

REGIONAL CONSERVATION PARTNERSHIP PROGRAM (RCPP)
CONSERVATION EASEMENT (**NO U.S. RIGHT OF ENFORCEMENT**)
RCPP MINIMUM DEED TERMS FOR USES LIMITED FOR PROTECTION OF CONSERVATION
VALUES (HIGHLY RESTRICTIVE LEVEL)

These deed terms must be used only when the RCPP Conservation Easement is not funded to include a U.S. right of enforcement.

1) This paragraph must be inserted at the end of the body of the RCPP-funded Conservation Easement deed:

This Conservation Easement is acquired with funds provided, in part, under the Regional Conservation Partnership Program (RCPP) (16 U.S.C. Section 3871 et seq. and 7 CFR part 1464). The EXHIBIT _____ is attached hereto and incorporated herein by reference and will run with the land [**SELECT ONE: *in perpetuity*** **OR *for the maximum duration allowed under applicable State law***]. As required by the RCPP, and as a condition of receiving RCPP funds, all present and future use of the Protected Property identified in EXHIBIT ____ (legal description or survey) is and will remain subject to the terms and conditions described forthwith in this Addendum entitled RCPP Minimum Deed Terms in EXHIBIT _____ that is appended to and made a part of this easement deed. The rights of the United States acquired under this Conservation Easement shall be unaffected by any subsequent amendments or repeal of the RCPP.

2) A fully executed copy of the Exhibit below must be attached to and recorded as part of the RCPP funded Conservation Easement deed at the time of closing.

EXHIBIT _____

RCPP MINIMUM DEED TERMS

The Regional Conservation Partnership Program (16 U.S.C. Section 3871 et seq.), facilitated and provided funding for the purchase of a Conservation Easement (“Conservation Easement”) on real property described in Exhibit _____ (*legal description or survey*), hereafter referred to as the “Protected Property,” to further the restoration, protection, enhancement, management, maintenance, and monitoring of [**IDENTIFY THE CONSERVATION VALUES HERE:** _____] on the Protected Property (the “Conservation Values”).

The [**LANDOWNER NAMES**] (collectively “Grantor”), the [**QUALIFIED ENTITY NAMES**] (collectively “Grantee”), and the **United States of America** (the “United States”) and its assigns, acting by and through the United States Department of Agriculture (“USDA”) Natural Resources Conservation Service (“NRCS”) on behalf of the Commodity Credit Corporation (“CCC”) (jointly referred to as the “Parties”) acknowledge that the Conservation Easement is acquired by the Grantee for the purpose of the restoration, protection, enhancement, management, maintenance, and monitoring of the Conservation Values (the “purposes of the Conservation Easement”). Decision making on behalf of NRCS is delegated to the Chief of NRCS or authorized designee (hereafter referred to as “Chief of NRCS”). Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is [**SELECT ONE: appended to this easement deed OR maintained in the files of the Grantee**].

In order to ensure compliance with the Regional Conservation Partnership Program, 16 U.S.C. Section 3871 et seq. and 7 CFR part 1464, the following rule of interpretation will govern any and all inconsistencies between this Exhibit and other provisions of the Conservation Easement. Notwithstanding any other provision of the Conservation Easement, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Sections I and II. If the terms and conditions in Sections I and II are inconsistent with terms and conditions in other sections of the Conservation Easement, Sections I and II will control; however, if other sections of the Conservation Easement have terms and conditions that are consistent with, but more restrictive to the rights of the Grantor than the terms and conditions in Section I, Paragraphs 1, 3, 4, and 5 those more restrictive terms and conditions will control. If other sections of the Conservation Easement are more restrictive to the rights of the Grantor than Section I, Paragraph 2 and Section II, then Section I, Paragraph 2 and Section II will control.

SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of the Conservation Easement, and the restrictions and covenants of this Conservation Easement will apply to the Protected Property as a whole.

