

**THE NATURE CONSERVANCY IN VIRGINIA**  
**Easement**

Note: This Conservation Easement has been drafted by the Conservancy as an accommodation to the Grantor. The Conservancy does not represent the interests of the Grantor. The Conservancy strongly advises the Grantor to review this document with the Grantor's attorney.
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Tax Map Parcel(s): \_\_\_\_\_.

**CONSERVATION EASEMENT**

THIS DEED OF GIFT OF CONSERVATION EASEMENT ("Conservation Easement"), exempt from all recordation taxes pursuant to Virginia Code §§ 58.1-811(D) and (F), is made on this \_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_ ("Grantor"), and THE NATURE CONSERVANCY, a non-profit corporation organized and existing under the laws of the District of Columbia, with a local address of Post Office Box 158, 11332 Brownsville Road, Nassawadox, Virginia 23413, ("Grantee" or "Conservancy").

**RECITALS:**

A. The Grantor is the sole owner in fee simple of the property ("Property") legally described in Exhibit A, attached hereto and incorporated by this reference, which consists of approximately 285 acres located in \_\_\_\_\_ District, Northampton County, Virginia, and is generally known as \_\_\_\_\_ Farm.

B. This Conservation Easement is granted "exclusively for conservation purposes" under Section 170 of the Internal Revenue Code because the 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 P.L. 96-541, 26 U.S.C. § 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder; specifically the Property provides significant habitat for protected species of raptors, shorebirds, waterfowl and songbirds (including both neotropical and temperate migratory birds), includes historic and potential habitat for the Federally Listed Endangered Delmarva fox squirrel, includes ecologically significant wetlands, marshes and forested areas and provides a critical buffer area to protect the water quality of the marshes, bays, and lagoons located on the Atlantic side of the Eastern Shore of Virginia. Furthermore, it is the intent of this Conservation Easement to preserve and promote: (1) the growth and maintenance of forested areas containing multiple stories of native vegetation to allow abundant forage and staging areas for resident and migratory birds, (2) the protection of buffer area for a known population of the federally endangered Delmarva fox squirrel, and (3) the preservation of the water quality of \_\_\_\_\_ Creek, the estuarine system, and the marshes and lagoons of the Eastern Shore of Virginia Barrier Island ecosystem.

C. In addition, this Conservation Easement is granted “exclusively for conservation purposes” under §170(h)(1)(C) because it complies with the “open space” conservation purpose test under §170(h)(4)(A)(iii) of the Internal Revenue Code (references to the Internal Revenue Code in this Conservation Easement shall be to the United States Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent Federal tax laws, and the applicable regulations and rulings issued thereunder) (the “IRC”). Specifically, the preservation of open space on the Property (i) is pursuant to clearly delineated state and local governmental conservation policies that indicate the type of property identified by representatives of the general public as worthy of preservation and (ii) will yield a significant public benefit. The Property fronts on Virginia State Route \_\_\_\_\_, which is designated a Virginia Scenic Byway pursuant to the Virginia Scenic Byway Program (Virginia Code §§33.1-62 *et seq.*). The Property contributes to the panorama of agricultural lands and scenic rural views enjoyed by the public therefrom.

D. The General Assembly of the Commonwealth of Virginia enacted the Chesapeake Bay Preservation Act (Virginia Code §§10.1-2100 through 10.1-2116). 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”) has designated all the land within the County as a Chesapeake Bay Preservation Area, which is more particularly described in the County of Northampton, Virginia 2001 Comprehensive Plan Update (the “Plan”). The Property lies within the County’s Chesapeake Bay Preservation Area and contains approximately one (1) mile of vegetated waterfront and marshfront buffers on \_\_\_\_\_ Creek. The Plan includes the following goals for growth management: “Conserve the County’s natural resources. Maintain the County’s rural character,” and refers to conservation easements as a “technique (that) can help contribute to the preservation of land, which is an irreplaceable resource with intrinsic value.” The Property lies within an area of the County designated for conservation, agricultural, forestal or open space land use purposes, and the preservation of the Property through the use of a conservation easement is supported by the local Plan.

E. The Conservancy has established on the Eastern Shore of Virginia, the Virginia Coast Reserve (hereinafter the “Reserve”), which has been designated by the United Nations as a “Biosphere Reserve,” the purpose of which is to preserve and protect the unique ecological integrity and biological diversity of the barrier island lagoon system of the Virginia barrier islands, including islands, adjacent marshes, waterways, mudflat communities and other natural habitat. The Property lies adjacent to Conservancy-owned preserve land which is part of the Virginia Coast Reserve. As such, it has been identified as a priority for protection.

F. 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, and 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, which

provides both food and protection from predators. The Property contains vegetated waterfront land on \_\_\_\_\_ Creek and 36 acres of marsh, more or less, which provides habitat of great value to migratory birds and waterfowl.

G. The Property is adjacent to an area into which one recovery population of Delmarva fox squirrel was introduced and that possesses similar forest habitat. The Conservancy therefore considers the Property potentially significant for efforts to recover the federally Endangered Delmarva fox squirrel in that it provides important buffer habitat.

H. The Property is adjacent to \_\_\_\_\_ Creek, a perennial low-gradient sandy bottom stream supporting unique fish and macroinvertebrate communities. The flow and water quality of streams such as \_\_\_\_\_ Creek directly affect the biological diversity of tidal creeks and marshes. The protection and preservation of good water quality, healthy wetlands, and ecologically sound use of riparian waters and preservation of wetlands and marshes on the Property are essential to maintaining the integrity and quality of the Reserve.

I. The Property includes wetlands, forested areas, farmland, and open areas that have ecological, scientific, educational and aesthetic value as a “buffer area” directly and indirectly affecting the quality, and ecological health and well-being of other lands and waters owned or managed by the Conservancy and comprising a part of the Reserve.

J. Because certain uses of the Property would adversely affect the quality and health of the Property and the Reserve and the value of the Property for “open space,” limiting and controlling uses of the Property is therefore for the benefit of the general public and the protection of the Reserve.

K. The characteristics of the Property, its current use and state of improvement, are described in a report entitled Baseline Report of \_\_\_\_\_, dated \_\_\_\_\_ prepared by Grantee for the Grantor (the “Baseline Report”). The Grantor worked with the Grantee to ensure that the report is a complete and accurate description of the Property as of the date of this Conservation Easement. It will be used by the Grantor and Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement. However, the Baseline Report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

L. The Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Property in perpetuity, and the Commonwealth of Virginia has authorized the creation of Conservation Easements pursuant to the Virginia Conservation Easement Act, Virginia Code § 10.1-1009 *et seq.*, and Grantor and Grantee wish to avail themselves of the provisions of that law as well as the provisions of Section 170(h) of the IRC concerning qualified conservation contributions and Section 2031(c) of the IRC allowing an election for special treatment of qualifying conservation easements for estate tax purposes.

**NOW, THEREFORE**, the Grantor, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein and as an

absolute and unconditional gift, hereby gives, grants, and conveys unto the Grantee a Conservation Easement in perpetuity over the Property of the nature and character as follows:

1. **DEFINITIONS.** As used in this Conservation Easement:

A. Agricultural Areas – Those existing agricultural fields on the Property as depicted on Exhibit B, and as described and depicted graphically in the Baseline Report and any alterations in the area thereof, as agreed to in writing by the Grantor and Grantee. The term “agricultural” and similar terms as used by this easement shall specifically include the following uses, as permitted, within the Agricultural Areas: viticulture, horticulture, silviculture, nurseries, and orchards, as well as equine and equestrian activities.

B. Agriculture Management Plan – A plan designed to protect soil stability, water quality, and other conservation values of the Property, that includes an Integrated Pest Management plan (as such term is defined by the Natural Resource Conservation Service or successor agency), that is prepared by an agriculture management specialist and approved by Grantee.

C. Animal Unit – An Animal Unit (“AU”) equals 1,000 pounds of animal body weight. For purposes of this Conservation Easement, the following Animal Units shall apply to grazing animals: adult beef cattle: 1.0 AU; calves: 0.5 AU; adult horses: 1.5 AU; colts (< 2 years): 0.5 AU; sheep: 0.2 AU; goats: 0.2 AU.

D. Aquaculture - The propagation, rearing, enhancement, and harvest of aquatic organisms in controlled or selected environments for commercial or research purposes, conducted in marine, estuarine, brackish or fresh water, including manmade ponds or impoundments.

E. Buffer Areas – Those areas of the Property located within one hundred (100) feet of \_\_\_\_\_ Creek and all other permanent and intermittent streams, wetlands, mudflats, and water bodies, and within fifty (50) feet of all ditches on or adjacent to the Property, including manmade ditches and ponds, unless otherwise specified in this Conservation Easement. All Buffer Areas shall be measured from the edge of the stream or feature under normal conditions (mean high water in tidal environments). The extent and location of Buffer Areas are as depicted on Exhibit B and are described and depicted graphically in the Baseline Report.

F. Building Areas – Building Areas on the Property as depicted on Exhibit B, shall be coextensive with the Agricultural Areas, and include the existing residentially developed area. Notwithstanding the foregoing, to the east of the Building Line (defined below), only a single Improvement may be built. All other allowable Improvements must be built west of the Building Line. Building Areas shall not be located in the Buffer Areas.

G. Building Line - That certain line as depicted on Exhibit B hereto and which delineates the location of certain rights of the Grantor retained herein.

H. Dairy Operation - An enclosed structure or area that regularly houses more than six (6) head of adult dairy cattle.

I. Existing Improvements and Constructed Features – Those existing structures, facilities, septic fields, water wells, header dams, ditches, utilities, Roads (defined below), Trails (defined below), and other man-made additions to the natural environment located on the Property as of the date of this Conservation Easement and described and depicted in the Baseline Report.

J. Feedlot – A confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock for feeding and fattening for market.

K. Footprint – The ground area, as measured in square feet, covered or overhung by an Improvement (defined below), including any area covered by an overhanging roof or attached patio, deck, or porch.

L. Forest Management Plan - A plan approved by Grantee written to cover a period of ten (10) years and including, as a minimum:

- (1) A statement of Grantor's forest management goals and objectives;
- (2) A detailed description of management actions to be employed to accomplish each of the forest management objectives stated (as enumerated in **Paragraph 3.3(b) {Forest Management, Forest Management Objectives}**);
- (3) Forest stand descriptions and locations at a forest stand level suitable for guiding forest management pursuant to this Conservation Easement including species composition, stocking levels, site classes, age classes or age class structure, and volumes and, where available, soil types;
- (4) A forest type map showing predominant topographic and hydrographic features, forest stands, existing roads, the approximate location of future roads such as they might be anticipated at the time the Forest Management Plan is written, other Improvements, scale, and north arrow;
- (5) If timber harvest is planned or anticipated during the term of the Forest Management Plan, a discussion of the pre-harvest planning process that includes, but is not limited to:
  - (a) A description of the silvicultural goals and options to be used, by forest type;

- (b) If the harvest is a regeneration cut, regeneration standards to be followed, by forest type;
- (c) The methodology for determining the appropriate silvicultural prescription for harvesting/silvicultural activity to be conducted; and
- (d) Strategies to identify and conserve threatened or endangered species, unique habitats, cultural and archaeological sites, and forested wetland and streamside buffers, including a description and map of such features.

M. Forested Areas – Those forested or wooded areas of the Property as depicted on Exhibit B and as described and depicted in the Baseline Report and any alterations in the area thereof, as agreed to in writing by the Grantor and Grantee.

N. Grazing Plan – A plan designed to ensure the maintenance of vegetation, while protecting soil stability, water quality and other conservation values of the Property, prepared by the Natural Resources Conservation Service (or its successors) or other pasture management specialist, and approved by Grantee.

O. Harvest Plan – A plan approved by the Grantee prior to the removal of timber from any area of the Property that includes the following:

- (1) A statement signed by the forester preparing the Harvest Plan acknowledging that management activities follow the terms of this Conservation Easement and the Forest Management Plan and will be supervised by the forester;
- (2) Description of access to proposed timber sale area and any constraints to that access;
- (3) Descriptive map(s) of all management areas, including logging deck(s), skid trails, Roads, streams, Buffer Areas, stream crossings, and areas of special concern;
- (4) Timber inventory in targeted management areas with volume, stocking, and species data, and projected yields. Inventory may be estimated or omitted with prior approval of the Grantee in cases where it is not deemed necessary (such as pre-commercial thinning).
- (5) Clear marking of Buffers Areas and any stream crossings on the ground pursuant to a wetland delineation prepared by a qualified hydrologist at Grantor's expense. If a Harvest Plan does not clearly address how Buffer Areas will be protected, the Grantee may reject it. The number of stream crossings should be minimized and carefully selected to minimize

disturbance to the streams or drainage channels and surrounding soils and vegetation;

- (6) An inventory for the presence of rare, threatened or endangered species and other unique natural, geological or historic resources in targeted management areas which may require special treatment;
- (7) Prescribed activities and precautions including protection methods for any unique natural, geological, or historical areas and erosion and sedimentation control actions for water quality protection and a smoke management plan if fire is to be prescribed;
- (8) Aesthetic and recreational considerations including impacts on views from public roads. Aesthetic impacts should be minimized to the greatest extent possible by use of un-harvested buffers and careful selection of harvest areas, harvest techniques, and by avoiding the use of clear-cutting, unless within an Agricultural Area or a Timber Management Area, or unless absolutely necessary and approved as part of the Harvest Plan by the Grantee.
- (9) Plan for post-cutting treatments, including the re-vegetation of skid rows and logging decks with non-invasive seed mixes.

P. Highgrading – A timber harvest practice that results in the removal of only certain species of trees above a certain size or of high value, leaving residual stands composed of trees of poor condition or species composition, through which the forest may become depleted over time of the best genetic growing stock.

Q. Hog Farm - An enclosed structure or area that regularly houses more than four (4) head of swine older than six (6) weeks.

R. Improvements – Improvements consist of any building, structure, or man-made addition to the Property, including but not limited to Residences (defined below), out-buildings, sheds, barns, tree-houses, house and office trailers, tennis and other recreation courts, and swimming pools placed, built, or constructed on the Property after the date of this Conservation Easement. For the purposes of this definition, Improvements do not include ponds and impoundments, Roads and Trails (defined below), structures associated with utilities (poles, wires, etc.), septic tanks or fields, docks, hunting or wildlife viewing blinds, fences, or movable items not affixed to real estate that have a *de minimis* impact on ground area.

S. Invasive Plants and Animals- Plants included on the most current list of Virginia Department of Conservation and Recreation's "Invasive Alien Plant Species of Virginia" or, if such list ceases to be published, a similar list promulgated by the Commonwealth of Virginia or the federal government, which the Grantee shall notify the Grantor is the list that shall be binding on the Grantor for purposes of this Conservation Easement.

Animals, including pests and pathogens, identified on the most current list promulgated by the Commonwealth of Virginia or the federal government, which the Grantee shall notify the Grantor is the list that shall be binding on the Grantor for purposes of this Conservation Easement.

T. Plasticulture - A production system of plant rows, often bedded, covered with impervious plastic mulch alternated with uncovered, inter-row spaces.

U. Poultry House – An enclosed structure or area that regularly houses more than one hundred (100) head of poultry or fowl greater than one (1) month old.

V. Residence – An Improvement used for human habitation regardless of the number of days per year inhabited; a dwelling. Residences may be leased.

W. Roads – Those access roads, driveways, or improved paths used to provide access to and within the Property by motorized and non-motorized means. The locations of existing Roads are depicted on Exhibit B and described and depicted graphically in the Baseline Report.

X. Timber Management Area – That area depicted on Exhibit B, which may be managed for commercial forest products without limitation provided that, at a minimum, Best Management Practices as recommended by the Virginia Department of Forestry are adhered to, and provided that the area remains in a forested state and not converted to another use. Clearcutting is allowed in this area.

Y. Trails – Those trails and paths used to provide access to and within the Property by non-motorized means only, provided however, that motorized non-highway three and/or four wheel all-terrain vehicles (ATVs) are permitted on Trails as needed in support of hunting and fishing activities. The locations of existing Trails are depicted on Exhibit B and described and depicted graphically in the Baseline Report.

Z. Utilities – Those structures or facilities necessary to supply the Property's Improvements and permitted water impoundments with power, water, sewage disposal, and other amenities. Utilities include but are not necessarily limited to power lines, poles, personal wind turbines (turbines used to generate power primarily for use on the Property), and associated electrical hardware; water wells and water distribution lines; septic tanks, septic fields, and distribution boxes; antennas, satellite dishes, and cable lines.

2. **PURPOSES.** The purposes of this Conservation Easement are as follows: to ensure that the Property will be retained forever predominantly in its natural and scenic condition; to protect resident and migratory bird habitats; to protect adjacent Delmarva fox squirrel habitat; to protect water quality within the coastal lagoon and bay system; to protect native plants, animals, or plant communities on the Property; to protect groundwater hydrologic systems; to protect the natural flow of low gradient sandy bottom streams and mitigate siltation; to control invasive and exotic species; to prevent any use of the Property that will significantly impair or interfere with the



conservation values of the Property described above, while allowing for traditional uses on the Property that are compatible with and not destructive of the conservation values of the Property, such as farming of existing pastures and fields, limited construction, forest management, hunting, recreation, and fishing.

Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the purposes of this Conservation Easement. Nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Property after any act of God or other event over which Grantor had no control, except in those cases when an act of God destroys an Existing Improvement or Constructed Feature or an Improvement and that destruction produces continuing deleterious impacts to the conservation values of the Property (a dam failure and subsequent erosion for example). In that case, the Grantor shall take steps in good faith to remedy the situation through appropriate corrective action. Grantor understands that nothing in this Conservation Easement relieves Grantor of any obligation or restriction on the use of the Property imposed by law.

3. **PROPERTY USES.** Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following is a listing of activities and uses which are expressly prohibited or which are expressly allowed. Grantor and Grantee have determined that the allowed activities do not impair the conservation values of the Property. Additional retained rights of Grantor are set forth in Paragraph 4 below.

3.1 General Requirements. The following requirements apply to all activities on and uses of the Property, unless an exception is specifically provided.

(a) *Subdivision.* The Property shall not be divided, subdivided or partitioned, nor conveyed or pledged for a debt except in its current configuration as an entity. Minor boundary line adjustments may be permitted, subject to written approval by the Grantee.

(b) *Improvements.* No Improvements may be constructed, maintained, or permitted on the Property except as provided herein. Furthermore, additional special requirements apply to activities on and uses of the Property as follows:

(i) Limitation on Improvements. The collective Footprint of all Improvements on the Property shall not exceed 31,000 square feet, of which no more than 8,000 square feet may be devoted to residential use and no more than 4,000 square feet of such 8,000 square feet may be devoted to a primary Residence. Residential development shall be limited to a maximum of three Residences, with each Residence restricted to single-family occupancy. A single non-Residential Improvement with a Footprint of not more than two hundred (200) square feet may be located, constructed and maintained east of the Building Line. All other Improvements shall be located west of the Building Line.

(ii) Improvements in Building Areas. The Grantor is permitted to construct and maintain or replace Improvements within the Building Areas subject to

Paragraph 3.1(b)(i) *{Limitation on Improvements}* without the prior consent of the Grantee. In addition, all construction of Improvements shall be located within Building Areas. Grantor may move Existing Improvements and Constructed Features and new Improvements to other locations within the Building Areas. Grantor may destroy and replace Existing Improvements and Constructed Features and new Improvements and new constructed features within the Building Areas. Subject to the limitations in Paragraph 3.1(b)(i), replacement Improvements may differ in character and size from the replaced Improvements.

(iii) *Improvements Outside Building Areas.* The Grantor may construct and maintain Improvements outside the Building Areas only with the prior written consent of the Grantee. Any and all Improvements permitted under this paragraph shall count against the absolute footprint limit on Improvements as outlined in Paragraph 3.1(b)(i) *{Limitation on Improvements}*.

(iv) *Outdoor Lighting.* Outdoor lighting is permitted provided it is placed no more than twenty (20) feet high and at least (60) feet from Forested Areas and Buffer Areas. Lighting must be shielded with full cut-off reflectors and directed towards the ground. Use of additional mercury vapor lights beyond those which are identified in the Baseline Report is prohibited.

(v) *Roads, Trails, and Utilities.* The Grantor may construct on the Property Roads, associated culverts, and underground and above-ground utility lines necessary to accommodate permitted Improvements and water impoundments as described in Paragraph 3.1(i). Roads shall be no more than twelve (12) feet in width, and an area of no more than thirty (30) feet in width may be cleared of natural vegetation in the construction of Roads. Furthermore, Roads shall be open section roads (shoulder and ditch design) and drainage ditches shall be vegetated open channels as opposed to concrete or other impervious materials. Land cleared in the construction of the Road (excluding the Road itself) shall be re-forested or re-vegetated as soon as possible following construction. The Grantor may relocate the existing impermeable driveway to a more northerly location on the Property provided that the existing impermeable driveway is converted to a permeable Road. In addition, Grantor shall have the right to construct Trails on the Property to provide access to areas of the Property and/or to accommodate recreational activities. Trails shall be no more than four (4) feet in width and shall be either unimproved paths or shall be constructed of permeable materials. No Roads or Trails are permitted in the Buffer Areas or Forested Areas unless expressly approved in writing by the Grantee.

(vi) *Well and Septic.* The Grantor may drill water wells and install septic tanks and septic fields necessary to accommodate permitted Improvements on the Property together with other necessary Utilities to serve these structures.

(vii) Off-Property Utilities. Unless such utilities are placed on or over the Property under eminent domain proceedings or the threat thereof, Grantor may not consent to the construction or placement of utilities on the Property that serve entities and/or users located off the Property (a communications tower for example) without the prior written consent of the Grantee. Such consent shall only be granted if their construction or placement would not deleteriously impact the conservation values of the Property or would produce a smaller impact than if those utilities were located on an adjoining or nearby property.

(viii) Existing Improvements and Constructed Features. Grantor shall have the right to maintain, remodel, and repair Existing Improvements and Constructed Features on the Property (as described and detailed in the Baseline Report), and in the event of their destruction, to reconstruct any such Existing Improvement or Constructed Feature with another, as outlined in Paragraph 3.1(b)(ii). Grantor shall have the right to expand or enlarge Existing Improvements that are buildings or impervious surfaces, but the new Footprint of such additions shall be subject to the absolute limitation on the Footprint of Improvements as outlined in Paragraph 3.1(b)(i) {*Limitation on Improvements*}.

(ix) Conservancy's Consent. Prior to beginning construction of Improvements allowed pursuant to Paragraph 3.1(b)(iii); Roads, Trails, and Utilities allowed pursuant to Paragraph 3.1(b)(v) and located at least partially outside of Building Areas; and/or expansion of Existing Improvements and Constructed Features allowed pursuant to Paragraph 3.1(b)(viii) and located at least partially outside of Building Areas, Grantor shall submit site plans to the Conservancy for its review. The plans shall be sufficiently detailed to allow the Conservancy to fully evaluate the construction's conformance to the Conservation Easement, including but not necessarily limited to location and size of the proposed Improvements or Constructed Features. The Conservancy may, at its discretion, request information from the Grantor to ensure that Grantor shall take appropriate measures to control, trap, mitigate, and prevent erosion and sedimentation associated with the proposed construction. No construction of Improvements as outlined above may take place until the Conservancy reviews and approves the plans. The plans will be deemed approved unless the Conservancy objects in writing, within thirty (30) days of receipt of complete plans, setting forth with specificity the Conservancy's grounds for objections. The Conservancy agrees that if the new construction is consistent with the terms and provisions of this Conservation Easement, the Conservancy's approval shall not be unreasonably withheld.

(x) Alternative Energy Sources. Subject to the limitations provided in this Conservation Easement, alternative energy sources (such as wind turbines, solar panels, geothermal and other devices) may be installed on the Property but only at a size and scale as to satisfy the energy needs of the Property. Such alternative energy source may operate as an inter-tie system (reverse metering); no

commercial sales are permitted. Placement, design and technologies utilized by such systems require the prior written approval of the Grantee.

- (c) Recreational Uses. Grantor shall have the right to engage in and permit others to engage in recreational uses of the Property, including, without limitation, hunting, fishing, hiking, biking and equestrian activities that require no surface alteration or other development of the land or which occur on or within Improvements, Roads, and/or Trails permitted under Paragraph 3.1(b) {Improvements}. Motorized vehicles are prohibited on all Trails and off-road terrain in Forested Areas and Buffer Areas, except pursuant to a Forest Management Plan or except as provided in Section 1.Y. hereof. Pursuit of wildlife by any form of motorized transportation is not allowed. Furthermore, Grantor shall not be allowed to conduct recreational activities that impair the conservation values of the Property as described under Paragraphs H, I and J in the recitals, especially with regard to erosion and sedimentation issues associated with overuse or misuse of the Property's landscape. Lastly, in order to qualify this easement for treatment under Internal Revenue Code Section 2031(c)(8)(B) any use of the Property for more than a *de minimis* use for a commercial recreational activity is prohibited.
- (d) Home Businesses. Any business that is conducted by, and in the Residence of, a person residing on the Property in accordance with applicable laws, regulations and ordinances, is allowed, provided that the home business does not directly harm the conservation values protected by this Conservation Easement.
- (e) Commercial Use and Development. Unless otherwise provided for herein, any commercial or industrial use of, or activity on, the Property is prohibited.
- (f) Invasive Plants and Animals. In no event shall the Grantor introduce Invasive Plants or Animals to the Property or water bodies occurring on the Property. However, such introduction may be approved in writing by the Grantee to address a defined land management concern, such as short-term erosion mitigation using annual grasses. Notwithstanding the foregoing, Grantor shall have the right to remove Invasive Plants and Animals, including diseased trees, shrubs, or plants.
- (g) Firebreaks. Grantor shall have the right to cut firebreaks, subject to the prior approval of the Grantee, except that such approval shall not be required in case of emergency firebreaks.
- (h) Excavation. Except as necessary to accommodate the activities expressly permitted under this Conservation Easement, there shall be no ditching, draining, diking, filling, excavating, dredging, or removal of topsoil, sand, gravel, rock, minerals or other materials. In addition, except as otherwise permitted under this Conservation Easement there shall be no building of Roads, change in the topography of the Property, or disturbance of the soil in any manner. In no event shall mining or hydrocarbon extraction be permitted on the Property.

(i) Water Management. Grantor has the right to maintain North and South Irrigation Ponds (as depicted on Exhibit B), and to establish a new shallow water impoundment, not to exceed five (5) acres, with required well(s), in the Agricultural Areas, and to extend electrical utilities to all such existing ponds and permitted impoundment. If necessary the Grantor may extend Utilities from the line existing as of the date of this Conservation Easement and shown in the Baseline Report through the Buffer Areas to said permitted impoundment. The new impoundment may be used for the purpose of moist-soil management or for growing and irrigation of plants permitted in Agricultural Areas, and shall employ shallow excavation and utilize only non-invasive plants. Water for the new impoundment may be supplied by pumping from either of the existing irrigation ponds, or new or existing wells. No additional ponds or impoundments may be built; however, any such pond or impoundment may be relocated with the prior written consent of the Grantee. The placement and design of utilities (solar powered pumps are preferred) and the impoundment are subject to the prior written approval of the Grantee, not to be unreasonably conditioned or withheld. Except as provided above, or except as otherwise permitted under this Conservation Easement, there shall be no alteration, pollution, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies on the Property, and no activities shall be conducted on the Property that would be detrimental to water purity or that could alter the natural water level or flow in or over the Property. No commercial sale of water produced on or extracted from the Property is permitted.

(j) Shoreline Stabilization. There shall be no hardening of shorelines, including but not limited to jetties, groins, bulkheads, etc. If such features exist as of the date of this Conservation Easement and are detailed in the Baseline Report as such, Grantor shall have the right to maintain or repair these features, but may not enlarge them. In addition, beaches shall not be supplemented with sand. Grantor must allow current or future beaches to undergo a natural process of sediment erosion and accretion.

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

(l) No Biocides. Unless otherwise provided, there shall be no use of biocides, including but not limited to pesticides, fungicides, rodenticides, and herbicides. Notwithstanding the foregoing, Grantor shall have the right to use biocides in and around buildings, and, as approved by Grantee, to control Invasive Plants and Animals detrimental to the conservation values of the Property.

(m) No Dumping. There shall be no dumping of trash, garbage, or other unsightly or offensive material, hazardous substances, or toxic waste on the Property. The storage of reasonable quantities of biocides or other hazardous materials for use on the Property is permitted. The above ground storage of fuels for use on the Property is permitted.

Underground tanks are prohibited, except as provided herein and except for purposes of storing water or other non-toxic, non-hazardous substances only, provided, however, that one underground propane gas tank is permitted for each Residence on the Property. The existing underground home heating oil tank of five hundred fifty (550) gallons capacity currently serving the primary Residence is permitted, subject to Paragraph 18, below. Furthermore, there shall be no changing of the topography of the Property through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Property that could cause erosion or siltation on the Property. Notwithstanding the above restriction, low profile soil berms integral to construction and maintenance of the permitted impoundment and temporary soil piles associated with maintenance of irrigation ponds and with construction activities expressly permitted under this Conservation Easement are permitted. Nothing in this paragraph shall prevent generally accepted agricultural or wildlife management practices, such as the creation of brush piles, composting, or the storage of operable farm machinery. Furthermore, no provision of this paragraph shall extinguish any rights reserved to the Grantor in Paragraph 3.5 (a)(iii), or rights as expressly set forth in this Conservation Easement for the Grantor to construct and/or maintain permitted Roads.

(n) Animal Control. Except with respect to household vermin and other small animals that cannot be practically controlled by selective methods, the Grantor shall remove problem animals using methods selective and specific to individual animals, rather than broadcast, nonselective methods.

(o) Ecological Restoration Activities. If Grantee reasonably determines that such activities are consistent with the purposes of this Conservation Easement, Grantee may, subject in any event to Grantor's prior written consent, not to be unreasonably withheld, engage, and permit others to engage, in restoration activities, pertaining to, without limitation, wetlands, stream banks, riparian areas, invasive plant infestations, or fire regime. Prior to commencement of any restoration activities, Grantee shall have the plans and specifications for such restoration approved by, and shall obtain all permits necessary for engaging in such activities from, all local, state and federal authorities with jurisdiction over such activities.

(p) Best Management Practices. Unless otherwise specified, permitted uses of the Property for agriculture or forestry (including without limitation the siting, construction and maintenance of new and existing Roads, associated improvements and skid trails) shall meet or exceed best management practices ("BMPs") 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 Department of Conservation and Recreation, Division of Virginia Soil & Water Conservation, in order to control erosion, protect soil stability, water quality and other conservation values on the Property.

3.2 Agriculture. Grantor shall have the right, for commercial purposes or otherwise, to engage in agricultural activities in Agricultural Areas and/or within Building Areas.

(a) Agricultural activities shall include the right to:

- (i) breed, raise, keep and pasture livestock;
  - (ii) breed and raise bees, poultry and other fowl;
  - (iii) plant, raise and harvest crops;
  - (iv) perform primary processing and storage of crops and products harvested and produced principally on the Property;
  - (v) board and keep horses for use by Grantee and others;
  - (vi) lease portions of the property to others engaging in an approved agricultural use;
  - (vii) engage in silvicultural practices;
  - (viii) extract surface and subsurface water necessary to accommodate permitted agricultural activities;
  - (ix) Pursuant to Paragraph 3.1(i), construct retention pond(s), impoundment(s), or an irrigation pond(s);
  - (x) plant native and non-native trees, shrubs and plants;
  - (xi) use fertilizers, biocides and pesticides; and
  - (xii) employ conservation measures approved by any governmental authority and install agricultural BMPs to protect environmental quality as new techniques and technologies are developed.
  - (xiii) Use prescribed burning in accordance with applicable local, state and federal regulations.
- (b) These rights shall be subject to the following limitations:
- (i) Grantor may only plant, raise, and harvest fruit trees or perennial vines for commercial purposes pursuant to an Agriculture Management Plan, to be updated at least every (10) years.
  - (ii) Grantor may breed, raise, or pasture cattle, horses, sheep, and goats provided that the density of animals does not exceed one (1) Animal Unit for three (3) acres of Agricultural Areas. If the number of animals per acre exceeds one (1) Animal Unit per three (3) acres, Grantor may only graze and pasture the above referenced domestic animals pursuant to a

Grazing Plan, to be updated at least every ten (10) years. The allowance of additional species of pastured domestic animals on the Property is at the discretion of the Grantee. Grantee's approval of additional species shall not be unreasonably withheld.

- (iii) Grantor may breed, raise, and pasture swine, dairy cattle, poultry and fowl provided that the numbers of such animals on the Property shall not constitute the operation of a Poultry House, Hog Farm, Dairy Operation or Feedlot.
- (iv) Grantor may only harvest timber in an Agricultural Area pursuant to a Harvest Plan.
- (v) In no event shall the Grantor engage in Plasticulture.
- (vi) In no event shall the Grantor engage in Aquaculture.

3.3 Forest Management. Grantor reserves the right to conduct forest management activities in Forested Areas, for commercial purposes or otherwise, provided that such forest management follows a Forest Management Plan and is conducted under the supervision of a professional forester or the Grantee. The Grantee reserves the right to waive, in writing, the required Forest Management Plan or portions thereof if Grantee determines that the proposed forest management activity, such as harvest of firewood solely for use on Property, does not warrant development of a complete plan. A Forest Management Plan is not required for the Timber Management Area referred to in Paragraph X of the definitions, provided that Best Management Practices are followed.

(a) Forest Management Activities. Forest management includes, but is not limited to, the following:

- (i) Harvesting operations (including but not limited to the removal of forest products such as trees, logs, poles, posts, pulpwood, firewood, and chip), whether such operations are conducted using mechanical equipment, domestic animals, and/or manual labor;
- (ii) Prescribed burning activities;
- (iii) Planting, growing, and reforesting open, thinned, or logged areas on the Property;
- (iv) Control of pests, pathogens, non-native plants and Invasive Plants and Animals, using biocides or otherwise;
- (v) Use of fertilizers as necessary to improve soil conditions and tree growth; and



- (vi) Engage in the primary processing of forest products harvested on the Property (including timber harvested in Agricultural Areas).

(b) Forest Management Objectives. All forest management activities undertaken on the Property, including the provisions of the written Forest Management Plan, shall be guided by the following objectives:

- (i) Promote the recruitment and retention of a forest canopy of native tree species and species composition (i.e., forest community type) that is likely to occur on the site under natural biological and physiological processes;
- (ii) Promote the recruitment and persistence of an intact, native herbaceous and woody understory that is characteristic of the given forest community type in terms of its composition and abundance;
- (iii) Maintain soil productivity and prevent erosion;
- (iv) Enhance and protect water quality;
- (v) Maintain biological diversity, native plant and animal species, and the ecological processes that support them;
- (vi) Prevent and/or control the infestation of non-native, invasive species, pests and pathogens that threaten the health of the forest;
- (vii) Promote an older, mature forest with vertical structural diversity where a continuum of age classes is present, including standing dead snags, trees greater than 150 years old occur throughout, and downed woody debris remains on the forest floor; and
- (viii) Promote adequate forage and cover for migratory landbirds and raptors through managing forest for a vertically stratified, native mixed pine-hardwood forest with a highly productive, soft-mast producing component.

(c) Forest Management Plan Approval. As a condition to exercising its reserved right to conduct forest management activities, the Grantor shall submit the Forest Management Plan to Grantee for review and approval as to compliance with the terms of the Conservation Easement. Prior to the development of such plan, Grantor and Grantee shall meet to share information relevant to the planning process. Upon receiving Grantor's Forest Management Plan, Grantee shall have ninety (90) days to complete its review. These requirements, including Grantee's review and approval, shall also apply to the periodic updates to the Forest Management Plan. