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When recorded return to:  
Virginia Eastern Shore Land Trust, Inc.  
P.O. Box 1114  
Exmore, VA 23350

TAX MAP NO(s) \_\_\_\_\_

**Exempted from recordation tax under the Virginia Code Section 58.1-811 (D)**

**THIS DEED OF GIFT OF EASEMENT** (this “Easement”), made this \_\_\_ day of \_\_\_\_\_, 20\_\_ between \_\_\_\_\_, having an address of \_\_\_\_\_ (“Grantor), and the VIRGINIA EASTERN SHORE LAND TRUST, INC. a Virginia non-stock corporation, the address of which is P.O. Box 1114, Exmore, VA 23350, (“Grantee”); and \_\_\_\_\_ (the “lender”); and \_\_\_\_\_, and \_\_\_\_\_, Trustees (to be indexed as Grantors).

Grantor and Grantee may sometimes be collectively referred to in this Easement as the “Parties.”

**DEFINITIONS:**

For purposes of this Easement, the following terms shall have the meaning given to them below. Additional definitions are sometimes expressly provided in the body of this Easement. Where a term used in this Easement is not expressly defined herein, it shall be defined according to the land use regulations of \_\_\_\_\_ County, or if there are no such definitions, the according to the law governing the interpretation of contracts as applicable in the Commonwealth of Virginia.

1. The term “**accessory residential structures**” shall mean structures and improvements commonly and appropriately incidental and accessory to a dwelling unit permitted by the terms of this Easement and sized appropriately to serve as an amenity to such dwelling unit, including garages, carports, parking areas, swimming pools, tennis courts, gazebos, storage sheds and the like.
2. The term “**agriculture**” shall mean use of the Property for (a) the tilling of soil, (b) growing crops or plant growth of any kind in the open, including gardening, (c) pasturing livestock including operation of a horse farm, (d) horticulture, (e) dairies (provided that all milk processed in the dairy is produced on the Property), (f) floriculture, (g) keeping chickens and other fowl and/or livestock, (h) apiculture, (i) viticulture (but not viniculture, see definitions below), (j) open-air nurseries, and/ or (k) silviculture.

“Agriculture” expressly excludes (unless otherwise expressly permitted by another provision of this Easement) (a) timbering; (b) the maintenance and operation of commercial greenhouses or commercial hydroponic farms; (c) the operation or maintenance of feedlot(s); commercial poultry or swine operations; (d) manufacture, processing or storage of mulch made from off-site material or for commercial purposes; (e) animal race tracks; (f) commercial slaughter of animals; (g) commercial kennel(s); (h) viniculture, and/ or (i) any other activities that are expressly prohibited by this Easement.

3. The term “**agricultural production**” shall mean processing and sale of agricultural products grown or raised on the Property, provided that the same are processed or sold in structures permitted on the Property by other provisions of this Easement.

4. The term “**agricultural structure**” shall mean a structure used primarily to support agricultural uses permitted by this Easement, including barns, hay sheds, animal shelters, fencing, water tanks, animal watering and feeding facilities, equipment and storage sheds.

5. The term “**building**” shall mean an enclosed, roofed, structure used or intended for supporting or sheltering any use or activity.

6. The term “**commercial activity**” shall mean any activity making, or intending to make, a profit.

7. The terms “**commercial poultry operation**” and “**commercial swine operation**” shall mean keeping for commercial purposes within structures or other confined spaces, fowl and/ or swine in numbers requiring the removal of animal waste from the Property, or the treatment of animal waste on the Property. Keeping of fowl and/ or swine in small numbers as part of a general farming operation for personal consumption or for incidental sales from farm stands located on the Property shall not be deemed a commercial poultry or swine operation.

8. The terms “**current**” or “**existing**” shall mean current or existing as of the Effective Date.

9. The terms “**day**” or “**days**” shall mean business days, not calendar days.

10. The term “**dwelling unit**” shall mean a building, collection of buildings, or one (1) or more rooms in a building, arranged, designed, used or intended for use as a complete, independent living facility for one (1) family, and which includes permanent provisions for living, sleeping, eating, cooking and sanitation; but excluding a mobile home, trailer, or modular home unless otherwise expressly reserved on the Property by the terms of this Easement.

11. The term “**Effective Date**” shall mean the date and time that this Easement was first recorded in the Office of the Clerk of the Circuit Court of \_\_\_\_\_ County, Virginia.

12. The term “**feedlot**” shall mean an enclosed area where livestock is fed and fattened for commercial slaughter or sale, as opposed to the grazing of livestock on growing vegetation in open fields or pastures, but excluding winter feeding using hay.

13. The term “**Forest Management Plan**” shall mean a plan developed by a professional forester, and approved by Grantee and Grantor, based upon applicable Virginia Department of Forestry guidelines, which shall incorporate provisions for the protection of migratory bird habitat, and any species, or habitat therefore, that are “listed endangered,” “listed threatened,” “proposed endangered,” “proposed threatened,” “special concern,” or candidate for any such listing or characterization, identified at the time of such proposed forest management or timber harvest by the Virginia Department of Conservation and Recreation or the Virginia Department of Game and Inland Fisheries.
14. The term “**Grantee**” shall mean the Virginia Eastern Shore Land Trust, Inc., and its successors and/or assigns in title to this Easement.
15. The term “**Grantor**” shall mean \_\_\_\_\_ and its successors and assigns in title to the Property or any portion thereof or interest therein.
16. The term “**ground area**” shall mean the area occupied by a building or other structure, measured from the outside of the walls of any building, or the outside edges of the foundation of any other structure or, if there is no foundation or four (4) walls, then measured from the outside edges of the roof of a structure. Fencing, gates and gateposts, mailboxes, livestock feeding and watering facilities, and utilities shall not be considered to have a ground area.
17. The term “**home occupancy use**” shall mean a business, profession, occupation or trade conducted for gain or support within a permitted dwelling unit, which use is accessory and subordinate to the use of the dwelling unit for residential purposes and which use does not change the residential character of such dwelling unit and its immediate surroundings.
18. The term “**improvements**” shall mean man-made additions to the Property and/ or man-made changes in topography, excluding structures, roads and utilities, as defined herein, but including berms, ditches, ponds, fountains, pools (including swimming pools), tennis courts, fencing, pipes, pipelines, culverts, mailboxes, gates, gate posts, signs, decks, riding rings, hunting stands and blinds, and patios. Changes in topography resulting from normal Agricultural activities, such as plowing, mowing, planting hay or crops, and trees and other vegetation, shall not be deemed “improvements.”
19. The term “**Indemnified Parties**” shall, with respect to Grantee, mean Grantee’s officers, employees and Board members, and their heirs, successors and assigns. Said term with respect to Grantors shall mean Grantors’ heirs, successors and assigns.
20. The term “**industrial activity**” shall mean the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles; *excluding* Agricultural Production (defined above).
21. The term “**new**” shall mean occurring after the Effective Date.

22. The term “**overgrazing**” shall mean grazing resulting in denuding the land of vegetation, or grazing resulting in undesirable changes in plant communities that lead to decreased productivity, and decreased pasturage values.
23. The terms “**reserved**” and “**permitted**” shall mean a use of the Property that is expressly reserved by Grantor as a right under the terms of this Easement, or that is otherwise expressly permitted by such terms.
24. The term “**silviculture**” shall mean the growing and cultivation of trees, but not including timbering.
25. The term “**structure**” shall mean a building or other object constructed from several parts of which one may be a foundation or footing, and shall include a sign, sculpture or statue that may consist of a single part without a foundation or footing.
26. The term “**timbering**” shall mean the harvesting of trees for processing and/or sale.
27. The term “**viniculture**” shall mean the process or business of making and selling wine.
28. The term “**viticulture**” shall mean planting, maintaining, cultivating, and harvesting grapes.

