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Emergency Watersheds Protection Program Floodplain Warranty Easement Deed

1. AGREEMENT NO. _____

THIS WARRANTY EASEMENT DEED is made by and between

2. _____ of

3. Landowner address:

(hereafter referred to as the "Landowner"), Grantor(s), and **the UNITED STATES OF AMERICA,** by and through the Natural Resources Conservation Service (hereafter referred to as the "United States"), Grantee. The Landowner and the United States are jointly referred to as the "Parties". The acquiring agency of the United States is the Natural Resources Conservation Service (NRCS), United States Department of Agriculture.

Witnesseth:

Purposes and Intent. The purpose of this easement is to restore, protect, manage, maintain, and enhance the functional values of floodplains, wetlands, riparian areas, and other lands; and for the conservation of natural values including fish and wildlife and their habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values, and environmental education; and to safeguard lives and property from floods, drought, and the products of erosion. It is the intent of United States to give the Landowner the opportunity to participate in the restoration and management activities on the easement area.

Authority. This easement deed acquisition is authorized by 16 U.S.C. 2203, as amended, and 7 U.S.C. 428a.

NOW THEREFORE, for and in consideration of the sum of
(4.) _____ Dollars, (4 a.) ($ _____), the Grantor(s), hereby grants and conveys with general warranty of title to the UNITED STATES OF AMERICA and its assigns, the Grantee, forever, all rights, title and interest in the lands comprising the easement are described in Part I and appurtenant rights of access to the easement area, but reserving to the Landowner only those rights, title, and interest expressly enumerated in Part II. It is the intention of the Landowner to convey and relinquish any and all other property rights not so reserved. This easement shall constitute a servitude upon the land so encumbered; shall run with the land **in perpetuity;** and shall bind the Landowner, (the Grantor(s)), their heirs, successors, assigns, lessees, and any other person
claiming under them.

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SUBJECT, however, to all valid rights of record, if any.

PART I. Description of the Easement Area. The lands encumbered by this easement deed, referred to hereafter as the easement area, are described on EXHIBIT A which is appended to and made a part of this easement deed.

TOGETHER with a right of access for ingress and egress to the easement area across adjacent or other properties of the Landowner. Such a right-of-way for access purposes is described in EXHIBIT B which is appended to and made a part of this easement deed.

PART II. Reservation in the Landowner on the Easement Area. Subject to the rights, title, and interest conveyed by this easement deed to the United States, the Landowner reserves:

A. **Title.** Record title, along with the Landowner's right to convey, transfer, and otherwise alienate title to these reserved rights.

B. **Quiet Enjoyment.** The right of quiet enjoyment of the rights reserved on the easement area.

C. **Control of Access.** The right to prevent trespass and control access by the general public subject to the operation of State and Federal law.

D. **Recreation Uses.** The right to undeveloped and recreation uses, including hunting and fishing, and including leasing of such rights for economic gain, pursuant to applicable State and Federal regulations that may be in effect at the time.

E. **Subsurface Resources.** The right to oil, gas, minerals, and geothermal resources underlying the easement area, provided that any drilling or mining activities are to be located outside the boundaries of the easement area, unless activities within the boundaries are specified in accordance with the terms and conditions of EXHIBIT C.

PART III. Obligations of the Landowner. The Landowner shall comply with all terms and conditions of this easement, including the following:

A. **Prohibitions.** Without otherwise limiting the rights of the United States acquired hereunder, it is expressly understood that the rights to the following activities and uses have been acquired by the United States and, unless authorized by the United States under Part IV, are prohibited of the Landowner on the easement area:

1. haying, mowing, or seed harvesting for any reason;

2. altering of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, disking, cutting or otherwise destroying the vegetative cover;
3. dumping refuse, wastes, sewage, or other debris;
4. harvesting wood products;
5. draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices;
6. diverting or causing or permitting the diversion of surface or underground water into, within, or out of the easement area by any means;
7. building or placing buildings or structures on the easement area;
8. planting or harvesting any crop;
9. grazing or allowing livestock on the easement area; and
10. disturbing or interfering with the nesting or brood-rearing activities of migratory birds.
11. receiving any disaster assistance form the Secretary of Agriculture.

B. **Noxious Plants and Pests.** The Landowner is responsible for noxious weed control and emergency control of pests as required by all Federal, State, and local laws. A plan to control noxious weeds and pests must be approved in writing by the United States prior to implementation by the Landowner.

C. **Fences.** Except for establishment cost incurred by the United States and replacement cost not due to the Landowner's negligence or malfeasance, all other costs involved in maintenance of fences and similar facilities to exclude livestock shall be the responsibility of the Landowner.

D. **Taxes.** The Landowner shall pay any and all real property and other taxes and assessments, if any, which may be levied against the land.

E. **Reporting.** The Landowner shall report to the United States any conditions or events which may adversely affect the wetland, wildlife, and other natural values of the easement area.

PART IV. Allowance of compatible Uses by the Landowner.

A. **General.** The United States may authorize, in writing and subject to such terms and conditions the United States may prescribe at its discretion, the use of the easement area for compatible economic uses, including, but not limited to, managed timber harvest, periodic haying, or grazing.

B. **Limitations.** Compatible use authorization will only be made if, upon a determination by the United States in the exercise of its discretion and rights, that the proposed use is consistent with the long-term protection and enhancement of the

floodplain, riparian, the wetland and other natural values of the easement area. The United States shall prescribe the amount, method, timing, intensity, and duration of the compatible use.

PART V. Rights of the United States. The rights of the United States include:

A. **Management Activities.** The Unites States shall have the right to enter unto the easement area to undertake, at its own expense or on a cost-share basis with the Landowner or other entity, any activities (including removal of levees or other hydrologic alteration) to restore, protect, manage, maintain, enhance, and monitor the floodplain and other natural values of the easement area. The United States, at its own cost, may apply to or impound additional waters on the easement area in order to maintain or improve wetland and other natural values.

B. **Access.** The United States has a right of reasonable ingress and egress to the easement area over the Landowner's property, whether or not the property is adjacent or appurtenant to the easement area, for the exercise of any of the rights of the United States under this easement deed. The authorized representatives of the United States may utilize vehicles and other reasonable modes of transportation for access purposes. To the extent practical, the United States shall utilize the access identified in EXHIBIT B.

C. **Easement Management.** The United States may delegate all or part of the management, monitoring or enforcement responsibilities under this easement to any entity authorized by law that the United States determines to have the appropriate authority, expertise and resources necessary to carry out such delegated responsibilities. State or Federal agencies may utilize their general statutory authorities in the administration of any delegated management, monitoring or enforcement responsibilities for this easement.

D. **Violations and Remedies - Enforcement.** The Parties agree that this easement deed may be introduced in any enforcement proceeding as the stipulation of the Parties hereto. If there is any failure of the Landowner to comply with any of the provisions of this easement deed, the United States or other delegated authority shall have any legal or equitable remedy provided by law and the right:

1. To enter upon the easement area to perform necessary work for prevention of or remediation of damage to floodplain or other natural values; and,

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2. To access all expenses incurred by the United States (including any legal fees or attorney fees) against the Landowner, to be owed immediately to the United States.

PART VI. General Provisions.

A. **Successors in Interest.** The rights granted to the United States shall accrue to any of its agents, successors, or assigns. All obligations of the Landowner under this easement deed shall also bind the Landowner's heirs, successors, agents, assigns, lessees, and any other person claiming under them. All the Landowners who are parties to this easement deed shall be jointly and severally liable for compliance with its terms.

B. **Rules of Construction and Special Provisions.** All rights in the easement area not reserved by the Landowner shall be deemed acquired by the United States. Any ambiguities in this easement deed shall be construed in favor of the United States to effect the floodplain, wetland and conservation purposes for which this easement deed is being acquired. The property rights of the United States acquired under this easement shall be unaffected by any subsequent amendments or repeal of the Emergency Watersheds Program. If the Landowner receives the consideration for this easement in installments, the Parties agree that the conveyance of this easement shall be totally effective upon the payment of the first installment.

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TO HAVE AND TO HOLD, this Warranty Easement Deed is granted to the United States of America and its assigns forever. The Landowner covenants that he, she, or they are vested with good title to the easement area and will warrant and defend the same on behalf of the United States against all claims and demands. The Landowner covenants to comply with the terms and conditions enumerated in this document for the use of the easement area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this easement deed.

5. Dated this _____ day of _____ , 2 _____ .

6. Landowners (s): _____
(Signature)

_____
(Signature)

ACKNOWLEDGEMENT

(This section is completed by Notary Public)

STATE OF: _____

COUNTY OF: _____

On this _____ day of _____, 2 _____ , before me, the undersigned, a Notary Public in and for said State personally appeared _____ , know or proved to me to be the person(s) described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as _____ free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and years first above written.

_____

Notary Public for the State of _____
Residing at _____
My Commission Expires _____

This instrument was drafted by the Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C. 20250-1400.

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