The terms and conditions of the Conservation Easement run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

1. RCPP Easement Plan. The Grantee shall prepare an RCPP Easement Plan in consultation with the Grantor and the Chief of NRCS. The RCPP Easement Plan shall describe the Conservation Values and identify natural resource concerns on the Protected Property. **[INCLUDE THE FOLLOWING IF THE CONSERVATION VALUES OF THE PROTECTED PROPERTY IDENTIFY SPECIFIC HABITAT TYPES (such as WETLAND, RIPARIAN, FLOODPLAIN, OR OTHERS) or NATIVE WILDLIFE SPECIES: The RCPP Easement Plan shall include a habitat management plan component that describes: the [INSERT HABITAT TYPES or WILDLIFE SPECIES] resource and habitats, including associated habitats; the functions and values of each identified habitat; any requirements related to specific habitat, species, or sensitive natural resources identified.]** The RCPP Easement Plan shall describe the conservation activities, measures, practices, and land uses that may be implemented to restore, protect, enhance, maintain, manage, and monitor the Conservation Values, address the identified resource concerns, and promote the long-term viability of the land to meet the purposes of the Conservation Easement. The RCPP Easement Plan shall identify, as applicable, permissible and prohibited activities and any associated restoration plans.

The RCPP Easement Plan is incorporated by reference and must not include any provisions inconsistent with the purposes of the Conservation Easement. The Grantee agrees to update the RCPP Easement Plan, in consultation with the Grantor and the Chief of NRCS, in the event the uses or ownership of the Protected Property change. The RCPP Easement Plan and any revisions thereto must be approved by the Grantor, Grantee, and NRCS. A copy of the current RCPP Easement Plan is kept on file with the Grantee.

The Grantee must take all reasonable steps to ensure that any activities conducted on the Protected Property are compliant with the RCPP Easement Plan. In the event of substantial or ongoing noncompliance with the RCPP Easement Plan or the requirement to update the RCPP Easement Plan, Chief of NRCS may notify the Grantee and Grantor. NRCS will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action.

2. Allowed Uses. Allowed uses of the Protected Property include the following activities subject to the qualifications stated below:

(A) Conservation Activities. The right to conduct conservation activities, practices, measures and land uses as set forth in this Conservation Easement and the RCPP Easement Plan that further the restoration, protection, enhancement, management, maintenance, and monitoring of the Conservation Values, and are consistent with the purposes of the Conservation Easement.

(B) Other Uses. Any uses not specifically prohibited or restricted by this Conservation Easement and which are not inconsistent with the purposes of the Conservation Easement.

3. Limitation on Impervious Surfaces. Impervious surfaces **[SELECT ONE: are prohibited on OR will not exceed 2 percent of]** the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this Conservation Easement.

[Include the following if limited impervious surfaces are not prohibited above and if subdivision is allowed below: *In the event the Protected Property is subdivided as provided for in Section I, Paragraph 4(A), the total cumulative impervious surface of the subdivided parcels must not exceed the impervious surface limitation referenced above. The Grantor, with Grantee approval, will allocate the impervious surface limit among the subdivided parcels and ensure said impervious surface limitation is clearly defined in each subdivided parcel's recorded instrument.]*

4. Limitations on Uses. Any uses or activities that are inconsistent with the purposes of the Conservation Easement are prohibited. No uses will be allowed that violate Federal laws, including Federal drug laws, or that decrease the Conservation Easement's protection for the purposes of the Conservation Easement. The following activities are inconsistent with the purposes of the Conservation Easement and are specifically prohibited, subject to the qualifications stated below:

(A) Subdivision – [Select Option 1, 2, or 3.]

[[Option 1] Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.]

[[Option 2] The Protected Property must not be divided or subdivided into, or separately conveyed as, more than _____ separate parcels (____ divisions allowed), the boundaries of which have been identified in EXHIBIT ____, which is appended to and made a part of this Conservation Easement. To protect the Conservation Values, the boundaries of such divisions have been preapproved in writing by Grantee. Deviations from the identified boundaries will not be allowed. Grantor must give Grantee written notice prior to subdividing, dividing, or separately conveying a parcel of the Protected Property.]