**RECITALS:**

- A. Grantor is the owner in fee simple of real property situated in \_\_\_\_\_ County, Virginia, containing in the aggregate \_\_\_\_\_ acres, more or less, a legal description of which is contained in Exhibit A (the “Property”), and desires to give and convey to Grantee a perpetual conservation and open-space easement over the Property as herein set forth.
- B. Grantee meets the statutory requirements of Virginia Code § 10.1-1009 for a holder of a perpetual easement under the Virginia Conservation Easement Act (Virginia Code sections 10.1- 1001, *et seq*); Grantee’s mission is “to conserve rural lands to preserve the farms, forests, wetlands, waters, and heritage for the benefit of current and future generations”; and Grantee is a “qualified organization” as defined in Internal Revenue Code (“IRC”) § 170(h)(3), that is: (i) a publicly supported public charity, tax-exempt nonprofit organization exempt from taxation under IRC § 501(c)(3), (ii) organized and operated primarily for the purposes of protecting natural resources and the natural values of real property, and (iii) authorized to acquire and hold conservation easements under the Virginia Conservation Easement Act.

Grantee is willing to accept a perpetual conservation and open space easement on and over the Property as set forth herein, has had a principal office in Virginia for more than five years, and by its signature below Grantee confirms that it has the resources to enforce the restrictions of the Easement and has a commitment to protect the Conservation Values of the Property (hereinafter defined) and the Conservation Purposes of this Easement (hereinafter defined).

- C. This Easement is intended to constitute (i) a “qualified conservation contribution” as defined in IRC Section 170(h)(1) as more particularly explained below, and (ii) a qualifying “interest in land” under the Virginia Land Conservation Incentives Act of 1999 (Section 58.1-510 *et seq.* of the Code of Virginia (1950), as amended).
- D. This Easement is intended to be a grant “exclusively for conservation purposes” under IRC Section 170(h)(1)(C) because it effects (i) “the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem” as provided in IRS Section 1.70(h)(4)(A)(ii); and (ii) “the preservation of open space (including farmland and forest land)” under IRC Sections 170(h)(4)(A)(iii)(I) and (II) for “the scenic enjoyment of the general” public yielding a significant public benefit, and the preservation of open space “pursuant to clearly delineated governmental conservation policies” yielding a significant public benefit.
- E. Protection of the Property by this Easement is pursuant to the following clearly delineated governmental conservation policies:
- (i) Conservation Policies of the **United States** as set forth in:
- a. Presidential Executive Order dated May 12, 2009, entitled *Chesapeake Bay Protection and Restoration* in furtherance of the Clean Water Act of 1972, as amended (33 U.S.C. 1251 *et seq.*). The Order recognizes the importance of the Chesapeake Bay as “a national treasure constituting the largest estuary in the United States and one of the largest and most biologically productive estuaries in the world, and provides plans and strategies in order to protect and restore the Chesapeake Bay;” which this Easement will benefit.
  - b. The Property lies within the Chesapeake Bay watershed, and the restrictions set forth herein will help protect the rivers and streams in the bay watershed and help implement the goals of Federal Executive Order 13508 (May 19, 2009) referenced above, which states in part, “restore clean water, recover habitat, sustain fish and wildlife, conserve land and increase public access in the Bay watershed by 2025.”
  - c. The Property includes habitat for \_\_\_\_\_, and \_\_\_\_\_, which are endangered species [or species of special concern, etc.] listed on the federal \_\_\_\_\_ list [Bald and Golden Eagle Protection Act; Migratory Bird Protection Act, etc.]
  - d. In 1997, the US Environmental Protection Agency (EPA) designated the fresh ground water that supplies all drinking water on the Eastern Shore of Virginia as the Columbia and Yorktown-Eastover Multiaquifer System Sole Source Aquifer. The Protected Property is located near the area noted to be the “spine” of the groundwater recharge on the Eastern Shore of Virginia. A conservation easement on the Protected Property will reduce demand upon and protect water quality within the sole source aquifer.

(ii) Land conservation policies of the **Commonwealth of Virginia** as set forth in:

- a. Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth's policy to protect its atmosphere, lands and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.
- b. The **Open-Space Land Act**, (Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, Sections 10.1-1700 through 10.1-1705 of the Code of Virginia (1950), as amended (the "Virginia Code")), which declares that the preservation of open-space land serves a public purpose by curbing urban sprawl, preventing the spread of urban blight and deterioration and encouraging more economic and desirable urban development, helping provide or preserve necessary park, recreational, historic and scenic areas, and conserving land and other natural resources, and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land.
- c. The **Virginia Conservation Easement Act**, (Chapter 10.1 of Title 10.1, § 10.1-1009 through 10.1-1016 of the Virginia Code), which Grantee to hold a non-possessory interest in real property for purposes of retaining or protecting natural or open-space value of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archeological aspects of real property.
- d. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, Sections 58.1-510 through 58.1-513 of the Code of Virginia cited above, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth's unique natural resources, wildlife habitats, open spaces and forest resources.
- e. The Chesapeake Bay Preservation Act, Chapter 21 of Title 10.1, §§10.1-2100 through 10.1 the Code of Virginia (the "Chesapeake Bay Preservation Act"), which establishes the Chesapeake Bay Local Assistance Board to promulgate regulations and criteria for land use controls to protect water quality in the Chesapeake Bay and its tributaries.
- f. The 2018 Virginia Outdoors Plan ("VOP"), discussing the \_\_\_\_\_, which includes all of the County of \_\_\_\_\_, notes for the District that:

1. As Virginia continues to grow and develop its lands, however, its long-treasured landscape character is being lost to sprawling development, fragmented by gray infrastructure, and severely impacted by our changing climate. Preservation of large expanses of landscape is essential to preserving the integrity of historic and scenic areas and is necessary to provide the context

and meaning of those resources. The integrity of Virginia’s scenic vistas, which often possess a combination of natural and historic features, is susceptible to incremental degradation — ranging from isolated development to large linear infrastructure projects — that endangers the character of viewsheds. Land conservation is vital for protecting many of Virginia’s shared community assets, such as its rich biodiversity, outdoor recreation, water quality, historic and scenic resources, and working landscapes. See VOP, Ch. 12, page, 12.3.

2. Strategic land conservation should expand upon existing managed areas and seek connectivity via protecting and/or managing intact ecological cores and natural vegetation cover between currently protected lands. The appropriate conservation activities and methods of protection will vary with each site but may include placing the site on Virginia’s Registry of Natural Areas; developing a voluntary management agreement with the landowner; securing a conservation easement through a local land trust; acquiring the site through a locality or local land trust; dedicating the site as a natural area preserve with the current owner; or acquiring the site as a state-owned natural area preserve. See VOP, Ch. 13, page, 13.106.

- g. The Virginia Department of Wildlife Resources list of Special Status Faunal Species in Virginia, which identifies certain wildlife species as deserving of special consideration.
- h. The Virginia List of Species of Special Concern.
- i. The Virginia Agricultural and Forestal Districts Act, §15.2-4300, *et seq.* of the Code of Virginia (the “Ag/Forest Districts Act”), declares that it is the policy of the Commonwealth to conserve and protect the Commonwealth’s agricultural and forestal lands for the production of food and other agricultural and forestal products and as valued natural and ecological resources, which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, and aesthetic purposes. The County’s Agricultural and Forestal Ordinance, enacted pursuant to the Ag/Forest Districts Act, provides certain tax benefits and other protections for the agricultural and forestal use of land to landowners who voluntarily agree to limit development of their property under certain terms. The Protected Property lies within the \_\_\_\_\_ [Name of] Agricultural and Forestal District and contains approximately \_\_\_\_\_ acres of prime agricultural soils and \_\_\_\_\_ acres of forestland. A conservation easement on the Property will permanently preserve the prime soils and forest cover.

