the right to use and to permit others to use the Property for otherwise lawful noncommercial and non-motorized recreational uses, that require no significant surface alteration or other development of the land, including, but not limited to, hiking, cross-country skiing, birdwatching, meditating, observing and photographing nature, walking, picnicking, resting, education, horseback riding, hunting, and other activities that are consistent with the purposes of this Easement.

**16.5. Reserved Rights: Scientific and Educational Activities.** Grantor may engage in and permit others to engage in ecological research on the Property that is not inconsistent with the conservation purposes and values of this Easement provided that Holder’s approval is obtained as provided herein if the research is more than merely observational. Grantor may carry out and permit other to carry out educational activities related to the agricultural use and other Conservation Values of the Property, including but not limited to educational activities addressing the subjects of sustainable agriculture, food production and nutrition, environmental conservation, and ecology.

**16.6. Reserved Rights: Signs, Foraging, Other.** Grantor may place and remove and allow others to place and remove a reasonable number of small identifying signs (including a 16 foot square sign identifying the property under (County Name) ’s farmland and open space protection program), bird houses, bat houses, butterfly houses and the like on the Property. Grantor may control invasive species by means designed to best serve the conservation values and purposes of the easement. Grantor may gather wild plants for household consumption, and gather firewood from dead and downed trees.

**RIGHT TO PRIVACY**

**17. Right to Privacy.** Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Property. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property.

**17.1. Public Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement, except that visual access to the Property’s scenic attributes shall be preserved.

**DEVELOPMENT RIGHTS**

**18. Development Rights Dormant.** The parties recognize that despite their efforts to preserve the Property, there remains a risk of condemnation of some or all of the Property by governmental or other authorized entities. In order to clarify their respective rights, in the event of such a condemnation, and to make clear their intentions, the parties agree that the development and other rights conveyed to Holder by this Easement are hereby rendered dormant, and will remain dormant as long as this Easement or an amended version of this Easement, or the Property, is held by the Holder or a successor Holder. The parties further agree that such rights may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for calculating permissible lot yield of the Property or any other property.

**IMPROVEMENTS**

**19. Construction of Buildings and Other Improvements.** Except as specified herein, no structures or buildings not currently in existence on the Property are permitted, including but not limited to resort structures, recreational structures, golf courses, athletic fields, non-residential swimming pools, commercial helicopter pads and public or commercial airstrips.

**19.1. Existing Agricultural Structures.** Existing agricultural structures may be repaired, or replaced, and shall remain entirely within the Farmstead Areas as shown on Exhibit B, attached hereto. Building enlargements must not exceed fifty percent (50%) of the ground floor area occupied by said existing structure at the date of the execution of the Easement, and the height must not exceed thirty-five (35) feet or the local zoning height restriction, if any, whichever is more stringent.

**19.2. New Agricultural Structures.** In addition to those structures present on the date of the execution of the Easement, a total of up to three new buildings or other structures may be built on the Property within the Farmstead Areas identified in Exhibit B and C. After a new structure is built, it may be maintained, repaired, or replaced.

**19.3. Existing Single-Family Residential Dwelling.** Any existing residential dwelling(s) in the Farmstead Area(s) may be repaired, enlarged by up to 50 percent (50%) greater than its size at the time of the granting of this Easement, or replaced at the current location or elsewhere entirely within the Farmstead Area(s) identified in Exhibit B and C. All structures and appurtenant facilities associated with the dwelling shall be located entirely within the Farmstead Area(s). The height must not exceed three (3) stories or the local zoning height restriction, if any, whichever is more stringent.

**19.4. Fences.** Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock, wildlife, and farm produce, and the reasonable and customary security of the farm produce and the residence(s) and other improvements upon the Property. Location of new fences shall be consistent with the Management and Conservation plan and shall not interfere with conservation values intended to be protected by this Easement.

**19.5. Utilities and Septic Systems.** Wires, lines, pipes, cables, or other facilities providing electrical, gas, water, sewer, communications, energy generation (but only for energy to be used primarily at the Property), or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed, relocated, and replaced.. In addition, septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired, replaced, relocated, or improved. Notwithstanding the foregoing, Grantor may not undertake any action or grant any right-of-way if the effect of such action or grant would significantly impair the conservation and scenic values of the Property, provided, however, that with approval of Holder, Grantor may consent to acquisition of such rights of way pursuant to proper exercise of eminent domain.

**19.6. Existing Cell Tower and Billboard** The existing cell tower structure and billboard may be repaired and maintained as required by leases (lease documents are included in baseline documentation attached.) In order to protect the scenic and conservation values of this easement no additional cell towers or billboards may be erected at any time. Additional facilities to maintain the existing tower may be added within the existing lease area. The cell tower and billboard leases may be extended or renegotiated or renewed periodically by Grantor, so long as the extensions, renewals, or renegotiations do not affect the conservation values and purposes materially more than the existing leases, and so long as such future leases are restricted to the boundaries of the of the existing leases.

**19.7. Paving, Road Construction and Trails**. The maintenance, repair, and use of access and agricultural roads currently existing as of the date of this Easement on the Property in substantially their present location and condition is permitted. No extension or expansion of roads into is permitted without prior approval of Land Trust as set forth in paragraph 25.

**WATER SOURCES**

**20. Maintenance and Improvement of Water Sources.** In accordance with applicable law, the conservation purposes of this Easement, the Plan required by Section 15, and the approval procedure set forth in paragraph 25, Grantor may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion, or improve the agricultural management potential of the Property.

**SUBDIVISION**

**21. Subdivision.** The Property is currently held as multiple legal parcels, all owned by Grantor. Unless otherwise permitted by the Land Trust, Grantor shall either consolidate ownership of the various parcels into one parcel and maintain the integrity of that parcel, or maintain all of the parcels composing the Property, and all interests therein, under common ownership, as though a single legal parcel, in perpetuity. Subdivision of any of the parcels, recording of a subdivision plan, partition of any of the parcels, certificates of compliance, lot line adjustments, imposition of a mortgage or other encumbrance on any of the pre-consolidation parcels or any portion of Property other than the entire Property, or any attempt to divide any of said parcels into two or more legal parcels without prior approval of Land Trust as provided below is prohibited.

**WASTE**

**22. Trash and Debris, Storage and the Like**. The dumping, burial, burning, or other disposal or accumulation of wastes, ashes, refuse, debris, dredge spoils, hazardous or toxic materials, inoperative vehicles, or other unsightly or offensive material on the Property is prohibited, except that which is reasonably generated by activities permitted herein and disposed of in a lawful manner that does not cause, and is not likely to cause, soil degradation or erosion, harm to native plant communities, pollution of any surface or subsurface waters, or any other degradation of Conservation Values.

Agricultural products, agricultural chemicals (including herbicides, pesticides, fungicides, fertilizers, and other materials commonly used in farming operations), oil, fuels, and petroleum products for use in agricultural operations on the Property, agricultural byproducts, and agricultural equipment used on the Property may be stored on the Property in accordance with applicable federal, state, and local laws, regulations and requirements. The application, storage and placement on the Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid generated from such sources for agricultural purposes may be undertaken only if in accordance with applicable federal, state, and local laws, regulations and requirements, and only if the application of any of these materials will not substantially diminish the viability and productivity of the agricultural soils on the Property.

**MINING**

**23. Surface Mining.** The mining or extraction of any mineral substance by use of any method that substantially disturbs the surface of the land subject to this easement is prohibited. Methods of mineral extraction that are managed so as to have limited and localized impact on the property and which are not substantially or irremediably destructive of the conservation purposes may be permitted upon notice to and approval by the Holder, as specified in Section 25.

**OTHER PROHIBITIONS**

**24. Other prohibitions.** Certain other uses are specifically prohibited.

**24.1. Commercial Recreational Uses.** All commercial recreational uses of, or commercial recreational activities on, the Property that are not specifically permitted herein, or approved in advance by Holder under the terms of paragraph 25, are prohibited. The terms “commercial recreational uses” and “commercial recreational activities” shall mean uses or activities that are typically recreational in nature for which users are charged a fee in excess of the property owner’s costs associated with offering or permitting such uses or activities.

**24.2. Vehicles**. Use of bicycles, motorcycles, all-terrain vehicles, or any other type of motorized or non-motorized vehicles on or off roadways on the Property is prohibited except that Owner or others under Owner’s control may make use designed to minimize impact on Conservation Values of vehicles for permitted activities, permitted residential or recreational uses, or urgent emergency uses, or as permitted by existing easements of record as shown in the Baseline Documentation.

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

**24.4. Visual Screening.** In order to maintain the scenic view of the Property from the state highway and county roads set forth as a Conservation Attribute, Grantors shall not erect, construct, assemble, or plant visual screening, including but not limited to stockade fences, tall berms, and dense hedges, that would, in Grantees’ sole discretion, substantially block views of the Property from such public roadways or waterways.

**NOTICE AND APPROVAL**

**25. Permission of Holder.** Where Grantor is required to obtain Holder’s permission or approval for a proposed action hereunder, Holder shall grant permission or approval to Grantor only where Holder determines that the proposed action will not substantially diminish or impair the conservation and scenic values of the Property. Said permission or approval:

**25.1**. Shall not be unreasonably delayed or withheld by Holder,

**25.2**. Shall be sought and given in writing within 90 days after receipt of Grantor’s complete written application and

**25.3**. Shall in all cases be obtained by Grantor prior to Grantor's taking the proposed action.

**RIGHTS OF HOLDER**

**26. Rights of Holder.** To accomplish the purpose of this Easement the following rights are conveyed to Holder by this Easement:

**26.1**. To preserve and protect the conservation values of the Property;

**26.2**. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies provided in Section 29.

**26.3.** To manage its responsibilities as holder of this Easement in order to uphold the purposes of this Easement, including, but not limited to, annual monitoring, such additional monitoring as circumstances may require, record keeping, and enforcement, for the purpose of preserving the Property’s Conservation Values and purposes. Failure of the Holder to carry out these responsibilities shall not impair the validity of this Easement or limit its enforceability in any way. With reasonable advance notice as specified in paragraph 27 (except in the event of an emergency circumstance or prevention of a threatened breach in which case no advance notice is required as further specified in paragraph 27), Holder shall have the right to enter upon, inspect, observe, document, monitor and evaluate the Property to identify the current condition of, and uses and practices on the Property and to determine whether the condition, uses and practices are consistent with this Easement.

**26.4.** To use any and all access easements and rights-of-way, whether recorded or not, over the Property or the property of others that individually or together provide Grantor with legal, physical and other access to the Property. Grantor shall execute any additional documents as may be necessary to evidence this assignment.

**26.5.** To erect and maintain small unlighted signs or other appropriate markers visible from public vantage points and along boundary lines to identify Holder, and public programs that have supported the conservation of the Property, and/or informing the public that the Property is protected by this Easement and identifying activities prohibited by the Easement. A 16 square foot sign identifying the Property as a project qualifying under the (County Name) ordinances referenced above is within the rights reserved to Holder in this paragraph.

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

**26.7.** To exercise such additional rights as may be reasonably necessary to effectuate the purposes of this Easement.

**ENFORCEMENT AND REMEDIES**

**27. Enforcement and Remedies.**

**27.1.** Holder, or its agents, shall have the right to enter upon the Property after reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement, subject to the following conditions:

**27.1.1.** Holder shall give at least forty-eight (48) hours written notice to Grantor before entering upon the Property, except in the event of an emergency or suspected emergency in which case reasonable verbal or written notice shall be attempted. The notice shall indicate the purpose of the entry and shall provide the timeframe during which Holder shall be upon the Property;

**27.1.2.** Holder shall promptly reimburse Grantor for any damage arising out of or in connection with such entry to the extent that such damage was the result of the negligent act of Holder or Holder’s representative(s).

**27.2**. If Holder determines that a violation of this Easement has occurred, Holder shall so notify Grantor, giving Grantor thirty (30) days to cure the violation. If the violation cannot reasonably be cured within 30 days, then Grantor shall commence the cure within such 30 day period and shall be allotted such additional time, subject to Holder’s approval which will not be unreasonably withheld, as shall be needed so that, that with reasonable diligence, Grantor can complete the cure.