[[Option 3] The Protected Property must not be divided or subdivided into, or separately conveyed as, more than __ separate parcels (____ divisions allowed). To protect the Conservation Values, the boundaries of such divisions must be approved in writing by Grantee before any such division, subdivision, or separate conveyance occurs. After receiving a request from Grantor to approve the division, subdivision, or separate conveyance of the Protected Property into separately conveyable parcels, Grantee may approve such request when—

1. Grantor certifies to the Grantee that the requested subdivision is required to protect the Conservation Values and that any new owners of the subdivided parcels intend to use such parcels for such purposes; and
2. Grantee determines that the Parcels resulting from the subdivision of the Protected Property will protect the Conservation Values.]

(B) Industrial or Commercial Uses – Industrial or commercial activities on the Protected Property are prohibited.

(C) Construction on the Protected Property – [Select Option 1, 2, or 3.]

[[Option 1] Except as otherwise permitted in this **Section I, Paragraph 4(C)**, all structures and improvements, whether existing now or in the future, are prohibited on the Protected Property.

[[Option 2] Except as otherwise permitted in this **Section I, Paragraph 4(C)**, no structures or improvements, whether existing now or in the future, may be constructed or enlarged on the Protected Property. Existing structures, as identified in the Baseline Documentation Report, may be maintained, repaired, or replaced at the same location and within the existing footprint of such existing structures, with the prior written approval of the Grantee based on a determination that such activities are consistent with the purposes of the Conservation Easement.]

[[Option 3] Except as otherwise permitted in this **Section I, Paragraph 2(C)**, all structures and improvements must be located within the Building Envelope(s), **[Select One (FIXED OPTION):** *containing approximately _____ total acres and described or shown in EXHIBIT _____, which is appended to and made a part of this Conservation Easement. OR (FLOATING OPTION): of which there shall be no more than _____ Building Envelopes, containing no more than _____ total acres. The Grantor must receive prior written approval of the location and boundaries of the future Building Envelopes from the Grantee, following which, the Grantor and Grantee shall amend this Conservation Easement to add an exhibit that describes the approved boundaries and locations of the Building Envelope(s).] **[Additional Optional language for Option 3: Include the following subparagraph if future adjustments to approved Building Envelopes may be considered:** *The identified boundaries and locations of the approved Building Envelope(s) may be adjusted only with prior written approval from the Grantee. The adjusted Building Envelope(s) may not be larger than the approved Building Envelope(s) and must provide equal or greater protection of the Conservation Values. Following receipt of written approval to adjust identified Building Envelope(s), the Grantor and Grantee shall amend this Conservation Easement to add an exhibit that describes the subsequently approved boundaries and locations of the Building Envelope(s).]**

[Additional Optional Language for Options 2 or 3: *Utilities that serve approved buildings or structures and that neither individually nor collectively have an adverse impact on the Conservation Values, may be located on the Protected Property with prior written approval of the Grantee.]*

Construction of new roads on the Protected Property **[SELECT ONE:** *is prohibited OR may be authorized only if such construction is approved in advance by Grantee, is within impervious surface limits, and is consistent with the purposes of the Conservation Easement or necessary to carry out the allowed uses on the Protected Property.]*

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and is consistent with the purposes of the Conservation Easement or necessary to carry out the allowed uses on the Protected Property.

Fences may be maintained and replaced, and new fences installed if they are necessary to achieve the Conservation Values, necessary to carry out the allowed uses on the Protected Property, or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be

conducted in a manner consistent with the purposes of the Conservation Easement.

(D) *Granting of Easements for Utilities and Roads* – The granting or modification of easements for utilities and roads is prohibited unless specifically authorized in writing in advance by the Grantee. Authorization for such activity may only be provided if the Grantee has determined the utility or road is consistent with protecting and maintaining the Conservation Values and such authorization may be subject to terms and conditions Grantee determines are necessary to ensure the viability of the Conservation Values.