(iii) Land use policies of the **County of** \_\_\_\_\_ as delineated in its comprehensive plan adopted on \_\_\_\_\_ (“Plan”), to which plan the restrictions set forth in this deed conform and which contains the following: [Specify below]

*Accomack County*

Accomack County enacted Article XVI Chesapeake/Atlantic Preservation Area on February 18, 2009 to implement the requirements of Code of Virginia section 10.1-2100 et seq. (The Chesapeake Bay Preservation Act) and amends this chapter. The intent and the purpose of the Chesapeake/Atlantic Preservation Overlay District is to: (1) Protect existing high quality state waters; (2) Restore all other state waters to a condition or quality that will permit all reasonable public uses and will support propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (3) Safeguard the clean waters of the Commonwealth from pollution; (4) Prevent any increase in pollution; (5) Reduce existing pollution; and (6) Promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the county. This article is enacted under the authority of Code of Virginia, section 10.1-2100 et seq. (The Chesapeake Bay Preservation Act) and Code of Virginia, Section 15.2-2283. Code of Virginia, Section 15.2-2283 states that zoning ordinances may, "also include reasonable provision, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in Code of Virginia, Section 62.1-255. (Ord. of 11-19-2003(3)). The Protected Property lies entirely within the County's Chesapeake/Atlantic Preservation Area. A conservation easement on the Property will enhance the conservation goals of the Chesapeake/Atlantic Preservation Overlay District, by restricting soil disturbance and loss of native vegetative cover and by preserving a vegetative buffer to serve as a critical filter in the protection of surface water quality.

*Northampton County*

The General Assembly of the Commonwealth of Virginia enacted the Chesapeake Bay Preservation Act (Virginia Code Sections 10.1-2100 through 10.1-2115). Subsequently, the Chesapeake Bay Local Assistance Board adopted regulations concerning the use and development of certain lands in Tidewater, Virginia called Chesapeake Bay Preservation Areas, which, if improperly developed, may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries. Subsequently, Northampton County, Virginia (the "County") designated all of the land within the County as a Chesapeake Bay Preservation Area, which is more particularly described in the County of Northampton, Virginia 2009 Comprehensive Plan Update (the "Plan"). Furthermore, Northampton County, Virginia (the "County") adopted a zoning overlay district known as the Chesapeake/Atlantic Preservation District (CAP) to incorporate into county zoning water quality protection measures consistent with the Commonwealth's Bay Act Regulations. The CAP encompasses all of the land within the County and the Protected Property lies entirely within this area. A conservation easement on the Property will enhance the conservation goals of the Chesapeake/Atlantic Preservation Overlay District, by restricting soil disturbance and loss of native vegetative cover and by preserving a vegetative buffer to serve as a critical filter in the protection of surface water quality.

- F. As evidenced by correspondence from the County of \_\_\_\_\_ dated \_\_\_\_\_, contribution of this Easement over the Property to Grantee conforms to the Comprehensive Plan of \_\_\_\_\_ County adopted on \_\_\_\_\_.



- G.** The Eastern Shore of Virginia (Northampton and Accomack Counties) supports critical migratory bird and waterfowl habitat. At certain times during the year, the narrow peninsula that forms the mouth of the Chesapeake Bay supports one of the largest concentrations of land birds found anywhere along the Atlantic Coast. It is a critical link in a much longer habitat chain stretching from the northern latitudes of Canada to Central and South America. Providing for the needs of migratory birds and waterfowl means preventing the loss of suitable habitat that provides both food and protection from predators.
- H.** The Property has approximately \_\_\_ miles of frontage on portions of both sides of \_\_\_\_\_ (a public road), and has approximately \_\_\_ yards of frontage on \_\_\_\_\_ (road), and members of the general public regularly view substantially all of the Property therefrom, satisfying the requirement for “visual public access” as defined in Treasury Regulation Section 1.170A-14(d)(4)(ii)(B), and preservation of the natural and open space character of the Property will protect a scenic and rural view for the biking, walking and driving public. This Easement will prohibit uses of the Property that would interfere with the public’s enjoyment of these scenic views over the Property.
- I.** The Property contains approximately \_\_\_ acres of United States Department of Agriculture-designated prime farmland soils and approximately \_\_\_ acres of farmland of statewide importance, and prime farmland is of major importance in meeting the nation’s short- and long-range needs for food and fiber. The Department of Agriculture recognizes that responsible levels of government, as well as individuals, should encourage and facilitate the wise use of our nation’s prime farmland, and the preservation of the Property hereunder will provide farmland for future use.
- J.** The Property has approximately \_\_\_\_\_ feet of frontage on \_\_\_\_\_, approximately \_\_\_ feet of frontage on \_\_\_\_\_, and additional frontage on unnamed perennial streams on the Property and wetlands along \_\_\_\_\_ and \_\_\_\_\_, which drains in to \_\_\_\_\_. Further, the \_\_\_\_\_ flows into the nearby \_\_\_\_\_ River and into the Chesapeake Bay.
- K.** Preservation of the Property in a relatively undeveloped state by the restrictions set forth herein also contributes to the “Goals and Outcomes” of the 2014 “Chesapeake Bay Watershed Agreement,” entered into by the Commonwealth of Virginia, six other states, the District of Columbia, the Chesapeake Bay Commission, and seven federal agencies. The agreement’s Land Conservation Goal states in part: “By 2025, protect an additional two million acres of land throughout the watershed . . . and reduce the rate of conversion of agricultural lands, forests, and wetlands as well as the rate of changing landscapes from more natural lands that soak up pollutants to those that are paved-over, hardscaped, or otherwise impervious.”
- L.** Protection of the Property is consistent with and furthers the purposes and policies of the County’s Plan, Chesapeake Bay Agreement, the Virginia Water Quality Improvement Act of 1997 and the VOP with respect to the goal to protect and improve the water quality of the Potomac River and the Chesapeake Bay.
- M.** **[OPTIONAL:]** The Property also is an important green infrastructure connection because the Property lies adjacent to approximately \_\_\_\_\_ acres that are subject to a conservation easement

with the, \_\_\_\_\_ and protection of the Property by the restrictions set forth herein contributes to the open-space values of such other land under easement and the continuity of natural habitat on this Property and such nearby property under easement.

