

**MEMORANDUM OF
SALE OF REAL PROPERTY**

THIS MEMORANDUM OF SALE is made this 19th day of March, 2022, by and between **Debra Lee Allen, Successor Trustee** (“Successor Trustee”), and _____ (“Purchaser”).

RECITALS

1. Pursuant to that certain *Credit Line Deed of Trust* (“Deed of Trust”) dated September 26, 2016, granted and executed by Kenneth David Vineyard (“Grantor”) to David G. Palmer and Joe W. Casto, Trustees for the beneficiary, Farm Credit of the Virginias, ACA (“Beneficiary”), and recorded in the Office of the Clerk of the County Commission of Calhoun County, West Virginia, in Trust Deed Book 172, at Page 532, the Successor Trustee was appointed pursuant to that certain *Appointment of Successor Trustees* dated January 12, 2021, and recorded in the aforesaid Clerk’s office in Trust Deed Book 182, at Page 232.

2. On March 19, 2022, at 10:00 a.m., the Successor Trustee, as directed by the Beneficiary, caused to be conducted a public auction of the real property subject to the Deed of Trust, consisting of approximately 329 acres, commonly known as **13621 S. Calhoun Hwy, Arnoldsburg, WV 25234** and more particularly described in Exhibit A attached hereto (the “Property”).

3. The Purchaser was the successful bidder at the sale of the Property in accordance with the terms advertised and announced at the time of sale, which are more particularly described in the Notice of Successor Trustee’s Sale attached hereto as Exhibit B, with a prevailing bid price of _____ (\$ _____) (the “Prevailing Bid Price”). Per the terms of the Notice of Successor Trustee’s Sale, a Buyer’s Premium of 10% of the Prevailing Bid Price is added, for the total purchase price of _____ (\$ _____) (the “Purchase Price”).

AGREEMENT

FOR AND IN CONSIDERATION of the payment of the Purchase Price and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Purchaser shall pay to the Successor Trustee a deposit toward the Purchase Price equal to Ten Percent (10%) of the Purchase Price (the “Deposit”), which Deposit shall be paid to the Successor Trustee as follows:

a. An initial deposit of Thirty Thousand and 00/100 Dollars (\$30,000) (the “Initial Deposit”) has been paid (at the time of sale) and accepted by the Successor Trustee.

b. On or before 12:00 p.m. (Noon), March 21, 2022, Purchaser shall pay the remainder of the Deposit by wire transfer, this amount being equal to the difference between the total Deposit and the Initial Deposit (the “Additional Deposit”).

Together, the Initial Deposit and the Additional Deposit constitute the required Deposit of 10% of the Purchase Price. The Deposit funds shall be deposited in the Successor Trustee’s law firm’s trust account, to be held until the closing of the sale of the Property. Wire instructions will be separately provided.

2. Settlement and closing shall take place on or before April 19, 2022, at a place and time mutually agreed to by the parties. On or before the date of closing, Purchaser shall pay to the Successor Trustee, by wire transfer to the Successor Trustee’s law firm’s trust account, the balance of the Purchase Price, i.e., the Purchase Price less the Deposit paid. If the Purchaser fails to deliver to the Successor Trustee the balance of the Purchase Price on or before April 19, 2022, the Successor Trustee shall have the right, in her sole discretion, to declare the Purchaser in default of this Memorandum of Sale and to enforce the Successor Trustee’s rights in accordance with the laws of the State of West Virginia and this Memorandum of Sale. In addition to any legal or equitable remedies available to the Successor Trustee, she may convey the Property to the next highest bidder if such bidder will honor his bid, or may proceed to resell the Property pursuant to the Deed of Trust. In the event of such a default, the defaulting Purchaser shall be liable for the payment of any deficiency in the purchase price resulting therefrom, all costs and expenses of any subsequent sale, reasonable attorneys’ fees, all other charges due, and incidental damages. In the event a resale of the Property results in a sale in excess of the amount originally bid by the defaulting Purchaser, the defaulting Purchaser shall not be entitled to return of his Deposit, and Purchaser waives any and all claims, right and interest to any such excess amount and shall not be entitled to any distribution whatsoever from the resale proceeds. In addition, the Successor Trustee shall be entitled to recover from the Purchaser all of her reasonable attorney’s fees and costs incurred in connection with enforcement of this Memorandum of Sale, including, without limitation, all of her reasonable attorney’s fees, and reasonable expert witness fees including any fees and costs incurred in enforcing any judgment or award arising from this Memorandum of Sale.
3. If the Purchaser fails to complete the closing of the sale of the Property on or before April 19, 2022, the Deposit shall be automatically forfeited without prior written notice, and no portion of the Deposit will be refunded.
4. Upon receipt of the Purchase Price, the Property will be conveyed to Purchaser by Successor Trustee’s Deed without any covenant or warranty (express or implied) in the form prescribed by W.Va. Code § 38-1-6. The Property will be conveyed subject to all easements, rights-of-way, exceptions, reservations, restrictions, covenants, conditions,

leases, liens or encumbrances affecting title to the Property, if any, and to any and all liens, encumbrances, assessments, or adverse claims of whatever nature, recorded and unrecorded, including any and all statutory liens for labor or materials that are superior to the lien of the Deed of Trust and including but not limited to environmental conditions, and all applicable federal, state and local laws, ordinances and regulations lawfully affecting the Property.