**27.3**. Notwithstanding the foregoing, where Holder in Holder's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the agricultural or other conservation values of the Property, Holder may bring an action to enjoin the violation, *ex parte* if necessary, through temporary restraining order, preliminary injunction, and/or permanent injunction. In the event Holder seeks injunctive relief, it shall be irrefutably presumed that money damages or other remedies at law are insufficient to protect Holder’s interests.

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

**27.4.1.** Money damages, including damages for the loss of the conservation values protected by this Easement; and

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

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

**27.5**. In any litigation or administrative proceeding enforcing this Easement, the Holder shall be entitled to be reimbursed for its expenses, including, but not limited to, reasonable attorneys’ fees and costs of litigation, unless Holder was unsuccessful in establishing that any breach of this conservation easement had occurred. The failure of Holder to discover a violation or to take legal action when a violation is discovered shall not bar Holder from taking legal action at a later time.

**27.6**. Without expanding or limiting Grantor’s liability therefore, the Holder shall apply damages recovered to the cost of undertaking any corrective action on the Property. Should the restoration of lost values be impossible or impractical the Holder shall apply any and all damages recovered to furthering the Holder’s mission, with primary emphasis on conservation easement acquisition, monitoring, enforcement, or defense.

**SUBORDINATION**

**28. Subordination, Costs, Liabilities, Taxes, and Environmental Compliance.**

**28.1. Subordination.** Grantor represents that as of the date of this grant, there are no liens or mortgages outstanding against the Property that are not subordinated to Holder’s rights under this Easement, as required under Section 1.170A-14 of the Treasury Regulations. Grantor has the right to use the Property (but only the entire Property) as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to Holder’s rights under this Easement. Under no circumstances may Holder’s rights be extinguished or otherwise affected by recording of any document, foreclosure, or any other action taken concerning any existing or subsequent lien or other interest in the Property.

**28.2. Costs, Legal Requirements, and Liabilities***.* Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement.

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

**28.4. Representations and Warranties.** Grantor represents and warrants that, after reasonable investigation and to the best of Grantor’s knowledge:

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

**28.4.2.** There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.

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

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

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

**28.7.1.** Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent caused by the negligence of any of the Indemnified Parties;

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

**28.7.3.** 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, except to the extent caused by any of the Indemnified Parties; and 28.7.4. Breach of the obligations, covenants, representations, and warranties of Sections 28.4.1 and 28.4.2.

**AMENDMENT OF EASEMENT**

**29. Amendment.**

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

**29.2**. Standards for Approval of Conservation Easement Amendments:

**29.2.1.** Correction of an error or clarification of an ambiguity

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

**29.2.2.1.** The amendment creates a condition that strengthens or has no net effect on the protection of the conservation values identified in the Easement and

**29.2.2.2.** The amendment does not undermine the public’s perception of reliability of conservation easements as a land conservation tool.

**29.2.2.3.** The amendment upholds the intent of the original Grantors and the fiduciary obligation of the Grantees to protect the Property for the benefit of the public in perpetuity;

**TERMINATION OF EASEMENT**

**30. Termination, Condemnation, Eminent Domain, and Division of Proceeds.**

**30.1**. Unless terminated in whole or part by eminent domain, this Easement may only be terminated or extinguished, in whole or in part, by a court of competent jurisdiction. The Easement shall be terminated only if there are circumstances so changed that each of the conservation purposes of this Agricultural Conservation Easement is manifestly impracticable to accomplish. Even if most conservation purposes are impracticable, so long as any conservation purpose remains, the Easement shall not be terminated. If the Easement is terminated, in whole or in part, whether by condemnation or other means, Holder, as owner of a vested property right, is entitled to compensation that is to be used in a manner that accomplishes as closely as possible under the changed circumstances the purposes of this Easement.

