

This template is a sample of VES Land Trust's standard easement language. Each conservation easement is unique to the property it protects. Therefore, the standard language is subject to change based on the property in question and the donor's wishes for its perpetual conservation. For example, the standard language retains timber rights. However, some donors wish to restrict commercial timbering.

Prepared by: Virginia Eastern Shore Land Trust, Inc.
PIN#s: *[tax parcel numbers written out]*

**Deed of Gift of Conservation Easement
Virginia Eastern Shore Land Trust, Inc.**

Exempted from recordation tax under the Code of Virginia (1950), as amended,
Section 58.1-811(D)

THIS DEED OF GIFT of a CONSERVATION EASEMENT (this "Conservation Easement"), made this ____ *[DD]* day of ____ *[Month]* 2022, between ____ *[Landowner full name or LLC]*, herein called the "Grantor," whose address is _____, and the VIRGINIA EASTERN SHORE LAND TRUST, INC., a Virginia non-profit corporation, herein called the "Grantee," whose address is P.O. Box 1114, Exmore, VA 23350. The real property, subject to this Conservation Easement (referred to, and more fully described hereafter), is herein called the "Protected Property or" ____ *[protected property name]*."

The Protected Property, known generally as ____ *[protected property name]*, comprises ____ *[write out no. of acres]* (____ *[no. of acres in numerals]*) acres of land fronting Route _____, located on the ____ *[direction]* side of _____ Creek and near the town of _____ in _____ County, Virginia.

RECITALS

R-1. The Protected Property possesses significant scenic, open space, habitat, water quality and agricultural values more particularly described below (the "conservation values"). The protection of the conservation values will satisfy many of the conservation purposes of Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code").

R-2. This Conservation Easement is intended to constitute a "qualified conservation contribution" as that term is defined in Section 170(h)(1) of the Code.

R-3. The specific conservation values of the Protected Property are documented in greater detail in the Baseline Documentation Report, herein called the "Baseline Report," dated ____ *[Month DD]*, 2022.

R-4. 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. The Protected Property contains approximately _____ acres of mixed growth forest, _____ acres of tidal marsh and _____ feet of vegetated waterfront buffer on _____ Creek, all of which provide habitat of great value to migratory birds.

R-5. The Protected Property provides significant migratory stopover habitat for protected species of raptors, shorebirds, waterfowl and songbirds (including both Neotropical and temperate migratory birds), includes ecologically significant wetlands and forested areas.

R-6. The Protected Property is a significant natural area that qualifies as a "...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in Section 170(h)(4)(A)(ii) of the Code.

R-7. Chapter 10.1, Title 10.1 of the Code of Virginia of 1950, as amended, entitled "Virginia Conservation Easement Act," (the "Conservation Easement Act"), provides for the conveyance of a conservation easement to a charitable corporation declared exempt from taxation pursuant to Section 501(c)(3) of the Code when the primary purposes or powers of such corporation include "(i) retaining or protecting the natural or open space values of real property; (ii) assuring the availability of real property for agricultural, forestal, recreational or open-space use; (iii) protecting natural resources; (iv) maintaining or enhancing air or water quality; or (v) preserving the historic architectural or archeological aspects of real property." *[If co-held with ESSWCD, must also include a similar section for the Open Space Lands Act, Chapter 17 Section 10.1]*

R-8. The preservation of the Protected Property will benefit the citizens of the Commonwealth and help retain the rural character of the Eastern Shore of Virginia. The Grantor and the Grantee desire to protect in perpetuity such conservation values of the Protected Property; and the Grantor and the Grantee intend to accomplish such protection by restricting the use of the Protected Property through the conveyance and acceptances of this Conservation Easement under the Conservation Easement Act as hereinafter set forth.

R-9.

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 and contains approximately _____ feet of vegetated waterfront buffer on _____ Creek. A conservation easement on _____ [protected property name] 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 and contains approximately _____ feet of waterfront buffer along _____ Creek and _____ acres of marsh all of which provide a critical filter in the protection of water quality.

R-10. 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.

R-11. The _____ [Accomack/Northampton] County Comprehensive Plan sets as objectives, "conserve unique and environmentally sensitive areas for open space, recreation and habitat protection" and "recognize and protect the County's rural character, including historic resources...." The Protected Property lies within a rural area designated by the County for the above conservation, agricultural, forestal or open space land use purposes and the limitations or obligations created by this Conservation Easement and the use of the Protected Property for open-space land conform in all respects to the Plan. A conservation easement on _____

[Protected Property] will contribute to the goals of the _____ [Accomack/Northampton] County Comprehensive Plan.

R-12. 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 _____ [Protected Property] will permanently preserve the prime soils and forest cover.

R-13. The Protected Property lies in close proximity to _____ [Protected Property] totaling _____ acres under conservation easement to the Virginia Eastern Shore Land Trust and the _____ [Co-holder if applicable]. The Protected Property is also located across _____ Creek from _____ [Protected Property] totaling _____ acres under conservation easement to the Virginia Eastern Shore Land Trust and the _____ [Co-holder if applicable]. A conservation easement on the Protected Property will add _____ acres to the protected lands located within the _____ Creek and _____ Neck Conservation Corridor, for a total of _____ acres, as illustrated on Exhibit C: Protected Lands on the _____ Creek and _____ Neck Conservation Corridor. A conservation easement on _____ [Protected Property] will significantly enhance the conservation values along the _____ Creek and _____ Conservation Corridor as well as enhance the overall preservation of wildlife habitat, prime farmland and forestland in the County.

R-14. [If appropriate landmark property recital] The Protected Property contains a significant historic resource [house, cemetery, site, etc.] circa DATE. The [house, cemetery, site...] is listed on the [appropriate listing such as Virginia Landmarks Register or National Register of Historic Places].

R-15. The Grantee has engaged in a rigorous review, considered and evaluated the benefits provided by this Conservation Easement to the general public and concluded that the protection afforded the open space character and natural habitat values of the Protected Property by this Conservation Easement will yield a significant public benefit and further the conservation objectives of the Grantee, local government and the Commonwealth of Virginia.

R-16. This Conservation Easement encumbering in perpetuity the Protected Property meets the requirements of Section 170(h)(4)(A)(iii)(I) and (II) of the Code.

R-17. The Grantor is the owner in fee simple of the real property hereinafter described, which

the Grantor desires preserved as open-space land in the public interest.

R-18. The Grantee is a qualified organization within the meaning of Section 170(h)(3) of the Code and a “holder” within the meaning of the Conservation Easement Act. The Grantee has had a principal office in the Commonwealth of Virginia for more than five years. The Grantee will conduct an annual monitoring of the Protected Property and maintains a dedicated organizational fund to cover the costs associated with monitoring and enforcement.

R-19. The restrictions and enforcement remedies hereinafter described shall vest to the Grantee immediately upon recordation of this Conservation Easement, jointly and severally, and to any successor qualified organizations, as required by Treas. Reg. Section 1.170A-14(g)(6)(ii).

NOW, THEREFORE, in recognition of the foregoing recitals incorporated herein and made a part hereof and in consideration of the mutual covenants herein and the acceptance hereof by the Grantee, the Grantor does hereby grant, give, and convey to the Grantee this conservation easement in gross over, and the right **IN PERPETUITY** to restrict the use of the Protected Property, exclusively for conservation purposes, consisting of _____ acres a legal description of which is contained in Exhibit A attached hereto and made a part hereof.

The Protected Property is shown as parcel _____ [*parcel no(s).*] among the tax records of the County and totals approximately _____ acres in aggregate. **The Protected Property shall be considered one parcel for the purposes of this Conservation Easement, and the restrictions and covenants of this Conservation Easement shall apply to the Protected Property in its entirety irrespective of any such individual parcels.**

Restrictions are hereby imposed on uses of the Protected Property pursuant to the public policies set forth above and as such are more specifically set forth in this Conservation Easement. The Grantor and the Grantee confirm that this Conservation Easement was donated to the Grantee for the Conservation Purposes; that this Conservation Easement can be transferred, amended, or extinguished only as provided herein; and that the terms of this Conservation Easement shall be binding upon both the Grantor and the Grantee and their respective successors in interest in the Protected Property, any portion thereof or interest therein, and this Conservation Easement, as their interests may appear, in perpetuity. The purpose and provisions of this Conservation Easement, the acts that the Grantor covenants to do and not to do upon the Protected Property, and the restrictions that the Grantee is hereby entitled to enforce, are and shall be as follows:

1. **CONSERVATION PURPOSES.** The “Conservation Purposes” of this Conservation Easement are (i) to preserve 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 Protected Property to those uses that are consistent with such Values and interests.
2. **PROPERTY USES.** Any activity on or use of the Protected Property inconsistent with

the Conservation Purposes is prohibited, and the Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Protected Property that is inconsistent with the Conservation Purposes. Furthermore, the Grantor agrees that they will only undertake the uses permitted or reserved by this Conservation Easement in a manner that is consistent with the Conservation Purposes.

Without limiting the generality of the foregoing, the following is a list of activities and uses that are expressly prohibited or that are expressly allowed. The Grantor and the Grantee have determined that the allowed activities are not inconsistent with the Conservation Purposes. Additional retained rights of the Grantor are set forth in Article 3.

2.1 Subdivision. The Protected Property shall not be subdivided or partitioned in any manner. *[One or more partitions may be allowable considering the size of the protected parcel, see Guiding Conservations Standards (separate document).]*

2.2 Existing Improvements. At the time of this Conservation Easement, there are _____ *[list main structures including residences and types of other buildings generally here, e.g. two (2) single-family dwellings, agricultural structures, and other improvements]* on the Protected Property. A detailed description of the existing improvements on the Protected Property is provided in the Baseline Report. The locations of such improvements are shown on Exhibit B: Map of the Protected Property.

The Grantor shall have the right to use, maintain, remodel and repair, lease (for uses consistent with the Conservation Purposes), remove partially or entirely, replace and/or expand (collectively for the purposes of this Article 2, to “use”) these existing improvements and other structures and improvements expressly permitted by this Conservation Easement, subject to the other provisions of this Conservation Easement

2.3 New Construction. Except as provided herein, no new structures or improvements may be used on the Protected Property without the prior, written consent of the Grantee. Subject to the restrictions below, the following structures and improvements may be used on the Protected Property without the need for consent by the Grantee:

- i. _____ *[no. of]* new single-family residence(s);
- ii. New accessory residential structures incidental to the use of _____ *[no. of]* existing residence(s);
- iii. New agricultural structures, hunting blinds, hunting stands;
- iv. New access roads, driveways, a dock, utilities and wells to serve the residences, accessory residential structures and agricultural structures; and
- v. Alternative energy structures such as but not limited to one (1) non-commercial wind turbine or solar panels to serve permitted buildings, structures, or activities on the Protected Property.

Any permitted new improvement used on the Protected Property, and relocations or expansions of existing improvements shall be subject to the following limitations,

restrictions, notices and approvals:

Written notice, as provided in Article 13 below shall be given to the Grantee sixty (60) days prior to any clearing or construction activity, and such prior notice shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the Conservation Purposes. The purpose of requiring such prior notice is to afford the Grantee an adequate opportunity (i) to object to such activities if the Grantee believes such activities are likely to have a material adverse impact on the Conservation Values, or (ii) if the Grantee does not object to such activities, to monitor such activities to ensure they are carried out in a manner consistent with the Conservation Purposes.

Any new structures must be located a minimum horizontal distance of one hundred (100) feet or the distance required at the time of construction by the [Accomack/Northampton] county Chesapeake/Atlantic Preservation Area and the Resource Protection Area, whichever is greater, based on aerial photography and field measurements, from any tidal or upland wetlands, tidal waters or perennial streams. In the case of tidal waters or perennial streams with adjacent wetlands, the one hundred (100) feet or greater setback shall be measured from the landward edge of wetlands.

Any new septic drain fields must be located a minimum horizontal distance of two hundred (200) feet or greater if required at the time by local county zoning ordinances from any tidal or upland wetlands, tidal waters or perennial streams. In the case of tidal waters or perennial streams with adjacent wetlands, the two hundred (200) feet or greater setback shall be measured from the landward edge of wetlands.

Outdoor lighting shall be placed and shielded to minimize the impact on migrating wildlife.

There shall be no constructing or placing of any utility pole (other than those necessary to service the Protected Property's improvements), commercial wind turbine, utility or communications tower, satellite TV tower (but specifically excluding personal satellite receivers), conduit or line on or above the Protected Property; provided, however, that Grantor shall have the right to install underground utility lines on the Protected Property necessary to service the Protected Property's improvements.

In no event shall more than one (1) percent of the total square footage of the Protected Property be occupied by impermeable surfaces. *(Usually .5 to 1 percent but maybe adjusted for smaller properties to allow for generally accepted uses and structures)*

Notwithstanding anything herein to the contrary, Grantor shall have the right to perform interior modifications and renovations to any of the structures and residence(s) located on the Protected Property without the necessity for obtaining approval from Grantee and without the necessity of using any specific historic or comparable materials.

In no case shall there ever be more than [*no. of*] single-family residence(s) on the Protected Property at one (1) time.

All structures on the Protected Property, except for roads and utilities, docks, observation platforms, fences, gates, corrals, and mailboxes, shall be located within one of the two (2) Building Envelopes, the boundaries and dimensions of which are depicted on Exhibit B. *[In order to comply with Treasury Regulation Section 1.170-14(h) and the Virginia Land Conservation's Conservation Value Review Criteria it is strongly recommended that site control of dwellings and other buildings be included herein to prevent destruction of significant conservation interests such as scenic vistas, historic features, farmland, etc.]*

2.4 Industrial & Commercial Property Uses. Industrial use of the Protected Property is prohibited. Commercial activities other than the following are prohibited: (i) agriculture, agricultural production, viticulture, vinification, aquaculture, silviculture, horticulture and equine activities, (ii) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Protected Property, and that are consistent with the Conservation Purposes; and (iii) activities conducted within permitted buildings without material alteration to the external appearance thereof. Intensive animal agricultural uses are prohibited, including, but not limited to, industrial animal agriculture, confined feeding operations, operations generating high levels of animal effluent and operations requiring specialized structures such as feedlots or massive poultry or swine breeding and raising buildings.

2.5 Best Management Practices. Permitted uses of the Protected Property for agriculture or forestry shall be conducted according to Best Management Practices as outlined by the appropriate state agency, including, but not limited to, the Virginia Department of Forestry, the Virginia Department of Agriculture and the Virginia Soil & Water Conservation Commission, in order to control erosion and to protect soil stability, water quality and other conservation values of the Protected Property.

2.6 Forest Management Plan. *[if timber harvest rights retained]* The Grantor shall have the right to harvest timber from the "Timber Harvest Area," noted on Exhibit B: Map of the Protected Property, on the Protected Property pursuant to a forest management plan (the "Forest Management Plan"), to be updated at least every ten (10) years, that is approved by the Grantee and that is designed to insure the maintenance of good quality growing stock of native tree species and/or tree species approved by the Virginia Department of Forestry, while protecting soil stability, water quality and other conservation values of the Protected Property, including without limitation, scenic, riparian and wildlife habitat values.

All forestry activities shall be carried out to maintain biodiversity and preserve the environmental and scenic quality of the area and shall be designed, located and conducted in a manner that avoids and protects existing and restored migratory bird habitat. Forestry Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material forestry activity is

undertaken.

There shall be no commercial forestry activities within waterfront buffers and migratory bird habitat, consisting of wooded areas, scrub/shrub growth and forest understory, nor shall waterfront buffers or migratory bird habitat be removed or destroyed to create new timber operations. However, any agricultural field in existence on the Effective Date may be planted as a timber harvest operation or silviculture operation and subsequently reverted to an agricultural field after harvest or removal of such trees. Existing fields are defined for the purpose of this Conservation Easement as those fields used for agricultural activities on the Effective Date and as identified in the Baseline Report.

Consistent with the Forest Management Plan, the Grantor shall have the right to harvest timber, cut and remove diseased or exotic trees, shrubs or plants, invasive species and to cut firebreaks. Any such activity inconsistent with the Forest Management Plan shall require prior approval from the Grantee, except that such approval shall not be required in case of emergency firebreaks. Notwithstanding anything to the contrary herein, non-commercial *de minimis* harvest of trees for trail clearing, firewood or the Grantor's domestic use, removal of trees that pose an imminent hazard to human health or safety, and/or removal of invasive species shall not require a Forest Management Plan and shall not constitute forest management activity.

With respect to any bald eagle or bald eagle nest on the Protected Property, forest management activities shall be carried out in accordance with all applicable state, federal and local laws, regulations and ordinances and the Bald Eagle Protection Act (16 U.S.C. Section 668).

The Grantor shall notify the Grantee no later than thirty (30) days prior to the start of any forest management activity and within seven (7) days of its completion.

2.7 Protection of Migratory Bird Habitat. Activities permitted pursuant to this Conservation Easement shall be designed, located and carried out in a manner that avoids and protects existing and restored migratory bird habitat, specifically wooded areas, scrub/shrub growth and forest understory. Any removal or clearing of native vegetation including forest, understory and herbaceous plants, except those resulting from forestal operations consistent with a Forest Management Plan as provided in Article 2.6 above shall be off-set by the Grantor through the restoration of an equally-sized area of native vegetation of a similar type in either an existing field on the Protected Property or in any other area of the Protected Property that is not currently vegetated with native species.

The introduction of invasive species as defined and listed by the Virginia Department of Conservation and Recreation, Division of Natural Heritage, is expressly prohibited. Except for use around improvements or in gardens, there shall be no planting of non-native trees, shrubs or herbaceous plants on the Protected Property.

Where thinning of wooded areas is undertaken by the Grantor, such thinning shall be

conducted in accordance with a Forest Management Plan as described in Article 2.6 above. This article shall apply equally to existing habitat, restored habitat areas and to existing fields upon commencement of habitat restoration or abandonment of agricultural practices.

2.8 Waterfront Buffer. Except as necessary for the continued use of but not expansion of existing residences and associated yards, and for mitigation activities and habitat enhancement as provided in the Article 2.9 below which are permitted within the buffer, all land within one hundred (100) feet of tidal marshes, wetlands, mudflats, water bodies and streams shall be maintained as a buffer strip of forest, grass or natural vegetation, with no timber cutting, plowing, use by livestock or soil disturbance. There shall be no additional clearing of land in the buffer to add to the area of existing fields. Water dependent structures, such as docks and observation platforms may be located within the buffer.

Buffers shall be measured from the edge of wetlands, marshes, water bodies and the banks of streams, horizontally, in a landward direction, and perpendicular to such water feature.

2.9 Water Resources. The Grantor retains the right to restore or enhance those water resources and wetlands on the Protected Property for purposes of wildlife habitat, shoreline stabilization, mitigation, and agricultural use, so long as such enhancement and maintenance does not materially and adversely impact any of the water resources or wetlands on the Protected Property and such activities are not in conflict or inconsistent with the Conservation Purposes of or the restrictions set forth in this Conservation Easement and that prior written approval for same shall have been obtained from Grantee. Permitted activities shall include, but are not limited to, the right to create, restore and enhance water resources, such as ponds, living shorelines, or wetlands. Shoreline stabilization activities must be conducted pursuant to a shoreline management plan and all local, state, and federal permits and consistent with best management practices. The Grantee has no obligation to enforce the provisions of any permit(s), restriction(s), or easement(s) therefor other than those specified in this deed of easement.

2.10 Signage. No signs, billboards or other advertising displays are allowed on the Protected Property, except that signs whose placement, number and design do not significantly diminish the scenic character of the Protected Property may be displayed to state the name and address of the Protected Property and the names of persons living on the Protected Property, to advertise or regulate permitted on-site activities, to advertise the Protected Property for sale or rent, to post the Protected Property to control unauthorized entry or use, and temporary signs to promote political candidates.

2.11 Home Businesses. Any business that is conducted by and in the home of a person residing on the Protected Property is allowed if consistent with applicable laws, regulations and ordinances.

2.12 Recreational Uses. The Grantor shall have the right to engage in and permit others to engage in recreational uses of the Protected Property that require no permanent surface alteration or other development of the land, including, without limitation, hunting and fishing. More than a *de minimis* use of the Protected Property for any commercial recreational activity is prohibited.

2.13 Mining & Excavation. Mining is prohibited on the Protected Property. Excavation, except as necessary to accommodate the activities expressly permitted under this Conservation Easement, is prohibited and there shall be no ditching, draining, diking, blasting, grading, filling, excavating, dredging, removal of topsoil, sand, gravel, rock, minerals or other materials, drilling or removal of minerals or petroleum, nor, except as otherwise permitted by this Conservation Easement, any building of roads or change in the topography of the Protected Property or disturbance of the soil in any manner.

2.14 No Biocides. There shall be no use of biocides, including but not limited to insecticides, fungicides, rodenticides and herbicides in any manner that could harm the Conservation Values. Pesticides and herbicides may be used as needed to control invasive species on the Protected Property, in existing agricultural fields, and to facilitate forestry management as outlined in the "Forest Management Plan."

2.15 No Dumping. There shall be no accumulation, storage or dumping of trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, or under the Protected Property. There shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Protected Property that could cause erosion or siltation on the Protected Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the Protected Property.

2.16 No Pollution. There shall be no pollution of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies. No activities shall be conducted on the Protected Property that (i) would be detrimental to water quality or purity or (ii) could alter the natural water level or flow in or over the Protected Property (except as permitted pursuant to Article 2.9 above).

2.17 Density. Neither the Protected Property nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished or transferred to the Grantee by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme, cluster development arrangement or otherwise; provided, however, that with prior written permission of the Grantee, this paragraph shall not preclude such transfer of development rights resulting

from the destruction or demolition of any existing residential building on the Protected Property.

2.18 Boundary Line Adjustments. Boundary line adjustments of the Protected Property (but not of this Conservation Easement) to add contiguous land to the Protected Property is permitted with the Grantee's prior review and approval.

2.19 Uses Inconsistent with Conservation Purposes. The parties recognize that this Conservation Easement cannot address every circumstance that may arise in the future, and any use or activity not specifically addressed in this Conservation Easement that is inconsistent with the Conservation Purposes or that threatens the Conservation Purposes is prohibited.

3. **ADDITIONAL RIGHTS RETAINED BY THE GRANTOR.** The Grantor reserves to the Grantor, and to the Grantor's successors and assigns in title to the Protected Property, any portion thereof or interest therein, all rights accruing from the Grantor's ownership of the Protected Property, the exercise of which is not prohibited or limited by this Conservation Easement, including the right to engage in, and to permit or invite others to engage in, all uses of the Protected Property that are permitted herein, provided that such uses are only undertaken in a manner that is consistent with the Conservation Purposes. Without limiting the generality of the foregoing, and subject to the terms of Article 2 above, the Grantor expressly reserves certain additional rights, as follows:

3.1 Existing Uses. The Grantor reserves the right to engage in traditional uses on the Protected Property that are compatible with, and not destructive of, the conservation values of the Protected Property, such as, but not limited to, recreational use, forest management, farming of existing fields, improvement of wildlife habitat, and hunting.

3.2 Transfer. The Grantor reserves the right to sell, give, mortgage, lease or otherwise convey the Protected Property subject to the terms of this Conservation Easement.

3.3 No Public Access. The Grantor reserves the right to deny the public entrance upon, or use of, the Protected Property or any portion thereof. Although this Conservation Easement in gross 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 Protected Property, and the Grantor hereby retains the exclusive right to such access and use, subject to the terms of this Conservation Easement.

3.4 Notice to the Grantee. Unless otherwise provided in this Conservation Easement, the rights retained by the Grantor under this Conservation Easement may be exercised without the permission of, or notice to, the Grantee. Notwithstanding the foregoing, pursuant to Treas. Reg. Section 1.170A-14(g)(5)(ii), the Grantor agrees to notify the Grantee, in writing, before exercising any reserved right which may have an adverse impact on the Conservation Values.

4. **THE GRANTEE'S RIGHTS.** To accomplish the purpose of this Conservation Easement, the following rights are granted to the Grantee by this Conservation Easement:

4.1 Right to Enforce. The right to enforce the terms of this Conservation Easement, including the right to prevent any activity on, or use of, the Protected Property that is inconsistent with the Conservation Purposes. When a violation of this Conservation Easement has caused injury to the Protected Property, the Grantee has the right to require the restoration of the Protected Property, all as more particularly set forth in Article 6 below.

4.2 Right of Entry. The Grantee and its staff, contractors and associated natural resource management professionals are granted the right to reasonable entry and access to the Protected Property for inspection and monitoring purposes and for enforcement of the terms of this Conservation Easement. The Grantee will make reasonable efforts to notify the Grantor prior to entry onto any of the Protected Property except when emergency circumstances or prevention of a threatened breach of this Conservation Easement requires immediate entry. The Grantor or the Grantor's representative may accompany the Grantee, its staff, contractors and associated natural resource management professionals on any such visit. In the event of entry without prior notice due to emergency, the Grantee shall limit its actions to those necessary to preventing or abating the breach, and shall provide written notice to the Grantor as soon thereafter as practical stating the reason for such emergency entry and the actions taken pursuant thereto.

4.3 Discretionary Consent. The Grantee's consent for activities requiring such consent under Article 2 may be given under the following conditions and circumstances. Requests for permission for activities requiring the Grantee's consent shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the Conservation Purposes. The Grantee may give its permission only if the Grantee determines, in its sole discretion, that such activities (i) are consistent with the Conservation Purposes, and (ii) do not confer an impermissible private benefit.

5. **RESPONSIBILITIES OF THE GRANTOR AND THE GRANTEE NOT AFFECTED.** The Grantor shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property. This includes payment for any and all real estate taxes or assessments levied on the Protected Property by authorized governmental and quasi-governmental authorities. The Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement. Nothing in this Conservation Easement shall be construed as giving rise to any right or ability in the Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of the Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sections 9601 et seq.), as amended, and any corresponding state statutes.

6. **GRANTEE'S REMEDIES.** If the Grantee becomes aware of a violation of the terms of this Conservation Easement, the Grantee shall give written notice to the Grantor as provided herein, and request corrective action sufficient to abate such violation. In addition, when the violation has caused injury to the Conservation Values, such written notice to the Grantor shall request corrective action sufficient to restore the Protected Property to its condition on the Effective Date or to such condition in compliance with the terms of this Conservation Easement.

The Grantor agrees that the Baseline Report shall be deemed to provide objective information concerning the Protected Property's condition on the Effective Date. If the Grantor fails to cure the violation within thirty (30) days after receipt of notice from the Grantee, or, under circumstances where the violation cannot be reasonably cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or fails to continue diligently to cure such violation until finally cured, the Grantee may bring an action at law or equity in a court of competent jurisdiction (i) to enforce the terms of this Conservation Easement and to require the restoration of the Protected Property as described above; (ii) to enjoin the non-compliance by a request for a temporary or permanent injunction, *ex parte* or otherwise; and/or (iii) to recover any damages arising from the non-compliance, including damages for injury to the Conservation Values and the costs of restoration. Such damages, when recovered, shall be applied by the Grantee, to corrective action on the Protected Property. If the court determines that the Grantor has failed to comply with the terms of this Conservation Easement, the Grantor shall reimburse the Grantee for any reasonable costs of enforcement, including court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court.

6.1 Emergency Enforcement. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, the Grantee may pursue its remedies under this Article 6 without prior notice to the Grantor and without waiting for the period for cure to expire. Nevertheless, the Grantee shall limit its actions to those necessary to preventing or abating such damage, and shall provide written notice to the Grantor as soon thereafter as practical stating the reason for such emergency entry and the actions taken pursuant thereto.

6.2 Failure to Act or Delay. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with the terms of this Conservation Easement by any prior failure to act and the Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act or delay by the Grantee in acting to enforce any restriction or to exercise any rights under this Conservation Easement.

6.3 Violations Due to Causes Beyond The Grantor's Control. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor (including requiring the Grantor to take any action to restore the condition of the Protected Property) as a result of any changes to the Protected Property due to acts of God or other causes beyond the Grantor's control, such as changes caused by fire, flood, storm,

earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Easement caused by the unauthorized wrongful acts of third persons, the Grantor agrees, upon request by the Grantee, to assign Grantor's right of action to the Grantee, to join in any suit, or to appoint the Grantee as Grantor's attorney-in-fact for the purposes of pursuing enforcement action, all at the election of the Grantee.

7. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of Virginia, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to the Conservation Purposes.

8. **TRANSFER OF EASEMENT.** The Parties recognize and agree that this Conservation Easement is assignable, provided, however, that the Grantee shall not transfer its interest in this Conservation Easement unless (i) the transferee is "Qualified Organization" as defined in Section 1.170A-14(c) of the Treasury Regulations, and as a "holder" under Virginia law; and (ii) the Grantee requires, as a condition of the transfer, that the Conservation Purposes shall continue to be carried out in perpetuity.

If the Grantee ever ceases to exist or ceases to be a Qualified Organization, a court of competent jurisdiction shall transfer this Conservation Easement to another Qualified Organization having similar purposes that agrees as a condition of the transfer to ensure that the purpose of this Conservation Easement shall continue to be carried out in perpetuity.

9. **TRANSFER OF PROPERTY.** Any time the Protected Property, or any portion thereof, or interest therein, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee in writing at least thirty (30) days before the transfer of the Protected Property, and the document of conveyance shall expressly refer to this Conservation Easement. The failure of the Grantor to perform any act required by this Article shall not impair the validity of this Conservation Easement or limit its enforceability in any way, or the validity of the transfer.

10. **AMENDMENT OF EASEMENT.** The Grantee and the Grantor may amend this Easement to enhance the Conservation Values or add real property subject to the restrictions set forth in this deed to the restricted property by an amended deed of easement, provided that no amendment shall (i) affect this Conservation Easement's perpetual duration, (ii) permit development, improvements, or uses prohibited by this Conservation Easement on the Effective Date, (iii) conflict with or be contrary to or inconsistent with the Conservation Purposes of this Easement, (iv) reduce the protection of the Conservation Values, (v) affect the qualification of this Conservation Easement as a "qualified conservation contribution" or "interest in land," (vi) affect the status of Grantee as a "qualified organization" or "eligible donee," or (vii) 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 the Grantee and the Grantor and recorded in the Clerk's Office of the Circuit Court of [County, State].

11. **TERMINATION OF EASEMENT.** The Grantor agrees that the contribution of this Conservation Easement gives rise to a property right, vested in the Grantee immediately upon the Effective Date, with a fair market value that is at least equal to the proportionate value that this Conservation Easement, on the Effective Date, bears to the value of the Protected Property as a whole at that time. This proportionate value shall remain constant.

If an unexpected change in the conditions surrounding the Protected Property subsequent to the Effective Date can make impossible or impractical the continued use of the Protected Property for conservation purposes, the restrictions imposed by this Conservation Easement can only be extinguished through a judicial proceeding. In such case, on a subsequent sale, exchange, or involuntary conversion of the Protected Property, the Grantee shall be entitled to a portion of the proceeds at least equal to that proportionate value of this Conservation Easement as determined in the preceding paragraph. The Grantee shall use any such proceeds in a manner that is consistent with the Conservation Purposes.

The Parties acknowledge that the Protected Property may be significantly more valuable unencumbered by this Conservation Easement; that such value may increase over time; that uses reserved in this Conservation Easement may be or become uneconomic; and that surrounding property may change in use and character. Nevertheless, the Parties hereby agree that such changes do not provide grounds for seeking extinguishment of this Conservation Easement or any of the provisions of this Conservation Easement.

12. **INDEMNIFICATION.** Except as otherwise provided in this Conservation Easement, the Grantor shall hold harmless, indemnify and defend the Grantee from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, orders, judgments, administrative actions and attorneys' fees that the Grantee may incur as a result, or arising out, of the activities of the Grantor or any person on the Protected Property, other than those caused by the actions or failure to act of the Grantee, and except those arising out of the Grantee's workers' compensation obligations, if any.

13. **NOTICES.**

13.1. *Form of Notice.* Any notices, demands or other communications required or permitted to be given by the terms of this Conservation Easement shall be given in writing and shall be delivered (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; (iv) by regular U.S. Mail; (v) by telephone facsimile; or (vi) by electronic mail with a verification of sending.

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 three (3) business days of deposit with a courier in the case of U.S. Express Mail, or commercial overnight courier; (iv) when actually received, in the case of U.S. Mail; (v) when sent, with a confirmation of delivery if sent by telephone facsimile; or (vi) when received, if sent by electronic mail with a verification of sending. Such notices shall be sent to the addresses of the Parties set forth above, or to such other address as a Party may, pursuant to the notice provisions of this Article 13, direct, or to the facsimile telephone number or electronic mail address of the Party to whom it is directed.

Notice of change of address shall be effective only when done in accordance with this Article 13.

13.2. *Response by the Grantee.* The Grantee shall respond in writing to any request for approval by the Grantor made in compliance with this Article 13 within sixty (60) days of receipt of such request. Unless expressly permitted in writing by the Grantee, the Grantor shall not commence the activity described in the notice. If the Grantee fails to respond to such a request within such period, the Grantor may either deem the request denied, or may re-submit the request to the Grantee. Failure by the Grantee to provide a written response (but not necessarily approval) to such re-submitted request in a manner that is consistent with the other provisions of this Article 13 shall be actionable by the Grantor, in the Grantor's sole discretion.

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

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

Any objection by the Grantee to a proposed activity shall be based upon its opinion that the proposed activity is inconsistent with the Conservation Purposes or other terms of this Conservation Easement, and/or upon any specific standards provided for herein. The Grantee shall have reasonable discretion objecting to, or approving any, request by the Grantor.

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

14. **SEVERABILITY.** If any provision of this Conservation Easement or the application thereof to any person or circumstance is determined by a court having jurisdiction thereof to be invalid, the remainder of the provisions of this Conservation Easement and the

application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

15. **SUCCESSORS AND ASSIGNS.** The covenants agreed to and the terms, conditions, restrictions and purposes imposed with this grant shall be binding upon the Grantor and the Grantor's successors in title to the Protected Property, any portion thereof, or interest therein, and the Grantee and its successors in interest to this Conservation Easement, as their interests may appear, and shall continue as a servitude running in perpetuity with the Protected Property. Whenever used herein, "Grantor" shall include the Grantor and the Grantor's agents, officers, employees, successors and assigns, and all other successors to them in interest, and "Grantee" shall include the Grantee and its respective agents, officers, employees, successors and assigns and all other successors to it in interest.
16. **TITLE.** The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Protected Property in fee simple and have good right to grant and convey this Conservation Easement; that the Protected Property is free and clear of any and all encumbrances that may limit the enforceability or perpetuity of this Conservation Easement or impair its qualification as a "qualified conservation contribution" as that term is defined in the Code, Section 170(h)(1), including but not limited to, any mortgages not subordinated to this Conservation Easement; and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.
17. **LIENS ON PROPERTY.** The provisions of this Conservation Easement shall not be construed as impairing the ability of the Grantor to use the Protected Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing shall be subordinate to this Conservation Easement.

The Bank is the noteholder under a certain Credit Line Deed of Trust, in the original maximum principle amount of \$ _____, dated _____, and recorded in the Clerk's Office of the Circuit Court for the County of _____, Virginia, as Instrument Number _____, which subjects the Protected Property to the Bank's lien. The Bank and the Trustee under said Deed of Trust hereby consent to the terms and intent of this Conservation Easement and agree that the aforesaid indebtedness, lien and Deed of Trust shall be subject and subordinate to this Deed of Gift of Conservation Easement and that any sale of the real estate under and by virtue of the Deed of Trust shall be made expressly subject to this Conservation Easement.

18. **BASELINE REPORT.** The Conservation Values and the condition, use, character and state of improvement of the Protected Property are described in a Baseline Documentation Report, incorporated herein by reference. The Grantor and the Grantee agree that the Baseline Report provides an accurate representation of the Protected Property and the condition of the Protected Property as of the Effective Date, as required by Treas. Reg. Section 1.170A-14(g)(5), and that the Baseline Report is intended to serve as an objective informational baseline for monitoring compliance with the terms of this

Conservation Easement. The original Baseline Report is stored in the office of the Grantee, with a copy held by the Grantor. The existence of the Baseline Report shall not preclude either Party from introducing other evidence of the condition of the Protected Property in the event of any dispute.

19. **HAZARDOUS WASTE.** The Grantor does further covenant and represent that to the best of the Grantor's knowledge, information and belief, no hazardous substances or toxic wastes exist nor have been generated, treated, stored, used, disposed of, deposited in or on the Protected Property that have not been fully disclosed, except for the use of such substances as may be or have been from time to time, common in the course of agricultural practices, and that it knows of no underground storage tanks located on the Protected Property whose presence, age and location have not been fully disclosed.
20. **COMPLIANCE WITH LAWS.** The conveyance of this Conservation Easement by the Grantor to the Grantee shall not relieve the Grantor of (i) any obligation or restriction on the use of the Protected Property imposed by law; or (ii) the obligation and responsibilities to obtain any and all applicable federal, state, and local governmental permits and approvals, if necessary, to exercise the Grantor's retained rights and uses of the Protected Property even if consistent with the terms and purpose of this Conservation Easement.
21. **RECORDING.** This Conservation Easement shall be promptly recorded by the Grantee in the Office of the Clerk of the Circuit Court of Accomack County, Virginia upon the execution hereof by all Parties and may be re-recorded at any time by either Party. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement. The Grantor agrees to execute any such instruments upon request.
22. **CAPTIONS.** The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no affect upon its construction or interpretation.
23. **DEFINITIONS.**

For purposes of this Conservation Easement, the following terms shall have the meaning given to them below. Additional definitions are sometimes expressly provided in the body of this Conservation Easement. When a term used in this Conservation Easement is not expressly defined herein it shall be defined according to the Zoning Ordinance of Northampton County in effect at that time, or if not defined in said Ordinance, according to the law governing the interpretation of contracts as applicable in the Commonwealth of Virginia.

• **Accessory Residential Structures:** Structures and improvements commonly and appropriately incidental and accessory to a dwelling reserved by the terms of this

Conservation Easement, and sized appropriately to serve as an amenity to such dwelling, including a garage, or carport.

- **Agriculture/ Agricultural:** The use of the Protected Property for (a) the tilling of soil, (b) growing crops or plant growth of any kind in the open, including gardening, horticulture, and floriculture, (c) raising and keeping livestock for use of the Grantor or sale, (d) apiculture, (e) viticulture and vinification, (f) plant nurseries, (g) silviculture, and (h) aquaculture.

Agriculture/ Agricultural expressly excludes (unless otherwise expressly reserved by another provision of this Conservation Easement) (a) Timbering; (b) manufacture, processing or storage of mulch made from off-site material or for commercial purposes; (c) animal race tracks; (d) any other activities that are expressly prohibited by this Conservation Easement.

- **Agricultural Production:** Processing and sale of agricultural products grown or raised on the Protected Property.

- **Agricultural Structure:** Structures used primarily to support agricultural uses reserved on the Protected Property by this Conservation Easement, including barns, hay sheds, animal shelters, water tanks, animal watering and feeding facilities, equipment and storage sheds; and equestrian structures used in connection with a permitted horse farm.

- **Aquaculture:** the raising or cultivation of aquatic animals or aquatic plants for human consumption.

- **Baseline Report:** The Baseline Documentation, described in Article 17.

- **Building:** An enclosed, roofed, structure used or intended for supporting or sheltering any use or activity.

- **Building Envelope:** An area designated on an Exhibit to this Conservation Easement, and staked on the Protected Property, in which the right to construct, locate, and use structures is reserved on the Protected Property by this Conservation Easement.

- **Commercial:** making, or intending to make, a profit.

- **Grantor:** Wellington Neck LLC, Wellington Neck II LLC, and their successors in title to the Protected Property, any portion thereof, or interest therein, including tenants,

lessees, and licensees of the Protected Property, any portion thereof, or interest therein.

If the Grantor becomes a trust, any reference to the Grantor shall include reference to the beneficiary(ies) of said trust; if the Grantor becomes a limited liability company or corporation, any reference to the Grantor shall include such company's members and such corporation's shareholders; if the Grantor becomes a partnership, any reference to the Grantor shall include the partners in such partnership, including limited partners, if any.

Nevertheless, the number of persons who may be deemed to be the Grantor for purposes of the uses and activities reserved on the Protected Property by this Conservation Easement may not exceed twenty (20) without prior, written approval from the Grantee.

- **Ground Area:** The square footage of a structure, or improvement (including any combination thereof), as measured at the exterior of the foundation (perimeter load-bearing) walls and/or piers thereof or, if there are no such foundation walls or piers, the square footage of ground covered by such feature.
- **Home Occupancy Use:** A business, profession, occupation or trade conducted for gain or support within a dwelling reserved by the terms of this Conservation Easement, which use is incidental and secondary to the use of the dwelling for residential purposes and which use does not change the residential character of such dwelling.
- **Horse Farm:** A place where horses are kept for commercial or non-commercial purposes, including pasturing, breeding, boarding, training, riding, showing and/ or selling of horses, but excluding veterinary practices or the sale of feed or equipment. A horse farm may include, as an accessory use, riding instruction, and training events as part of such on-site instruction. Included in a horse farm are equestrian structures.
- **Impervious surface:** Any surface paved with concrete, asphalt, chip and seal, and the like (but excluding loose gravel, wood chips or packed earth); and including the ground area of any building, structure or improvement including patios and/ or ground level decks, recreational courts, swimming pools, patios, boardwalks, docks, garages, kennels, decks, sheds, and blinds.
- **Improvements:** Man-made additions to the Protected 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, corrals, pipes, pipelines, culverts, mailboxes, gates, gate posts, signs, decks, riding rings, docks, observation platforms, 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.”

- **Invasive Species:** Species listed on the Virginia List of Invasive Species from time to time by the Virginia Department of Conservation and Recreation, or comparable Virginia agency.

- **Kennel:** An enclosed space for the keeping of dogs or cats.

- **Livestock:** means cattle, sheep, goats, swine, poultry and other domestic animals ordinarily raised or used on the farm.

- **Mitigation:** activities undertaken, such as wetland or streambank enhancement, restoration, creation, preservation, and reforestation for the purpose of offsetting the harmful environmental impacts of development, land use and other activities off the Protected Property.

- **New:** occurring after the Effective Date.

- **Overgrazing:** means grazing resulting in the depletion of grass cover to the extent that bare soil is exposed.

- **Protected Property:** The real property subject to this Conservation Easement, a legal description of which is contained in Exhibit A. Even though the Protected Property may consist of more than one (1) parcel for governmental purposes of zoning or taxation, or may have been acquired as more than one parcel; for all purposes of this Conservation Easement the Protected Property shall be considered one (1) parcel.

- **Reserved/ Permitted:** A use of the Protected Property that is expressly reserved by the Grantor as a right under the terms of this Conservation Easement, or that is otherwise permitted by an express provision of this Conservation Easement.

- **Silviculture:** The growing and cultivation of trees, but not including timbering.

- **Structure:** An assembly of materials forming a construction, including, among other things, buildings, platforms, observation towers, water tanks, trestles, piers, open sheds, energy generators, or temporary structures having no foundation or footing, such as a tent or tree-house, but excluding Improvements.

• **Timbering:** The harvesting of trees for processing and/ or sale.

• **Utility:** A facility for the provision of infrastructure services to reserved structures and improvements on the Protected Property, including wells, water storage tanks; septic systems; sewer and water lines, electricity, internet, television, and telephone transmission lines; antennas for the transmission and reception of electro-magnetic energy; equipment used to harness natural renewable energy sources, such as sunlight, wind, water, or biomass; but excluding wind generators and cell towers except as expressly permitted herein.

• **Vinification:** the process or business of making and selling wine.

• **Viticulture:** planting, maintaining, cultivating, and harvesting grapes.

24. **COUNTERPARTS.** This Conservation Easement may be executed in counterparts by the parties. It is not necessary that the signatures of the parties appear on the same counterpart or counterparts. All counterparts shall collectively constitute a single instrument. In the event of any disparity between or among the counterparts produced, the counterpart first recorded in the Clerk's Office of the Circuit Court of _____ County shall be controlling.

25. **TAX MATTERS.** The Parties agree and understand that any value of this donation claimed for tax purposes must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations (see Treas. Reg. Section 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Grantee make no express or implied warranties regarding whether any tax benefits will be available to the Grantor by reason of the donation of this Conservation Easement, nor whether any such tax benefits might be transferable, nor whether there will be any market for any tax benefits that might be transferable.

IN WITNESS WHEREOF, the Grantor has executed this instrument and the Grantee has caused this instrument to be executed by its duly authorized representatives as of the date first above written:

THE GRANTOR:

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to wit:

I, _____, a Notary Public for the Commonwealth
aforesaid, hereby certify that _____, (Grantor) personally appeared before me this day
and acknowledged the foregoing instrument and represented that *he/she* was authorized to
execute this instrument.

WITNESS my hand and official seal this _____ day of _____, 2022.

(SEAL)
Notary Public

My commission expires: _____

Accepted:
VIRGINIA EASTERN SHORE LAND TRUST, INC.

By: _____
Karen Terwilliger, President

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to wit

I, _____, a Notary Public for the Commonwealth
aforesaid, hereby certify that Karen Terwilliger, President of the Virginia Eastern Shore Land
Trust, Inc., a Virginia corporation, herein the Grantee, personally appeared before me this day
and acknowledged the foregoing instrument on behalf of the Grantee.

WITNESS my hand and official seal this _____ day of _____, 2022.

(SEAL)
Notary Public

My commission expires: _____

Exhibit A: Legal Property Description
(Your attorney will provide this)

Exhibit B
(VES Land Trust provides this)

Exhibit C
(VES Land Trust provides this as applicable)

SAMPLE