5. Purchaser is responsible for, and the Property is sold subject to, any environmental matter or condition, whether latent or observable, if any, that may exist at or affect or relate to the Property and to any governmental requirements affecting the same.
6. In the event a notice of filing of bankruptcy by Property owner(s), or other bankruptcy proceeding affecting the Property, is received by the Successor Trustee prior to closing of the sale, Purchaser acknowledges that the sale may be voided and subject to cancellation by Successor Trustee at Successor Trustee's sole discretion. Should this occur, Successor Trustee shall refund to Purchaser the portion of the Deposit then paid, after which the parties shall be relieved of all further liability to one another.
7. If a suit challenging the foreclosure sale of the Property is filed in a court of competent jurisdiction by any entity, whether at law or in equity, the Successor Trustee reserves the right to set aside the sale of the Property, cancel this Memorandum of Sale, and return to the Purchaser the portion of the Deposit then paid without incurring any further liability between the parties. In such event, Purchaser's remedies are limited to return of the then paid Deposit.
8. Successor Trustee, in her discretion, reserves the right to withdraw the Property from sale or extend the time for closing of the sale. If the Successor Trustee refuses or fails, for any reason, to execute and deliver to the Purchaser a deed conveying the Property to Purchaser, the Purchaser's sole remedy is limited to the refund of the Deposit.
9. Neither the Successor Trustee nor the Beneficiary will deliver possession of the Property to the Purchaser.
10. The Property will be conveyed to Purchaser "as is" without representations or warranties of any kind or character including, but not limited to, the condition, zoning, or use of the Property or the title to the Property, and subject to the rights of any occupant of the Property. Purchaser waives any cause of action against the Successor Trustee and Beneficiary with respect to the Property and any claims that the Property may not be in compliance with any federal, state or local law, regulation or ruling.
11. The Successor Trustee and Beneficiary disclaim, and the Purchaser waives, any implied warranty of any kind or nature with regard to the Property, the improvements thereon, and any of the personal property or fixtures located therein.
12. Purchaser assumes the risk of damage or loss to the Property from fire, casualty, act of God, or any other cause as of the date of this Memorandum of Sale. All liabilities of

ownership are assumed by and pass to the Purchaser as of the date and time of closing of the sale of the Property. All other liabilities of ownership of the Property, including obtaining possession of the Property, shall be the sole responsibility of Purchaser, and shall pass to the Purchaser immediately upon closing.

13. All accrued and unpaid *ad valorem* real property taxes and assessments against the Property through the date of closing of the sale shall be paid by the Purchaser at settlement. Purchaser is required to pay the transfer taxes imposed by West Virginia Code § 11-2-1 and all other settlement costs and costs incidental to transfer of the Property.
14. The parties' respective rights and obligations regarding the terms of sale and the conduct of the sale shall be governed by and interpreted according to the laws of the State of West Virginia.
15. This Memorandum of Sale constitutes the full and complete understanding between the Purchaser and the Successor Trustee and supersedes all previous writings, representations, warranties, advertisements, and other communications, whether oral or written, between the Purchaser and the Successor Trustee, the Beneficiary, or any of their respective officers, directors, employees, agents, auctioneers, members, or attorneys. This Memorandum of Sale may not be modified or amended in any manner other than by written instrument signed by both the Purchaser and Successor Trustee.
16. The terms and conditions of this Memorandum of Sale shall survive closing of the sale of the Property to the Purchaser, the conveyance of the Property to the Purchaser and the delivery, acceptance, and recording of the deed to the Property from the Successor Trustee to the Purchaser.
17. Any notices to either party hereunder must be in writing and hand delivered or mailed by United States certified mail, return receipt requested, by the sending party to the receiving party as set forth in this Memorandum of Sale.
18. This Memorandum of Sale restates and incorporates the terms set forth in the Successor Trustee's Notice of Sale and those terms imposed by the laws of the State of West Virginia. Accordingly, the language used in this Memorandum of Sale shall not be construed against any party because that party, or the attorney for that party, prepared the Memorandum of Sale.
19. This Memorandum of Sale may be executed in two or more counterparts.
20. Purchaser represents and warrants that he is not an employee, director, or officer of the Beneficiary, Farm Credit of the Virginias, ACA, or that an immediate family member of Purchaser (meaning spouse, parent, sibling, child, step child, parent-in-law, sibling-in-law, son-in-law or daughter-in-law) is not an employee, director, or officer of the Beneficiary. If Purchaser is a corporation, partnership, limited liability company, or other entity, Purchaser represents and warrants that none of its manager(s) or owner(s) are

related parties of the Beneficiary as described above, unless Purchaser is a public company that is traded on a nationally recognized exchange, in which case, only a controlling interest shall be considered for purposes of this representation.

IN WITNESS WHEREOF, the Purchaser and the Successor Trustee have duly executed this Memorandum of Sale as of the date and year first above written.