- N.** **[OPTIONAL:]** The Property is an important green infrastructure connection because the Property lies in close proximity to approximately \_ acres that are subject to a conservation easement with Virginia Department of Historic Resources and an additional approximately \_\_ acres that are subject to a conservation easement with the Virginia Outdoors Foundation, and protection of the Property by the restrictions set forth herein contributes to the open-space values of such other lands under easement and the continuity of natural habitat on all such properties under easement.
- O.** **[OPTIONAL:]** The Virginia Department of Conservation and Recreation has developed the Virginia Natural Heritage Data Explorer (the “NHDE”) and Virginia Conservation Lands Database (“VCLD”) as part of the Virginia Conservation Visions to identify, prioritize and link natural lands as targets for protection activities such as conservation easements and habitat restoration. The NHDE/VCLD identifies portions of the Property as being within ecological core areas of general (Class 5) to high (Class 3), portions of the Property in a forest conservation area ranging from outstanding (Class 5) to high (Class 3), portions of the Property in a watershed integrity area with conservation priorities ranging from Class II to very high Class IV, and in an area of Class IV to Class V (highest) under the agricultural model as suitable for agriculture, and preservation of the Property under the Easement will enhance the protection activities promoted by the NHDE/VCLD in the region.
- P.** **[OPTIONAL:]** The Property provides habitat for \_\_\_\_\_, which are [identified as “Endangered Species”/ “Species of Special Concern”, etc.].
- Q.** The physical characteristics and natural resource values of the Property described in these Recitals, and in the Baseline Documentation provided for in Section IV, constitute the “Conservation Values” of the Property.
- R.** The Property has not been dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development, or dedicated as open space in, or as part of, any real estate development plan, or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits, and this Easement is not being granted as part of or in connection with any residential or commercial development of the Property or any other real property.
- S.** This Easement will yield significant public benefit to the citizens of the United States, the residents of the Commonwealth and of \_\_\_\_\_ County.
- T.** Grantee’s formal practices in reviewing and accepting this Easement. Grantee has engaged in a rigorous review, considered and evaluated the benefits provided by this Easement to the general public as set forth in these recitals, and concluded that the protection afforded the open-space character of the Property by this Easement will yield a significant public benefit and further the conservation objectives of Grantee and the Commonwealth of Virginia.

- U. Grantor and Grantee desire to protect in perpetuity the Conservation Values by restricting the use of the Property as set forth in Section II.
- V. Grantee has determined that the restrictions set forth in Section II (the Restrictions) will preserve and protect in perpetuity the Conservation Values; will further the clearly delineated governmental conservation polices described above; and will limit use of the Property to those uses consistent with, and not adversely affecting, the Conservation Purposes (defined below).
- W. Grantee, by its signature below, accepts the donation of this Easement and acknowledges that Grantor has been provided with no goods or services in consideration of this donation. By its acceptance of this Easement, Grantee designates the Property as property to be retained and used in perpetuity for the Conservation Purposes pursuant to the Virginia Conservation Easement Act.

**NOW, THEREFORE**, in consideration of the foregoing recitals incorporated herein and made a part hereof and in consideration of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant and convey to Grantee a conservation and open-space easement in gross over, and the right in perpetuity to restrict the use of, the Property, which is described in Exhibit A attached hereto.

The Property is indexed as Tax Map No.(s) \_\_\_\_\_ among the land records of the County of \_\_\_\_\_, Virginia. Even if the Property consists of more than one parcel for real estate tax or any other purpose, or if it may have been acquired previously as separate parcels, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole. Therefore, no portion of the Property may be conveyed separately from any other portion of the Property except as expressly permitted by the provisions of this Easement.

**SECTION I – CONSERVATION PURPOSES**

The purposes of this Easement (the “Conservation Purposes”) are (i) to preserve and protect the Conservation Values, and other significant conservation interests (to the extent that it is not necessary to impair such other interests in order to protect the Conservation Values), and (ii) to restrict the use of the Property to those uses that are consistent with such values and interests.

Pursuant to the Virginia Land Conservation Foundation’s Conservation Value Review Criteria the further purpose of this Easement is preservation of land for: natural habitat and biological diversity, watershed preservation, preservation of scenic open space, and preservation of open space designated by local government.

As provided in Treasury Regulations (“Regulations”) section 1.170A-14(d), included in the Conservation Purposes is (i) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, within the meaning of paragraph (d)(3) of Regulations section 1.170A-14; (ii) the preservation of certain open space (including farmland and forest land) pursuant to clearly delineated

Federal, state, and local governmental conservation policies yielding a significant public benefit; (iii) and preservation of the Property for the scenic enjoyment of the general public yielding a significant public benefit.

Grantor covenants that no acts or uses that are inconsistent with the Conservation Purposes shall be conducted on the Property, and that all rights reserved by it, or permitted by the terms of this Easement, for the future use of the Property shall be undertaken in a manner that is consistent with the Conservation Purposes.

## **SECTION II – RESTRICTIONS**

Restrictions are hereby imposed on the use of the Property pursuant to the public policies set forth above. The acts that Grantor covenants to do and not to do upon the Property, and the restrictions that Grantee is hereby entitled to enforce, are and shall be as follows:

**2.1 DIVISION and BOUNDARY ADJUSTMENTS. [OPTIONAL:]** Separate conveyance of a portion of the Property or division of the Property is prohibited, including boundary line adjustments that transfer any portion of the Property to another parcel of land.

**[OPTIONAL:]** Grantor reserves the right to divide the Property into \_\_\_\_\_ parcels, and to convey such parcels separately, but subject to the terms of this Easement. Grantor agrees to provide advance written notice of any division to Grantee, including a map showing the boundaries of all new parcels that will result from the proposed division.

**[OPTIONAL:]** In the event of the conveyance of any portion of the Property separate from the remainder of the Property, as Reserved in this Section 2.1, Grantor shall, in the deed conveying such portion, allocate such of the development rights and uses permitted or reserved in this Easement as Grantor shall choose, including the number of unused division rights, permitted ground area, permitted dwellings, structures, and improvements. In the event that Grantor fails to make such allocation with respect to any such rights or uses, all such unallocated rights or uses shall be deemed to have been retained by Grantor, except for the dwellings, structures, improvements, and ground area located on such conveyed portion of the Property at the time of the conveyance, which shall correspondingly reduce the dwellings, structures, improvements, and ground area permitted on the remainder of the Property. In no event may a division of the Property increase the dwellings, structures, improvements, and ground area permitted by the express provisions of this Easement.

Adjustments of the boundaries of the Property are only permitted pursuant to a court order resolving a *bona fide* boundary line dispute. In no event may a boundary adjustment alter the boundaries of this Easement. Furthermore, no boundary adjustment may result in the creation of any development potential, on or off from the Property, that did not exist prior to such adjustment.

**2.2. BUILDINGS, STRUCTURES, ROADS, AND UTILITIES.** No buildings, structures, roads or utilities, other than as permitted by this Section 2.2, are allowed on the Property.

(i) **Permitted Structures, etc.** Grantor reserves the rights to construct, locate, own, use, lease (for uses consistent with the provisions of this Easement), maintain, repair, renovate, remove, relocate, replace and reconstruct (collectively for purposes of this Section 2.2, “to use”) the following buildings, structures, roads, and utilities on the Property, subject to the provisions of this Easement:

(a) **Existing Buildings, Structures and Improvements.** To use existing buildings, structures and improvements located on the Property in their current locations, as described in the Baseline Documentation and shown on Exhibit B: Map of the Protected Property.

(b) **New Buildings, Structures and Improvements.** New buildings, structures and improvements as described below:

(1) **Dwelling Units.** To use up to \_\_\_\_\_ ( ) new dwelling units. The aggregate ground area of all new dwelling units, and the ground area of any expanded, replaced or reconstructed existing dwelling unit shall not exceed \_\_\_\_\_ ( ) square feet.

(2) **Accessory Residential Structures.** To use new accessory residential structures appurtenant and subordinate to each permitted dwelling unit. The aggregate ground area of all accessory residential structures shall not exceed \_\_\_\_\_ ( ) square feet.

(3) **Agricultural Structures.** To use new agricultural structures, which shall not exceed \_\_\_\_\_ ( ) of ground area in the aggregate.

(4) **Roads, Pathways and Vehicle Trails.** To use existing roads, existing vehicle trails and existing pedestrian pathways (for purposes of this paragraph to include bridle paths) in their current locations as shown in the Baseline Documentation, and to use new roads, new vehicle trails, and new pedestrian pathways to provide access to permitted structures, for Property maintenance and inspection, for hiking, jogging, and/ or horseback riding.