**30.2**. Proceeds from whole or partial termination, condemnation, eminent domain, or a claim on an insurance policy involving casualty, damage, harm or compromise to the property interest conveyed through this Easement shall be divided between Holder and Grantor in accordance with the following method:

**30.2.1.** The fair market value of the Property subject to the event shall be determined, as of the time of the event.

**30.2.2.** The value attributable to allowable buildings, additions or improvements added after the grant of this Easement shall be deducted from that fair market value and distributed to Grantor.

**30.2.3.** The remaining proceeds shall be divided between Grantor and Holder in proportion to the diminished value of Grantor’s property attributable to this Conservation Easement at the time it was entered into.

**30.2.3.1.** If an income tax deduction was taken by Grantor with respect to the contribution, the proportions reflected in that tax return shall be binding on the parties.

**30.2.3.2.** If no such diminished value was determined at the time of the grant of this easement, or if it cannot be determined what value was then determined, then the proceeds will be divided evenly between Grantor and Holder.

**30.2.4.** For example, assume the condemnation proceeds from a partial condemnation are $100,000. Assume the value of added improvements is $40,000. That $40,000 would be paid to Grantor. Assume the reduction in value deducted by Grantor for federal tax purposes was 60%. Then Grantor would receive 40% of the remaining $60,000, and Holder would receive 60% of the remaining $60,000.

**30.2.5.** The percentage of diminished value attributable to the grant of this conservation easement at the time it was made was \_\_\_\_\_ per cent (\_\_\_\_%).

**ASSIGNMENT OF EASEMENT**

**31. Assignment.**

**31.1.** If the Holder should desire to transfer its interest in the Easement created by this Deed, said Holder may transfer the Easement to a qualifying organization under Section 170(h) of the Internal Revenue Code after providing a 30-day advance notice to the Grantor. Such a transfer may proceed only if the chosen, qualifying organization has a commitment to the conservation purposes of the easement, resources available to enforce the restrictions, and expressly agrees to assume the responsibility imposed on Holder by this Easement. The assignment and assumption agreement shall be duly recorded.

**31.2.** If the Holder, or its successors, ever ceases to exist or no longer qualifies under Section 170(h) of the Internal Revenue Code, or applicable state law, to hold this Easement, a court of competent jurisdiction shall transfer, upon consultation with Grantor, said Holder’s interest in this Easement to another qualified organization that is committed to the conservation purposes of the easement, has resources available to enforce the restrictions, and agrees to assume the responsibilities imposed by this Easement.

**GRANTOR'S TITLE WARRANTY**

**32. Grantor's Title Warranty and Title Insurance.** Prior to the signing of this Conservation Easement, Holder will acquire a commitment for a policy of title insurance which Grantor has examined and determined provides adequate proof of Grantor’s title. Grantor represents and warrants that Grantor has good fee simple title to the Property, subject only to any liens, encumbrances or defects reflected in that commitment. To the best of Grantor’s knowledge there are no off record liens or encumbrances affecting the Property not reflected in that commitment. If Grantor discovers at any time that any old or new interest in the land exists that is not disclosed herein, Grantor shall immediately notify Holder of the discovery of the interest, and shall take all necessary steps to assist Holder to make the discovered interest subject to this Easement.

**TRANSFER OF PROPERTY**

**33. Subsequent Transfers by Grantor**. Grantor agrees to disclose this Easement to all prospective buyers of the Property and to inform Land Trust of a prospective sale. Grantor agrees that the terms of this Easement shall be incorporated by reference in any deed or other legal instrument by which Owner transfers any interest in all or a portion of the Property or by which Grantor grants to a third party a right or privilege to use the Property, including, without limitation, any easement, leasehold interest, or license agreement, and upon the recordation of document by which any such transfer is accomplished, this deed of easement shall also be rerecorded. Grantor further agrees to give written notice to Land Trust of the transfer of any such interest, or the grant of any such right or privilege, at least 30 days prior to the date of such transfer or grant. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way. If Property subject to this Easement is transferred while a violation remains uncured, Grantor who transfers remains liable for the violation jointly and severally with the transferee(s).