PURCHASER

Name: _____
Title: _____

SUCCESSOR TRUSTEE

Debra Lee Allen, Successor Trustee
Spilman Thomas & Battle, PLLC
48 Donley Street, Suite 800
Morgantown, West Virginia 26507
304-216-5835
dallen@spilmanlaw.com

PURCHASER'S INFORMATION:

Name: _____
Address: _____

Telephone: _____
Email: _____

I acknowledge receipt of \$30,000.00 as the Initial Deposit required by the terms of this Memorandum of Sale.

Debra Lee Allen, Successor Trustee

**EXHIBIT A
PROPERTY DESCRIPTION**

DESCRIPTION OF PROPERTY

Seven Tracts of land situate on the West Fork of the Little Kanawha River on State Route 16 in Lee District of Calhoun County, and the State of West Virginia, more particularly bounded and described as follows, to wit:

FIRST TRACT: A boundary of 169 acres of land, more or less, containing 98 acres and 100 acres, described here as Parcel No. 1 and Parcel No. 2, after deducting therefrom four parcels of land containing 9-1/8 acres, 1 acre, 10 acres and 10 acres, respectively, to-wit:

Parcel No. 1: BEGINNING at pointers in a line of John Brannon and corner to a 100-acre tract of land formerly owned by Rachel Barr; thence with part of the Brannon line, N 29 E, 70 poles to a hickory, corner to Brannon; thence N 32 W, 24 poles to a hickory; thence N 10 E, 12 poles to a black oak; N 33 E, 21 poles to a white oak; N 10-1/2 W, 38 poles to a hickory; N 44 E, 28 poles to a chestnut oak; N 20 W, 69-1/2 poles to a hickory; N 55 W, 42 poles to an ironwood; thence S 44 W, 14 poles to a white oak; S 15 W, 80 poles to a white oak; S 54 W, 28 poles to a red oak; S 13 W, 41 poles to pointers on Andrew Mace line; thence with the reverse of part of the Mace line, S 53 E, 33 poles to a white oak, corner to Mace's line and to the 100-acre tract described as Parcel No. 2 below; thence S 30 E, 120 poles to the place of beginning, containing Ninety-Eight (98) acres, more or less.

Parcel No. 2: BEGINNING at a lynn, a corner to A. Mace, and running thence N 3 W, crossing the West Fork, 60 poles to pointers; N 85 E, 4 poles to a beech, a corner to A. Mace; N 44 E, 92 poles to a white oak, corner to A. Mace; thence, leaving the Mace line, S 30 E, 120 poles to a stake in John Brannon's line; thence S 29 W, 59 poles with John Brannon's line to the West Fork; thence with the meanderings thereof to the place of beginning, containing One Hundred (100) acres, more or less.

There are excepted and reserved from First Tract, four tracts of land conveyed to Russell T. Keith and Edna R. Keith, described as follows:

FIRST EXCEPTION TO FIRST TRACT: A tract of 9-1/8 acres, more or less, conveyed by deed dated April 5, 1930 to T.R. Chenoweth, which deed is recorded in the Calhoun County Clerk's Office in Deed Book 73 at page 320, described as BEGINNING at a hickory stump four links from an ash pointer, and running thence S 54 W, 15 poles and 23 links to a C.O. bush; S 46 W, 14 poles and 2 links to a stake; S 25 W, 13 poles and 20 links to a dogwood; S 60-1/2 W, 17 poles and 5 links to a stake; S 34 W, 20 poles and 23 links to a black oak; S 43-3/4 W, 22 poles and 18 links to a stone; S 15 E, 24-1/2 poles to a stone; S 2 E, 6 poles to a stake in West Fork; and thence N 33 E, 125 poles to the place of beginning.

SECOND EXCEPTION TO FIRST TRACT: A tract of one acre, more or less, conveyed as First Tract by deed dated August 5, 1954 to Herbert K. Frame and Marie I. Frame, which deed is recorded in the Calhoun County Clerk's Office in Deed Book 93 at page 42, described as BEGINNING at a fence post in the Harley Mace line, thence with State Route No. 16, S 72° 30'

E, 175 feet to a stake; thence N 9° 35' E, 363 feet to a hickory; thence N 60° W, 167 feet to a hickory in the Mace line; thence with the Mace line, S 61° 30' W, 87 feet to a white oak in the Mace line; thence S 2° W, 350 feet with the Mace line to the place of beginning.

THIRD EXCEPTION TO FIRST TRACT: A tract of 10 acres, more or less, conveyed by deed dated May 15, 1956 to Gay Carpenter and Myrtle Carpenter, which deed is recorded in the Calhoun County Clerk's Office in Deed Book 94 at page 304, described as BEGINNING at a stake at the edge of Route No 16, and running thence N 42° 15' E, 355 feet to a fence post; thence N 70° E, 204 feet to a fence post; thence N 40° 45' E, 220 feet to a stake; thence N 58° 15' E. 340 feet to a fence near a standing stone; thence S 14° 30' E, 400 feet to a stake alongside of Route No. 16; thence S 54° W, 300 feet along the road to a stake; thence S 43° 30' W, 310 feet along the road to a stake; thence S 77° W, 400 feet to a stake at the edge of the road; thence N 31° W, 220 feet to a stake, the place of beginning.