(E) *Surface Alteration* – Agricultural use and any activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, wetlands, or the Conservation Values of the Protected Property is prohibited, except for the following activities which may be authorized if the activity will further the purposes of the Conservation Easement, as determined by the Grantee:

- (i) Draining, dredging, channeling, grading, blasting, filling, leveling, pumping, diking, impounding, or related activities;
- (ii) Diverting or causing or permitting the diversion of surface or underground water into, within, or out of the Protected Property;
- (iii) Altering of habitats or other natural features by burning, digging, plowing, disking, cutting, or otherwise destroying the vegetative cover;
- (iv) Haying, mowing, seed harvesting, planting or harvesting any crop, grazing or allowing livestock on the easement area, harvesting any wood products;
- (v) Erosion and sediment control; and
- (vi) Soil disturbance activities required in the maintenance or construction of approved buildings, structures, roads, and utilities.

Such activities must be conducted in a manner consistent with the RCPP Easement Plan and pursuant to terms and conditions approved by the Grantee in advance and in writing. Such terms and conditions must prescribe the technical limitations and requirements of the activities, such as the amount, method, location, frequency, timing, intensity, and duration, and may be set forth in the RCPP Easement Plan itself or a separate plan specific to the activity.

(F) *Surface and Subsurface Mineral Exploration and Extraction* –

Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Conservation Easement or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited.

Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Conservation Easement are subordinate to the terms of this Conservation Easement and must incorporate by reference this Conservation Easement.

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property prior to the time this Conservation Easement is executed, and their interests have not been subordinated to this Conservation Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction is conducted by such third party in accordance with applicable State law using off-site methods that do not impact the surface of the Protected Property and do not harm the Conservation Values.

5. Prohibitions. The following activities are expressly prohibited on the Protected Property:

- (A) Accumulating or dumping refuse, wastes, sewage, or other debris.
- (B) Use of the Protected Property for developed recreation. These uses include but are not limited to sports fields, camping facilities, recreational vehicle trails and tracks, sporting clay operations, skeet shooting operations, firearm range operations, and the infrastructure to raise, stock, and release captive raised waterfowl, game birds and other wildlife for hunting or fishing.
- (C) Any activities to be carried out on the Grantor's land that is immediately adjacent to, and functionally related to, the Protected Property if such activities will alter, degrade, or otherwise diminish the Conservation Values of the Protected Property.
- (D) The installation or use of fences which have the effect of preventing wildlife access and use of the Protected Property located on the Protected Property or on the Grantor's land that is immediately adjacent to, and functionally related to, the Protected Property.
- (E) Use of motor vehicles except as necessary to carry out allowed uses on the Protected Property.
- (F) Any additional prohibited activities set forth in the RCPP Easement Plan.

SECTION II – PROTECTION OF THE UNITED STATES' INTERESTS AND EASEMENT ENFORCEMENT

1. General Disclaimer and Grantor Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed or violations of any Federal, State,

or local laws, including all Environmental Laws.

2. Environmental Warranty. Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials (defined below), as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee on the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

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

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

3. Extinguishment, Termination, and Condemnation. The interests and rights under this Conservation Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal funds expended for the acquisition of this Conservation Easement, any proposed extinguishment, termination, or condemnation action that may affect the Protected Property must be reviewed and approved by the United States.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the Conservation Easement is ____ percent, hereinafter the

“Proportionate Share,” of the fair market value of the land unencumbered by this Conservation Easement. The Proportionate Share will remain constant over time.

If this Conservation Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this Conservation Easement. The fair market value will be determined at the time all or a part of this Conservation Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, [**Calculate and enter the percent of fair market value of the Conservation Easement provided based on the sum of the Grantee’s contributions and Grantor donations toward the acquisition value of the easement**] ___ percent of the Proportionate Share; and (b) to the United States ___ percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor’s successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

4. Amendment. This Conservation Easement may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of the Conservation Easement and complies with all applicable laws, regulations, and program policy. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended Conservation Easement, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.