**SUBSEQUENT EASEMENTS OR RESTRICTIONS**

**34. Subsequent Easements or Restrictions.** The grant of any easements or use restrictions that might diminish or impair the conservation values of the Property is prohibited. Holder’s written approval shall be obtained at least thirty (30) days in advance of executing any proposed easement or use restrictions on the Property, which shall be subject to the review and approval procedures set forth herein. Any such easements or use restrictions, and any subsequent encumbrances, shall be subordinate to this Easement and make reference to it in any documents submitted for recording.

**ESTOPPEL CERTIFICATES**

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

**NOTICES**

**36. 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 first class mail, postage prepaid, addressed as follows:

**36.1.** To Grantor:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**36.2.** To Holder:

Historic Hoosier Hills RC&D

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, IN

**PERPETUATION OF EASEMENT**

**37. Perpetuation of Easement.** Except as expressly otherwise provided herein, this Easement shall be of perpetual duration. No merger of title, estate, or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Holder, or Holder’s successor or assignee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Holder, or Holder’s successor or assignee.

**WAIVER**

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

**RECORDATION**

**39. Recordation.** This Easement shall be recorded in the Recorder’s Office of the county or counties in which the Property is located. Rerecording is permitted by either party at any time for any purpose, and the Easement shall be rerecorded upon any transfer of Grantor’s interest or any element thereof.

**ACCEPTANCE OF EASEMENT**

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

**GENERAL PROVISIONS**

**41. General Provisions.**

**41.1. Interpretation.** This Easement shall be interpreted under the laws of the State of Indiana or federal law as appropriate, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes. References to authorities in this Easement are to the statute, rule, regulation, ordinance, or other legal provision that is in effect at the time this easement becomes effective. No provision of this Easement shall constitute governmental approval of any improvements, construction, or other activities which may be permitted under this Easement.

**41.2. 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.

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

**41.4. No Forfeiture***.* Nothing contained herein will result in a forfeiture or reversion of Grantor’s title in any respect.

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

**41.6. Successors.** In accordance with the manner in which the terms are defined herein every provision of this Easement that applies to Grantor or Holder shall also apply to, and this Easement shall bind and inure to the benefit of, their respective agents, heirs, executors, administrators, assigns, and other successors in interest.

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

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

**41.9. Holder not tax adviser.** Grantor and Holder recognize that Grantor may or may not be entitled to a charitable contribution for state and/or federal income tax purposes as a result of Grantor’s gift of this conservation easement. Holder and Grantor agree that Grantor will rely solely on Grantor’s evaluation of Grantor’s entitlement to any such deduction, and on the advice of consultants retained by Grantor. Any information provided to Grantor by Holder regarding tax or other legal issues was intended to serve as introductory or background information at most, and Grantor does not and will not rely on any such information concerning Grantor’s entitlement to a deduction as a result of this gift, or any other matter. Grantor agrees to hold Holder harmless from any claim of any sort related to Grantor’s entitlement to a charitable deduction, with the sole exception being that Holder is qualified as a tax-exempt organization as set forth in paragraph 12.

**41.10. Liberal Construction**. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to achieve the conservation purposes of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the conservation purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. This Easement has been fully negotiated between the Parties so that the rule that documents may be construed against the drafter does not apply.

**41.11. Entire Agreement**. This Easement sets forth the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous discussions, negotiations, understandings, or agreements of the Parties relating to the subject matter of this Easement, all of which are merged herein.

**SOCIAL SECURITY NUMBERS**

**42. No Social Security Numbers.** Holder affirms under the penalties for perjury, that Holder has taken reasonable care to redact each social security number in this document, unless otherwise required by law.

IN WITNESS WHEREOF, Grantor and Holder, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

GRANTOR

(Name): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Accepted:

Historic Hoosier Hills Resource Conservation and Development Area., Holder

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Exhibit A Legal Description of and Deed to the Property

Exhibit B Map of Farmstead Area and other features

Exhibit C Baseline Document

Exhibit D Conservation Plan

This document prepared for Hoosier Hills RC&D by W. William Weeks, Attorney, The Conservation Law Center, 116 S. Indiana Ave., Bloomington, IN 47408