FOURTH EXCEPTION TO FIRST TRACT: Another tract of 10 acres, more or less, conveyed by deed dated July 15, 1958 to Gay Carpenter and Myrtle Carpenter, which deed is recorded in the Calhoun County Clerk's Office in Deed Book 98 at page 396, described as BEGINNING at a stake along State Route No. 16, thence crossing the highway, N 42-³/₄° E, 220 feet to a stake; thence N 58-¹/₄° E, 340 feet to a stone, corner to May Chenoweth Hill line; thence N 45° E, 207 feet with the Hill line to a fence post, corner of Russell T. Keith; thence leaving Hill line and with the Keith line, N 11-¹/₂° E, 185 feet to a black oak; thence N 69° W, 470 feet to a stone at edge of Cogar Run; thence S 32° W, 74 feet to an iron pin near a white oak tree; thence S 53-¹/₂° W, 130 feet to a beech; thence S 44-¹/₂° W, 140 feet to a stump; thence S 42-¹/₂° W, 45 feet to a fence post; thence S 9-¹/₂° E, 132 feet to an iron pin; thence S 51-¹/₂° W, 185 feet to an iron pin; thence S 30° W, 102 feet to an iron pin at the edge of State Route No. 16; thence crossing the highway diagonally, S 15-¹/₂° W, 580 feet to the place of beginning.

Therefore, there is conveyed as First Tract a residue of 169 acres, more or less.

This tract is taxed as 152.9 acres, Tax Map 29, Parcel 4.

SECOND TRACT: BEGINNING at a beech, corner to lands of Andrew Mace, and running thence S 60 W, 22 poles to a buckeye on the bank of the West Fork; thence down the West Fork, N 6 W, 6 poles to a stake; N 55 W, 38 poles to a stake; N 75 W, 18 poles to a stake; N 37 W, 9 poles to a stake; N 18 W, 11-¹/₂ poles to a stake opposite a large rock on the west side of the West Fork; thence leaving the West Fork, N 61-¹/₂ E, 104 poles to pointers; N 26 E, 118 poles to pointers on Andrew Mace's line; and thence with a line of Mace, N 81 W, 63 poles to the place of beginning, containing Fifty (50) acres, more or less.

This tract is either mapped as 50 acres Map 28, Parcel 9 or mapped as 47.35 acres Map 23, Parcel 51. If the former the tax bill says it is 45.94 acres, but if the later the tax bill says it is 46.64 acres.

THIRD TRACT: BEGINNING at a black oak on the ridge, a corner to Hoskins, and running thence S 78-¹/₂ E, 14 poles to pointers; N 57-¹/₂ E, 24 poles to a chestnut; N 73 E, 12

poles to a hickory; N 35 E, 11 poles to a black oak; N 56 E, 11-½ poles to a stone; S 48-½ E, 5 poles to three dogwoods; N 61 E, 61-7/10 poles to a red oak; N 84 E, 26 poles to a stone, corner to S.E. Keith; thence with same, S 15 W, 37 poles to a white oak; S 54 W, 28 poles to a red oak; S 13 W, 41 poles to pointers in Mace's line; N 50 W, 28 poles, with Mace, to a black oak; S 65 W, 140 poles on a rough hill to a pine, corner to Starcher; N 23 W, crossing Slaughter Run, 105 poles to pointers; S 65 E, 13 poles to a chestnut oak; S 73 E, 25 poles to a white oak; N 69-½ E, 18 poles to a red oak; and thence N 84 E, 9 poles to the place of beginning, containing Eight-One and one-half (81-1/2) acres, more or less.

This tract is taxed as 81 acres, Tax Map 29, Parcel 1.

FOURTH TRACT: BEGINNING at a black oak on the ridge, corner to Hoskins and S.E. Keith; thence, with five of Hoskins' Lines, N 51 W, 11 poles to a white oak; N 9 W, 34 poles to a chestnut; N 8 E, 10-¼ poles to a white oak; N 62-½ W, 10-½ poles to a dogwood; N 46 W, 13 poles to a black oak; thence with three original M. Lowe lines, S 75-¼ W, 73 poles to a stone; N 11 W, 19 poles to a poplar (now down); West 15 poles to the center of the West Fork; thence up the West Fork, with its meanders S 37 W, 58 poles; S 22 W, 12 poles; S 12 W, 18 poles; S 10 E, 30 poles to a point in the center of the creek, opposite S.E. Keith's corner; thence with his line, N 61-½ E, 106 poles to pointers near the top of the hill; thence with two of S.E. Keith's lines to the place of beginning, estimated to contain Sixty-One (61) acres, more or less.