Areas disturbed for the construction or relocation of roads, vehicle trails, and/ or pathways, which areas are not to be permanently occupied by a road, vehicle trail or pathway, shall be restored as provided in Section 2.5. In the event of the relocation of any road, vehicle trail or pathway, the area originally occupied by such feature shall be restored as provided in Section 2.5.

For purposes of this Section 2.2(i)(b)(4), the term “road” shall mean a road not to exceed thirty (30) feet in width that may be paved, or provided with some other all-weather surface; the phrase “vehicle trail” shall mean a one or two-track trail (to consist of dirt, wood chip, or loose gravel surface) not to exceed eight (8) feet in width; the term “pedestrian pathway” shall mean a grass, dirt, or wood-chip pathway not to exceed four (4) feet in width for pedestrian and/ or equestrian use.

**[OPTIONAL:]** In the event of a division of the Property pursuant to Section 2.1 resulting in the creation of parcels which are required by law to be served by roads having a width greater than thirty (30) feet, such roads may be constructed to meet such greater required width.

(5) **Utilities.** To use public or private utilities to serve permitted buildings, structures, improvements, and activities on the Property. Except for utilities to be located within existing utility rights of way, public or private utilities to be constructed in whole or in part to serve other properties shall not be constructed on, under, or over the Property unless Grantee determines that the construction and maintenance of such utilities will not impair the Conservation Values and gives its prior written approval for such construction and maintenance. Grantor reserves its separate rights to approve, or object to, such public or private utilities. To the extent practical, all new utilities and replacements of existing utilities shall be located underground.

(6) **Alternative energy structures.** To use alternative energy structures to harness natural renewable energy sources, such as sunlight, wind, water, or biomass, and scaled to provide electrical energy or pump water for buildings, structures, improvements, and activities permitted on the Property, which limitation shall not be deemed to prohibit the sale of excess power generated incidentally in the operation of such structures and associated equipment. Unless otherwise approved in advance by Grantee, all alternative energy structures shall be located within a building envelope.

(7) **Small-scale miscellaneous buildings, improvements, or structures.** Small-scale miscellaneous buildings, improvements, and structures, the existence of which is consistent with the Conservation Purposes, such as hunting stands, wildlife observation structures, mailboxes, entrance gates, boardwalks, gazebos, mailboxes, animal watering and feeding facilities, and fences, the aggregate ground area of all of which shall not exceed \_\_\_\_\_ ( ) square feet without prior written approval from Grantee.

(ii) **Earth Disturbance and Storage.** Areas disturbed for any work on any structure required to be located within a Building Envelope, and all related site work, shall be limited to the Building Envelope where such structure is, or will be, located. Areas disturbed for any permitted activity, whether or not located within a building envelope, not occupied by a permanent structure shall be restored as provided in Section 2.5.

(iii) **Temporary Storage of Construction Materials, and Construction Debris.** Grantor may store construction materials and non-garbage, non-toxic construction debris within a Building Envelope during periods of construction within the Building Envelope.

(iv) **Use and Parking of Vehicles.** To use motorized vehicles, including ATVs, for access to permitted structures, over permitted roads and permitted vehicle trails. Off-road use of vehicles shall be limited to uses necessary (1) for fire suppression; (2) for emergency or severe weather winter access when ordinary vehicle access is not available; (3) for normal maintenance; (4) for permitted agricultural uses; and (5) to establish and maintain vehicle trails

and pathways permitted on the Property. The take-off and landing of aircraft on the Property is limited to emergencies requiring such activity.

Vehicles may be parked on a permanent, long-term or short-term basis within a permitted Building Envelope, and temporarily anywhere on the Property in connection with work and/ or activities expressly permitted by this Easement.

(iv) **Change in Use of Structures.** All or a portion of the aggregate allowable ground area for permitted structures may be allocated to structures to be used for educational, scientific, religious, or public recreational purposes, provided that Grantee determines that the conversion of the structure is consistent with the Conservation Purposes and gives prior written approval of such conversion or construction.

(v) **Location, Size and Lighting Restrictions.** The following restrictions on the location of new structures are intended to protect the Conservation Values:

(a) **Building Envelope(s).** All structures permitted in this Section 2.2, except for existing structures, and except for structures permitted by Sections 2(i)(b)(4), (5), and (7) shall be located within those portions of the Property designated as “Building Envelope(s)” on the sketch attached hereto as Exhibit B, the corners of which area(s) are identified by GPS coordinates. Neither the location nor configuration of a Building Envelope may be changed. Grantor and Grantee shall mark the corners of the Building Envelope(s) on the ground prior to the commencement of any site work for, or the location or construction of, any structure required to be located within a Building Envelope.

(b) **Height Limitation.** No building on the Property shall exceed thirty-five (35) feet in height, measured from the highest point of the roof or top of such building (excluding chimneys or antennas) to the lowest point of finished grade adjoining such building.

(c) **External Lighting Limitation.** Except for existing lighting, all external lighting shall be located within a Building Envelope, shall be ninety-degree (90°) horizontal cutoff, downcast fixtures. No light shall be more than eight (8) feet above the ground unless attached to a building.

(d) **Impervious Surface Limitation.** Total impervious surface on the Property shall not exceed \_\_\_\_\_ (\_\_\_\_\_) square feet; provided that if Grantor can demonstrate that an increase in the total footprint would result in increased protection of the Conservation Values, Grantee may approve such increase in writing

### 2.3. **ACTIVITIES ON THE PROPERTY.**

(i) **Industrial Activities.** Industrial activities are prohibited.

(ii) **Commercial Activities.** Commercial activities are prohibited other than the following, which may also be undertaken for non-commercial purposes:

- (a) agriculture;
- (b) agricultural production;
- (c) the sale of excess power generated incidentally in the operation of permitted alternative energy structures.
- (d) home-occupancy use.

(iii) **Habitat Enhancement and Mitigation Activities.** Grantor may undertake activities on the Property to restore or enhance wetlands or streams or restore, enhance, or develop other ecosystem functions on the Property including, but not limited to, stream bank restoration, wetland and stream mitigation, nutrient offsets, biological carbon sequestration and biodiversity mitigation, and to grant easements therefore that are consistent with the Conservation Purposes, provided that prior written approval for such activities shall have been obtained from Grantee. Grantee is not responsible for monitoring any such activities and has no obligation to enforce the provisions of any permit(s), restriction(s), or easement(s) therefor other than the provisions of this Easement. Grantor may retain any compensation provided for such restoration or enhancement activities.

(iv) **Educational, etc. Activities.** Educational, scientific and religious activities are permitted on the Property, but subject to the provisions of Sections 2.2(v) and 2.3(v). Such activities may be conducted for commercial purposes.

(v) **Temporary Activities and Events.** Grantor may undertake temporary or seasonal outdoor activities or events on the Property (“activities”), provided that the activities do not require the construction or location of structures or improvements on the Property not otherwise expressly permitted by the provisions of this Easement, and provided that such activities do not permanently alter the physical appearance of the Property and do not impair the Conservation Values.

(vi) **Recreational Activities.** Grantor may undertake non-motorized recreational activities on the Property such as hunting, fishing, wildlife observation, hiking, and horseback riding. Notwithstanding any other provision of this Easement, no commercial recreational use (except for *de minimis* commercial recreational uses, which may include leases for hunting and/ or fishing) shall be allowed on the Property.

**2.4. MANAGEMENT OF FOREST.** Timbering and silviculture may be undertaken on the Property for commercial, or non-commercial purposes, but only subject to the provisions of this Section 2.4. Prior to undertaking any material timber harvest (harvesting of timber, or land clearing, affecting more than ten (10) acres within any calendar year), a Forest Management Plan shall be prepared and approved by the Parties. A pre-harvest plan consistent with the Forest Management Plan shall be submitted to Grantee for approval at least fourteen (14) days before beginning any material timber harvest, which approval shall be limited to determination of whether or not the pre-harvest plan is in compliance with the Forest Management Plan and is consistent with the Conservation Purposes.



Neither a Forest Management Plan nor a pre-harvest plan shall be required for the following permitted non-commercial activities: (i) cutting of trees for the construction of permitted roads (except as limited by the provisions of Section 4.2.(i)(b)(4)), utilities, buildings and structures, and ponds, (ii) cutting of trees for trail clearing, (iii) cutting of trees for firewood for Grantor's personal use, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, (v) removal of invasive species or trees that are dead, diseased, or dying, or (vi) for other permitted uses on the Property, except timber harvesting or land clearing.

## 2.5. GRADING, BLASTING, FILLING AND MINING.

(i) **Grading, etc.** Grading, blasting, filling, or earth removal shall not materially alter the topography of the Property except (a) for restoration, enhancement, or development of ecosystem functions on the Property as permitted by the express provisions of this Easement, (b) for construction, restoration, and/or maintenance of ponds, (c) for erosion and sediment control pursuant to an erosion and sediment control plan approved in writing in advance by Grantee, (d) as necessary for permitted forestry activities; or (e) as required in the construction of permitted buildings, structures, roads, and utilities. Grantee may require appropriate sediment and erosion control practices to be undertaken for buildings, structures, roads, or utilities that require Grantee's approval as a condition of such approval. Any area disturbed by such work, including any parking or storage of equipment, materials, or debris, shall be promptly restored to a condition roughly equivalent to the surrounding undisturbed land, to the reasonable satisfaction of Grantee, or to such other condition as Grantee may approve in writing, upon the completion or non-seasonally related interruption of such work exceeding sixty (60) days.

(ii) **Prior Notice Required.** Grading, blasting, filling, or earth removal in excess of one-quarter (1/4) acre for the purposes set forth in the preceding paragraph require thirty (30) days' prior notice to Grantee. Generally accepted agricultural activities such as plowing, shall not constitute a material alteration of the topography, but are subject to the restoration provisions of the preceding paragraph.

(iii) **Mining Prohibited.** Surface mining on the Property, subsurface mining on or from the surface of the Property, and dredging (except for normal pond maintenance, which is permitted) on or from the Property are prohibited.

## 2.6. ACCUMULATION OF TRASH; INOPERATIVE VEHICLES AND EQUIPMENT.

Accumulation or dumping of trash, refuse, junk or toxic materials, and outdoor storage or discard of inoperative vehicles and equipment outside of a permitted Building Envelope, is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, organic matter, agricultural products, or agricultural byproducts on the Property; provided that the location of such materials conform to the scenic buffer provided for in Section 2.9

2.7. **SIGNS.** No billboards or other signs may be displayed on the Property, except for signs that identify the Property, provide safety, instructional, directional, and educational information, or indicate permitted activities thereon. Temporary political signs are allowed. No sign visible from outside the Property shall exceed nine (9) square feet per face in size, and no signs shall be internally lighted. Grantor and Grantee may agree to erect a single marker or sign, at a location suitable to Grantor, which advises that Grantee holds the Easement granted herein.

2.8. **RIPARIAN BUFFER ZONE.** To protect water quality, a riparian buffer zone (“RPZ”), shall be maintained on the Property consisting of a one hundred (100)-foot buffer strip along and either side of all non-tidal perennial streams and wetlands on the Property, such buffers to be measured horizontally, in a landward direction, and perpendicular to the banks of such streams and wetlands. A one hundred (100)-foot buffer strip; measured as described in the preceding sentence, shall be maintained from the mean high-water mark of all tidal streams and wetlands on the Property. The location of the streams and wetlands subject to the provisions of this Section are shown on the map attached as Exhibit B.

RPZs that are forested on the Effective Date, shall be retained in forest. RPZs that are not forested on the Effective Date may be maintained in an open condition, but may not be mowed more frequently than two (2) times annually.

(i) **Prohibited Uses.** Within the RPZs, there shall be:

(a) no buildings or other structures constructed or located, except as permitted in Section II Paragraph 5(ii) and (iii) below;

(b) no new paved roads or paving of existing roads without Grantees’ prior, written approval;

(c) no storage of manure, fertilizers, chemicals, machinery, or equipment;

(d) no removal of trees, except:

(1) removal of invasive species,

(2) removal of dead or diseased trees,

(3) removal of trees posing a threat to human or livestock health or safety,

(4) removal of trees necessary for the purpose of maintaining existing roads,

(5) minimal removal (not to exceed \_\_\_\_\_ (\_\_\_\_) acre in the aggregate) of trees for creation of small wildlife plots, and

(6) removal of trees necessary for construction and maintenance of new permitted trails, roads, stream crossings, dams, and any other structures permitted in subparagraph (ii) below;

(e) no plowing, cultivation, filling, dumping, or other earth-disturbing activity, except as may be reasonably necessary for the activities set forth in Section 2.8(ii) below; and

(f) no micro-hydro installation without Grantee's prior, written approval.

In addition, livestock shall be excluded from the RPZs except (a) during times of drought, or (b) for use of permitted stream crossings.

(ii) **Permitted Uses.** Permitted within the RPZs are the following water-dependent structures:

(a) one (1) pier or dock [for each separate parcel created pursuant to Section 2.1,] which shall not individually exceed one thousand five hundred (1,500) square feet in surface area, without prior written approval from Grantee.

(b) erosion control or restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section 2.3(iii) above;

(c) fencing along or within the RPZs;

(d) construction and maintenance of stream crossings (including improvements over the RPZs to access crossings) for pedestrians, livestock, and vehicles, which crossings minimize obstruction of water flow;

(e) creation of trails, and maintenance of existing trails and roads without hard surfaces;

(f) creation and maintenance of natural habitat and small wildlife plots;

(g) planting of trees, shrubs, grasses, or other vegetation;

(h) clearing, grading and dam construction to create ponds (but not storm water retention or detention ponds);

(i) withdrawal of water for agricultural use on the Property;

(j) construction and maintenance of portions of shoreline stabilization structures;

(k) construction and maintenance of hunting stands, blinds, and wildlife observation structures.

(iv) **Meanders.** Should the streams or wetlands subject to the provisions of this Section 2.8 meander or change course naturally, or as a result of the restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section 2.3(iii) above, the RPZs shall remain the same width, but move relative to the movement of the streams and wetlands. In such event, any buildings or structures that were outside of the

original RPZs and are determined to be within the new buffer strips shall not be considered in violation of these restrictions and may be maintained at such locations, but not expanded or relocated except to locations outside of the RPZ where the provisions of this Easement permit such structures to be located.

- 2.9. **SCENIC BUFFER.** A scenic buffer shall be maintained, extending one hundred twenty (120) feet from the centerline of all public roads adjacent to the Property. Existing structures, improvements, and uses as documented in the Baseline Report, may continue to be used or undertaken within such scenic buffers. However, no new structures, except for permitted fencing, signs, roads and utilities may be located within such scenic buffers, and forested areas shall be not be timbered or removed.

### **SECTION III – ENFORCEMENT**

- 3.1. **RIGHT OF INSPECTION.** Representatives of Grantee may enter the Property from time to time for purposes of inspection (including photographic documentation of the condition of the Property) and enforcement of the terms of this Easement after ten (10) day's prior written notice to Grantor provided, however, that in the event of an emergency threatening the Conservation Values as determined by Grantee in its sole discretion, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with without prior notice to Grantor. In the event of entry without notice, Grantee shall provide written notice to Grantor describing the reason for such entry and actions taken during such entry no more than ten (10) days after the beginning of such entry. In the event of entry without notice, Grantee shall limit its actions to those necessary to terminate or mitigate the violation.

3.2. **ENFORCEMENT.**

(i) **Grantee's Right to Enforce.** Grantee has the right to bring an action at law or in equity to enforce the provisions of this Easement. This right specifically includes the right (a) to require restoration of the Property to its condition on the Effective Date, or to its condition prior to the violation, provided that such prior condition was in compliance with the provisions of this Easement; (b) to recover any damages arising from non-compliance; and (c) to enjoin non-compliance by *ex parte* temporary or permanent injunction.

(ii) **Grantor's Obligation to Reimburse.** If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay shall not waive or forfeit its right to take such action as may be necessary to ensure compliance with this Easement, and Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by Grantee.

(iii) **Acts Beyond Grantor's Control.** Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage to the Property or change in the condition of the Property (a) caused by fire, flood, storm, Act of God, governmental act or other cause outside of Grantor's control or (b) resulting from prudent action taken by

Grantor to avoid, abate, prevent or mitigate such damage to or changes in the condition of the Property from such causes.

(iv) **Grantee's Right to Proceed Against Third Parties.** Grantee has the right to proceed against any third party or parties whose actions threaten or damage the Conservation Values, including the right to pursue all remedies and damages provided for in this Section 3.2. Grantor shall cooperate with Grantee in such proceeding.

(v) **Grantor's Assignment of Rights.** If requested by Grantee, Grantor shall assign to Grantee any cause of action for trespass resulting in damage to the Conservation Values that may be available to Grantor. Grantor may condition such assignment to provide for the (a) diligent prosecution of any such action by Grantee and (b) division according to the proportionate values determined pursuant to Section 5.12 between Grantee and such Grantor of any recovery, over and above Grantee's attorney's fees and expenses incurred, and costs of restoration of the Property, resulting from such action.

#### **SECTION IV – DOCUMENTATION**

The Baseline Documentation Report (“Baseline Report”) describes the condition and character of the Property on the Effective Date. The Parties hereby acknowledge the accuracy of the Baseline and they acknowledge receipt of the Baseline prior to the execution of this Easement. The Baseline may be used to monitor compliance with the terms of this Easement and to assist in the enforcement of its terms. However, the Parties shall not be foreclosed from using other relevant evidence to assist in the resolution of any controversy regarding compliance. The Baseline Report contains a statement signed by Grantor and a representative of Grantee as required by Treasury Regulations 1.170A-14(g)(5)(i).

#### **SECTION V – GENERAL PROVISIONS**

- 5.1. DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions, and restrictions contained in this Easement are binding upon, and inure to the benefit of, Grantor and Grantee, and shall continue as a servitude running in perpetuity with the Property.
- 5.2. NO PUBLIC ACCESS AND GRANTOR'S RETENTION OF USE.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to or use of the Property, or any right to enforce the provisions of this Easement. Subject to the terms hereof, Grantor retains the exclusive right to such access and use including, but not limited to, the right to hunt, or trap on the Property. Neither Grantor nor Grantee intend, by the grant and acceptance of this Easement, to create any form of trust, including a charitable trust.
- 5.3. TITLE.** Grantor covenants and warrants that Grantor has good title to the Property, that Grantor has all right and authority to grant and convey this Easement and that the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record) including, but not limited to, any mortgages or deeds of trust not subordinated to this Easement.

- 5.4. ACCEPTANCE.** Acceptance of this conveyance by Grantee is authorized by Grantee and is evidenced by the signature of the President of Grantee, by authority granted by Grantee's Board of Directors.
- 5.5. INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, has been or shall be dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; dedicated as open space in, or as part of, any real estate development plan; or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.
- 5.6. CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

Grantor and Grantee intend that the grant of this Easement qualify as a "qualified conservation contribution" as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations Section 1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.

Common law principles notwithstanding, any restriction found to be ambiguous in this Easement shall be construed in favor of the application and enforcement of the restriction.

- 5.7. REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property. Failure by Grantor to comply with this requirement shall not impair the validity of the Easement or limit its enforceability in any way or affect the validity of the conveyance.
- 5.8. NOTICE TO GRANTEE AND GRANTOR.** Notices required or permitted to be sent under this Easement shall be sent to the current addresses of the Parties set forth at the beginning of this Easement.
- (i) Any notices, demands or other communications required or permitted to be given by the terms of this Easement shall be given in writing and shall be delivered either (i) in person (such delivery to be evidenced by a signed receipt); (ii) by certified mail, postage prepaid, return receipt requested; (iii) by U.S. Express Mail or commercial overnight courier; or (iv) by regular U.S. Mail.

Such notices shall be deemed to have been “given” (i) when actually delivered, in the case of personal delivery; (ii) when delivered as confirmed by an official return receipt if sent by certified mail; (iii) within two (2) business days of deposit with a courier in the case of U.S. Express Mail, or commercial overnight courier; or (iv) when actually received, in the case of U.S. Mail. Such notices shall be sent to the addresses of the Parties set forth above, or such other address as a party may, pursuant to the notice provisions of this Section 5.8, direct.

Notice of change of address shall be effective only when done in accordance with this Section 5.8.

(ii) Grantor hereby relinquishes any right to use the Property in ways that may be inconsistent with the Conservation Purposes, or with respect to which permission of Grantee is expressly required by the terms of this Easement, until it has notified Grantee in accordance with this Section 5.8 and obtained approval therefor from Grantee.

(iii) Grantee shall respond in writing to any request for approval by Grantor made in compliance with this Section 5.8 within thirty (30) days of receipt of such request. Unless expressly permitted in writing by Grantee, Grantor shall not commence the activity described in the notice. If Grantee fails to respond to such a request within such period, Grantor may either deem the request denied, or may re-submit the request to Grantee. Failure by Grantee to provide a written response (but not necessarily approval) to such re-submitted request in a matter that is consistent with the other provisions of this Section 5.8 shall be actionable by Grantor, in Grantor’s sole discretion.

All activities requiring prior written approval by Grantee shall be conducted consistently with such approval when granted.

If Grantee objects to the proposed activity, it shall inform Grantor in writing of the manner, if any, in which the proposed activity can be modified to satisfy its objections. Thereafter, Grantor may submit a revised proposal accommodating the objections, and Grantee shall review and respond to such revision in the same manner as to the original notice.

Any objection by Grantee to a proposed activity shall be based upon its opinion that the proposed activity is inconsistent with this Easement, and/or upon any specific standards provided for herein. Grantee shall have reasonable discretion in determining whether a proposed activity is consistent with the terms of this Easement, and/or any such standards.

In no event may Grantee permit any activity on the Property that would be inconsistent with the Conservation Purposes.

(iv) All notices required by this Easement shall be in writing, and shall provide sufficient information, in addition to any information required by other provisions of this Easement, to allow, in the case of notice to Grantee, Grantee to determine whether the proposal is consistent with the Conservation Purposes. In the case of notice to Grantor, the notice shall inform Grantor of the purpose of the notice, and the provision(s) of this Easement with respect to which the notice has been sent.

Failure by Grantor to comply with these requirements shall not impair the validity of the Easement or limit its enforceability in any way.

- 5.9. TAX MATTERS and ACKNOWLEDGEMENT OF DONATION.** The Parties agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by a qualified appraisal, as defined in Section 1.170A-13(c)(3) of the U.S. Treasury Regulations, prepared by a qualified appraiser as defined in Section 1.170A-13(c)(5) of said Regulations, and that the appraisal is subject to review and audit by all appropriate tax authorities and by Grantee.

Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from donation of this Easement, or that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. The Parties acknowledge that the provisions of this Easement shall remain in force, in perpetuity, regardless of the amount or availability of any tax benefits.

By its execution hereof, Grantee acknowledges and confirms receipt of the donation of this Easement and further acknowledges that Grantee has provided any goods or services in consideration of the donation of this Easement.

- 5.10. NO MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.
- 5.11. ASSIGNMENT BY GRANTEE.** Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (i) all restrictions and Conservation Purposes set forth in this Easement are to be continued in perpetuity and (ii) the transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the IRC as amended and the applicable Treasury Regulations.
- 5.12. GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the donation of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that this Easement, on the Effective Date, bears to the value of the Property as a whole at that time.
- 5.14. EXTINGUISHMENT.** If a subsequent unexpected change in the conditions surrounding the Property makes the continued use of the Property for conservation purposes impossible or impractical, the restrictions of this Easement may only be extinguished by a judicial proceeding. In such case, on a subsequent sale, exchange, or involuntary conversion of the Property, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Section 5.12. Such proceeds shall be used by Grantee in a manner consistent with the Conservation Purposes.
- 5.15. AMENDMENT.** Grantee and Grantor may amend this Easement to enhance protection of the Conservation Values, provided that no amendment shall (i) affect this Easement's perpetual



duration, (ii) conflict with or be contrary to or inconsistent with the Conservation Purposes, (iii) reduce the protection of the Conservation Values, (iv) affect the qualification of this Easement as a “qualified conservation contribution” or “interest in land”, (v) affect the status of Grantee as a “qualified organization” or “eligible donee”, or (vi) create an impermissible private benefit or private inurement in violation of federal tax law. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded in the Clerk’s Office of the Circuit Court of \_\_\_\_\_ County, Virginia.

**5.16. SEVERABILITY.** If any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.

**5.17 PAYMENT OF COSTS, TAXES OR ASSESSMENTS.**

(i) Grantor shall bear all costs of operation, upkeep and maintenance of the Property.

(ii) Grantor shall be responsible for the payment of all real estate taxes or assessments lawfully levied upon the Property and/or upon this Easement and/or upon Grantee as a result of its holding this Easement, and Grantee shall have no obligation, or responsibility, for the payment of such taxes or assessments. Grantee shall have the right to make any payment or to participate in any foreclosure or similar proceeding resulting from any delinquency, as necessary to protect its interest in the Property.

(iii) Grantor shall indemnify Grantee and Grantee’s Indemnified Parties from any liability or expenses incurred by Grantee in connection with the payment of the costs and/or taxes that are the subject of this Section 5.17.

**5.18. INDEMNIFICATION.** The Parties acknowledge and agree that Grantee has neither possessory rights in the Property, nor any right or responsibility to control the use of the Property (except to enforce the restrictions on use of the Property provided for in this Easement), nor to maintain, or keep up the Property, and the Parties agree that Grantor retains all such rights and control exclusively.

Grantor shall indemnify Grantee, and Grantee’s Indemnified Parties, from any court awarded damages, together with reasonable attorney’s fees and expenses incurred by Grantee and/or Grantee’s Indemnified Parties, and all attorney’s fees and expenses assessed against Grantee and/or Grantee’s Indemnified Parties, resulting from any and all of the following:

(i) Personal injury or property damage that occurs on the Property not due to the negligence of Grantee and/or its agents;

(ii) Liability, including, but not limited to, liability under CERCLA, and/or similar local, state or federal laws, relating to cleanup of hazardous substances that were released or in any way deposited on the Property, other than by Grantee and/or its agents.

Grantee shall indemnify Grantor, and/or Grantor's Indemnified Parties (as previously defined), from any court awarded damages, together with reasonable attorney's fees and expenses incurred by Grantor, and/or Grantor's Indemnified Parties, and all reasonable attorney's fees and expenses assessed against Grantor, and/or Grantor's Indemnified Parties, resulting from any and all of the following:

(i) Personal injury or property damage that occurs on the Property due to the negligence of the Grantee and/or its agents;

(ii) Liability, including, but not limited to, liability under CERCLA, and/or similar local, state or federal laws, relating to cleanup of hazardous substances that were released or in any way deposited on the Property, by the Grantee and/or its agents.

A Party's rights and obligations pursuant to this Easement shall terminate upon transfer of that Party's entire interest in the Easement or the Property, as the case may be, except that liability for the acts or omissions of such Party during the time that such Party held an interest in the Property or in the Easement shall survive transfer of any interest in the Property with respect to such Party.

- 5.19 CONTROL OF THE PROPERTY.** Nothing in this Conservation Easement shall be construed as giving rise to any right or ability in Grantee 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 "participate in management" of the Property, within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or similar federal, state, or local laws.
- 5.20. ENTIRE AGREEMENT.** This Easement, the exhibits hereto, and the Baseline Documentation, set forth the entire agreement of the Parties with respect to this Easement and supersede all prior discussions, negotiations, understandings, or agreements relating to this Easement.
- 5.21. CONTROLLING LAW and VENUE.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia; construction of the provisions of this Easement shall be according to the provisions of Section 5.6 above. Venue for any judicial action undertaken pursuant to this Easement shall be the Circuit Court of \_\_\_\_\_ County, Virginia
- 5.22. RECORDING.** This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of \_\_\_\_\_, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.
- 5.23. COUNTERPARTS.** This Easement may be executed in one or more counterpart copies, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto shall not affect the validity of the Easement.

**5.24 COST RECOVERY.** The Parties hereby agree that Grantee may recover from Grantor Grantee’s costs incurred in responding to requests initiated by Grantor involving matters such as boundary line adjustments, amendments, project reviews for ecosystem services, preparation of reports to facilitate sales, and access or utility easements over the Property.

**[5.25 SUBORDINATION.** \_\_\_\_\_, herein the Lender, is the note holder under a certain deed of trust dated \_\_\_\_\_ and recorded in the Clerk's Office of the Circuit Court of \_\_\_\_\_ County, Virginia as Instrument No. \_\_\_\_\_, which Deed of Trust subjects the Property to the Lender’s lien. The Lender hereby consents to the terms, conditions, and restrictions of this Easement, agrees that the lien represented by the Deed of Trust shall be held subject to this Easement and to all of the Grantee's rights hereunder, and joins in this Easement to reflect its direction to the Trustees to execute this Easement to give effect to the subordination of the Deed of Trust to this Easement and to all of the Grantee’s rights hereunder.

The Trustees join in the execution of this Easement to confirm that in the event of foreclosure under the Deed of Trust, or other sale of the property described in the Deed of Trust under judicial or non-judicial proceedings, the Property will be sold subject to this Easement and to all of the Grantee’s rights hereunder.]

*WITNESS the following signatures and seals:*

[Counterpart signature pages follow]

[Counterpart signature page 1 of 2]

WITNESS the following signatures and seals:

By: \_\_\_\_\_ (Seal)

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, TO WIT:

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 202\_\_  
by

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires: \_\_\_\_\_  
Registration No. \_\_\_\_\_

[Counterpart signature page 2 of 2]

Accepted:

\_\_\_\_\_

By: \_\_\_\_\_ (Seal)

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, TO WIT:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_ by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(SEAL) My commission expires: \_\_\_\_\_  
Registration No. \_\_\_\_\_

**EXHIBIT A**  
**Property Description**

DRAFT

**Exhibit B**  
**Map Showing Location of Existing Improvements, Building Envelope(s), and Buffers**

DRAFT