There are excepted and reserved from Fourth Tract, two tracts of land, bounded and described as follows:

FIRST EXCEPTION TO FOURTH TRACT: A tract of Ten (10) acres, more or less, conveyed by deed dated May 20, 1954 from Russell T. Keith and Edna R. Keith to J.W. Matheney and Bernice Matheney, which deed is recorded in the Office of the Clerk of the County Commission of Calhoun County, West Virginia in Deed Book 92 at page 424, described as BEGINNING at an iron pin near the east bank of the creek and the mouth of a small run, and running thence in a southeasterly direction approximately 102 feet to an iron pin at the lower edge of State Route No. 16; thence across the road approximately 44 feet to an iron pin near a drain abutment that passes under the road; thence with a small run and garden in a southeasterly direction approximately 128 feet to an iron pin at the upper edge of the garden; thence in a southeasterly direction approximately 77 feet to a poplar marked with three notches; thence in a southeasterly direction approximately 47 feet to an iron pin at the lower edge of a private road leading up the hill, thence in a northeasterly direction following the road and about 8 feet from the lower edge thereof approximately 150 feet to a marked stone and iron pin; thence in a northeasterly direction approximately 100 feet to an iron pin; thence approximately 100 feet to an iron pin about 15 feet north of an outhouse used for salting cattle; thence in an easterly direction approximately 200 feet to an iron pin and small stone at the lower edge of the road; thence in a northeasterly direction approximately 100 feet to an iron pin; thence in a northeasterly direction approximately 150 feet to a sugar tree, marked, near a small run; thence across the run approximately 80 feet to a marked poplar tree; thence in a southeasterly direction approximately 68 feet to a marked hickory; thence in a northeasterly direction approximately 138 feet to an iron pin at the lower edge of the road and where the road turns in a northerly direction; thence

approximately 200 feet to the Clyde Cottrell line, formerly known as the Lowe and later as the Poling tract of land; thence with the Cottrell line in a westerly direction to U.S. Route No. 33; thence across the highway with the line of Cottrell or Hays to the West Fork creek; and thence with the creek to the place of beginning.

SECOND EXCEPTION TO FOURTH TRACT: A tract of two and sixty-five one hundredths (2-65/100) acres, more or less, excepted and reserved for the benefit of Russell T. Keith, his heirs or assigns, in a deed dated June 10, 1968 from Russell T. Keith and Edna R. Keith to Earl F. Vineyard, which deed is recorded in Deed Book 112 at page 544, which tract is described as BEGINNING at the head wall of a culvert at the edge of State Route No. 16, and running thence S 81° 30' E, 130 feet to a fence post; thence S 29° E, 65 feet to a stone; thence S 52° 40' E, 244 feet to a fence post; thence S 80° W, 155 feet to a stake; thence S 58° 45' W, 300, feet to a stone; thence S 84° 05' W, 180 feet to a stake at the edge of State Route No. 16; and thence N 29° E, 480 feet to the place of beginning.

Therefore, there is conveyed as Fourth Tract a residue of 48-35/100 acres, more or less.

This tract is either mapped as 50 acres Map 28, Parcel 9 or mapped as 47.35 acres Map 23, Parcel 51. If the former the tax bill says it is 45.94 acres, but if the later the tax bill says it is 46.64 acres.

FIFTH TRACT: BEGINNING at a stake and black oak, corner to lands of Russell T. Keith, and running thence N 45° W, 438 feet to a white oak, corner to Keith; thence with another line of Keith, S 72° W, 1125 feet to a stake in the Keith line; thence S 76° 30' E, 280 feet to a black oak; thence S 73° 10' E, 545 feet to a post; thence N 80° E, 37 feet to a poplar; N 72° 50' E, 251 feet to a pine; thence N 56° 40' E, 132 feet to a locust; and thence N 47° E, 144 feet to the place of beginning, containing Nine (9) acres, more or less.

This tract is taxed as 9 acres, but is not mapped on the tax maps.

SIXTH TRACT : BEGINNING at a marked poplar tree near a small run, and thence in a southeasterly direction around 68 feet to a marked to a marked hickory; thence in a northeasterly direction around 138 feet to an iron pin at the lower edge of a private road and where the road turns in a northerly direction; thence around 200 feet to the William Jett line, formerly owned by Clyde Cottrell (Lowe and Poling tract of land); thence with the William Jett line in a westerly direction 9 feet to an iron pipe; thence in a southwesterly direction 333 feet to a marked poplar tree, the place of beginning, containing One-Half (1/2) acre, more or less. This ½-acre tract is a part of the 10 acres which had been conveyed out of an original 61-acre tract (Fourth Tract in this deed) by deed dated May 20, 1954 from Russell T. Keith and Edna R. Keith to J.W. Matheney and Bernice Matheney, which deed is recorded in the Calhoun County Clerk's Office in Deed Book 92 at page 424.

This tract is taxed as .5 acre, Tax Map 24, Parcel 74.2.

SEVENTH TRACT: BEGINNING at an iron pin on old division line between Wilbur Price and Russell T. Keith, approximately 27 rods from an iron pin at the corner of what is known as the Hoskins land, and running thence from the old division line in a northeasterly direction approximately 50 feet to an iron pin; thence in an easterly direction approximately 28 rods to an iron pin; thence in a southeasterly direction approximately 50 feet to the old division line; thence West along the old division line to the place of beginning, the width of the strip of land hereby granted being 30 feet.

There are excepted and reserved from the above seven tracts of land, two tracts of land, bounded and described as follows:

FIRST EXCEPTION: BEGINNING at a 5/8-inch iron rod set on east side of State Route 16, being S-14-49-W, 776.98 feet from the east end of a culvert crossing State Route 16 at a corner to Captain Ford Rogers, thence leaving State Route 16 and crossing through the parent tract; S-51-E, 152.39 feet to a 5/8-inch iron rod set, thence; N-54-13-E, 107.71 feet to a 5/8-inch iron rod set, thence; S-41-17 E, 159.15 feet to a 1/2-inch iron rod found, thence; S-42-03-E, 57.48 feet to an electric pole, thence; S-21-44-E, 118.26 feet to a 1/2-inch iron rod found, thence; S-48-10-W, 58.98 feet to a 1/2-inch iron rod found, thence; S-70-41-W, 124.39 feet to a 1/2-inch iron rod found, thence; S-66-38-W, 119.21 feet to a 1/2-inch iron rod found, being N-26-39-W, 152.37 feet from a point at Southeast corner of concrete head, a corner to David Vineyard, Deed Book 224 at page 65, thence; S-66-38-W, 31.14 feet to a point at eastern right-of-way of State Route 16, thence with eastern right-of-way of State Route 16; N-21-05-W, 72.92 feet to a point, thence; N-16-W, 100.05 feet to a point, thence; N-11-48-W, 103.65 feet to a point, thence; N-7-23 W, 104.44 feet to a point, thence; N-4-01-W, 76.09 feet to the place of beginning containing 2.35 acres, more or less.

First Exception is the same property conveyed by deed dated January 23, 2012, from Marlene Vineyard to Deborah J. Cox, the remainder interest after reservation of the grantor's life estate interest, which deed will be recorded in the Calhoun County Clerk's Office. First Exception includes 0.71 acres from the property described as Fourth Tract above and 1.64 acres from the property described as Second Tract above.

SECOND EXCEPTION: BEGINNING at a point on the northern edge of State Route 16, said point being N-64-51-W, 146.88 feet from a fence line, thence with the road; N-64-51-W, 118.25 feet to a point, thence; N-60-52-W, 71.85 feet to a point, thence; N-56-57-W, 61.61 feet to a point, thence; N-53-38-W, 64.93 feet to a point, thence; N-51-15-W, 114.13 feet to a point, thence; N-49-10-W, 120.34 feet to a point, thence; N-43-34-W, 64.15 feet to a point, thence leaving the road and with new division lines through the parent tract; N-64-44-E, passing the eastern corner of a concrete headwall at 15.09 feet, said corner being S-26-34-E, 152.37 feet from an iron rod found, in all a total distance of 308.29 feet to a 5/8-inch iron rod set, thence; S-32-55-E, 267.77 feet to a 36-inch White Oak, thence; S-15-47-E, passing a 5/8-inch iron rod set at 258.19 feet, in all a total distance of 271.02 feet to the place of beginning, containing 2.42 acres, more or less.

Second Exception is the same property conveyed by deed dated November 8, 2004 from Marlene Vineyard to David Vineyard, which deed is recorded in the office of the Clerk of the County Commission of Calhoun County, West Virginia in Deed Book 224 at page 65.

Said remaining tract is believed to be a 30 foot strip. It is taxed as a "Lot". It is not mapped on the tax maps.

EIGHTH TRACT: Beginning at a point on the northern edge of State Route 16, said point being N-64-51-W, 146.88 feet from a fence line, thence with the road; N-64-51-W, 118.25 feet to a point, thence; N-60-52-W, 71.85 feet to a point, thence; N-56-57-W, 61.61 feet to a point, thence; N-53-38-W, 64.93 feet to a point, thence; N-51-15-W, 114.13 feet to a point, thence; N-49-10-W, 120.34 feet to a point, thence; N-43-34-W, 64.15 feet to a point, thence leaving the road and with new division lines through the parent tract, N-64-44-E, passing the eastern corner of a concrete headwall at 15.09 feet, said corner being S-26-34-E, 152.37 feet from an iron rod found, in all a total distance of 308.29 feet to a 5/8-inch iron rod set, thence; S-32-55-E, 267.77 feet to a 36-inch White Oak, thence; S-15-47-E, passing a 5/8-inch iron rod set at 258.19 feet, in all a total distance of 271.02 feet to the place of beginning, containing 2.42 acres, more or less, as shown on a plat recorded in Deed Book 224, at page 67.

This deed is made and accepted subject to a 30-foot wide easement for ingress and egress from West Virginia Route 16, through the 50-acre tract described as Second Tract above, to a 56-acre tract conveyed as First Tract by deed dated April 25, 1979 from Marlene Vineyard to Jack Foraker, recorded in the Calhoun County Clerk's Office in Deed Book 134 at page 634, for the benefit of the owner of that 56 acre tract, and all other exceptions, reservations and out-conveyances of oil, gas, other minerals and easements which appear in the chain of title. This is a conveyance of the surface interest only.

The grantor excepts and reserves the first priority right to use free gas from any well or pipeline on the property conveyed here, for the benefit of the property described as First Exception above, conveyed by deed dated January 18, 2012 to Deborah J. Cox, as well as an easement for a pipeline and access to the free gas source. The grantor grants, conveys and assigns to the grantee the second priority right to use free gas pursuant to any oil and gas lease or free gas agreement which may now or later affect this property.

There is included in this conveyance the benefit of an open right-of-way, one rod wide, described in a deed dated January 20, 1937 from F.H. Marks and L.D. Marks to Russell Keith, recorded in the Calhoun County Clerk's Office in Deed Book 77 at page 467, and again in the above-described deeds to Marlene Vineyard, recorded in the Calhoun County Clerk's Office in Deed Book 112 at page 544 and Deed Book 113 at page 694, to which deeds reference is made for a more complete description thereof, and any other easements in the chain of title.

The grant of said Right of Way is without warranty.

This tract is taxed as 2.42 acres, Tax Map 28, parcel 9.1.

Tracts 1-7: BEING the same real estate conveyed unto Kenneth David Vineyard, single by Deed dated January 23, 2012 and of record in the Office of the Clerk of the County Commission of Calhoun County, West Virginia in Deed Book 240, at page 408.

Tract 8: BEING the same real estate conveyed unto David Vineyard, single by Deed dated November 8, 2004 and of record in the aforesaid Clerk's Office in Deed Book 224, at page 65.

This conveyance is made subject to all rights of way, reservations, restrictive and protective covenants utility easements, and oil, gas and mineral leases of record in the chain of title in the aforesaid Clerk's Office.

EXHIBIT B
NOTICE OF SUCCESSOR TRUSTEE'S SALE

**NOTICE OF SUCCESSOR TRUSTEE'S SALE
OF APPROXIMATELY 329 ACRES IN CALHOUN COUNTY, WEST VIRGINIA
Located at 13621 S. Calhoun Hwy, Arnoldsburg, WV 25234**

NOTICE IS HEREBY GIVEN THAT:

By virtue of that certain *Credit Line Deed of Trust* dated September 26, 2016, made, executed, and granted by KENNETH DAVID VINEYARD to DAVID G. PALMER and JOE W. CASTO, as Trustees for the benefit of FARM CREDIT OF THE VIRGINIAS, ACA, as Agent/Nominee (the "Beneficiary"), and recorded in the Office of the Clerk of the County Commission of Calhoun County, West Virginia, in Trust Deed Book 172, at Page 532, default in the performance of the obligations thereby secured having occurred, and pursuant to the terms thereof and to the written request of the holder of the indebtedness thereby secured, and further pursuant to the authority granted to the undersigned by that certain *Appointment of Successor Trustees* dated January 12, 2021, and recorded in the aforesaid Clerk's Office in Trust Deed Book 182, at page 232, the undersigned Successor Trustee will sell the real estate described on the attached **EXHIBIT A** (herein referred to as the "Property") at public auction to the highest bidder on:

**Saturday, March 19, 2022, at 10:00 a.m.
on the front steps of the Calhoun County Courthouse
363 Main Street, Grantsville, Calhoun County, West Virginia 26147.**

The Property is also described in a survey dated July 28, 2021, by Matthew J. Hilton, Jr. PS No. 2294, SLS Land & Energy Development, which Plat of Survey is recorded in the aforesaid Clerk's Office at Book 292, Page 523. The description and Plat of Survey may also be obtained from the Successor Trustee and will be referenced in the final Trustee's Deed to be provided upon completion of the sale.

NOTE: The information contained herein has been obtained from sources deemed reliable and is believed to be accurate, but is offered for informational purposes only. No express or implied warranty is made or may be inferred from any such representation. Dimensions, square footage and acreage contained herein are more or less. Prospective purchasers are encouraged to perform their own due diligence, in advance of the auction, regarding the Property and the improvements thereon and permitted uses of the Property.

The Property is being sold subject to any and all easements, rights-of-way, exceptions, reservations, restrictions, covenants, conditions, leases, liens or encumbrances affecting title to the Property and further to any state of facts that would be disclosed by or apparent upon an inspection or an accurate survey of the Property described above; provided, however, that any such restriction, covenant or condition indicating a preference, limitation or discrimination based on race, color, religion, sex, marital status, ancestry, disability, handicap, familial status or

national origin is hereby deleted to the extent such restriction, covenant or condition violates 42 USC § 3604(c).

The sale is further made subject to accrued and unpaid *ad valorem* real property taxes upon the Property. The Successor Trustee makes no representations or warranties as to the validity or priority of such liens, taxes, encumbrances and other matters, if any. The Property will be sold subject to any and all assessments and taxes against said Property, and all prior liens and encumbrances of any nature whatsoever, including the Internal Revenue Service's right of redemption, if any exists.

TERMS OF SALE:

A prospective purchaser must have in-hand, at the time and place of the foreclosure auction sale, **\$30,000.00 in certified funds**, which will serve as the "Initial Deposit" if the prospective purchaser secures the winning bid. The Initial Deposit will then be paid to the Successor Trustee at the close of the foreclosure auction sale. **A Buyer's Premium of 10% of the prevailing bid price at auction shall be added to the high bid price, which together shall be the "Contract Sales Price."** The Initial Deposit must be increased to equal ten percent (10%) of the Contract Sales Price no later than 12:00 p.m. (Noon), March 21, 2022, to be paid to the Successor Trustee by wired funds (the "Additional Deposit"). **The Initial Deposit and Additional Deposit are NON-REFUNDABLE.** The balance of the Contract Sales Price and all other sums due by purchaser shall be payable by wired funds at Settlement to be held on or before April 19, 2022.

The purchaser shall be responsible for payment of the transfer taxes imposed by West Virginia Code § 11-2-1 and all other settlement costs and costs incidental to transfer of the Property. Taxes and all other public charges and assessments outstanding against the Property shall be paid by purchaser at Settlement. Time shall be of the essence with respect to the payment of the Additional Deposit and all sums due by the purchaser at Settlement.

The Successor Trustee reserves: (1) the right to modify or waive the requirements for bidder's deposits and terms of sale and/or settlement; (2) the right to withdraw the Property from the sale (3) the right to cancel or postpone the sale; (4) the right to reject any and all bids; and (5) the right to sell the Property either as a whole or in parcels in the Successor Trustee's sole discretion. The beneficiary of the aforesaid Credit Line Deed of Trust and the holder of the note thereby secured reserves the right to submit a bid for the real estate at the sale, which bid may in the form of a credit bid. The beneficiary shall not be required to post a deposit.

Upon conclusion of the sale, the purchaser will be required to execute a Memorandum of Sale reflecting the sale of the Property, the Contract Sales Price and incorporating the terms of this Notice. If the purchaser fails to deliver the Additional Deposit, the remainder of the Contract Sales Price, and all other sums due at Settlement within the prescribed time, at the Successor Trustee's sole discretion, she may declare the deposits forfeited, and in addition to any other legal or equitable remedies available to her, may (a) file suit to enforce specific performance, (b) convey the Property to the next highest bidder if such bidder will honor his, her or its bid, or (c) proceed to resell the Property pursuant to the aforesaid *Credit Line Deed of Trust*. In the event of

such a default the defaulting purchaser(s) shall be liable to the Beneficiary for the payment of any deficiency in the Contract Sales Price resulting therefrom, all costs and expenses of any subsequent sale, reasonable attorneys' fees, all other charges due, and incidental damages. In the event a resale of the Property results in a sale in excess of the amount originally bid by the defaulting purchaser, the defaulting purchaser shall not be entitled to return of the deposits, and waives any and all claims, rights and interest to any such excess amount and shall not be entitled to any distribution whatsoever from the resale proceeds. The parties' respective rights and obligations regarding the terms of sale and the conduct of the sale shall be governed by and interpreted according to the laws of the State of West Virginia.

If the Successor Trustee fails, refuses or for any reason is unable to convey title to the Property or suit is filed challenging the sale, the Successor Trustee reserves the right to set aside the sale and void the Memorandum of Sale. In such event, the purchaser's sole remedy at law and in equity is limited to a refund of the deposit actually paid by the purchaser and the sale shall be null and void and of no further effect.

The Property will be sold in "AS IS" condition. The Successor Trustee makes no representations or warranties of any kind or character including, but not limited to, the condition, zoning, or use of the Property or the title to the Property to be conveyed. The purchaser is responsible for, and the Property is sold subject to, any environmental matter or condition, whether latent or observable, if any, that may exist at or affect or relate to the Property and to any governmental requirements affecting the same. The Property will be sold subject to any building or housing violations, easements, agreements, restrictions, terms, rights of way, filed and unfiled mechanics' and materialmen's liens, covenants, conditions, rights of redemption, liens and all other encumbrances having priority over the secured party's deed of trust, if any, lawfully affecting the Property, whether or not of record, including but not limited to environmental conditions (including without limitation possible wetlands, riparian rights, critical or protected areas, and the presence of protected or endangered species) and all applicable federal, state and local laws, ordinances and regulations lawfully affecting the Property.

The Successor Trustee will deliver a trustee's deed to the purchaser without any covenant or warranty (express or implied) in the form prescribed by W.Va. Code § 38-1-6 upon receipt of the full Contract Sales Price in good and available funds.

The purchaser at the foreclosure auction sale shall assume the risk of loss of the Property immediately after the foreclosure auction sale takes place. It shall be the purchaser's responsibility to obtain possession of the Property following execution and delivery of the deed from the Successor Trustee conveying the Property to the purchaser, and prospective purchasers are hereby advised that the rights of any existing tenants or persons occupying the subject real estate may be covered by the provisions of West Virginia Code § 38-1-16.

The sale does not include the sale of any personal property in or on the Property. The Successor Trustee shall be under no duty to cause any items of personal property remaining at the Property following the sale to be removed.

The Successor Trustee reserves the right to adjourn the sale for a time, or from time to time, without further notice, by announcement made at the time and place of the sale described above. Announcements made on the day of sale take precedence over these Terms of Sale.

Employees, directors and officers of Farm Credit of the Virginias, ACA, and their immediate family and companies in which they have an interest are not eligible under federal regulations to purchase this Property at foreclosure.

Given under my hand this 8th day of February, 2022

/s/ Debra Lee Allen

DEBRA LEE ALLEN, Successor Trustee
Spilman Thomas & Battle, PLLC
Remote Location:
528 E. Liberty St.
Charles Town, West Virginia 25414
304.291.7951
dallen@spilmanlaw.com

For additional information, including the Public Property Inspection dates, please contact:

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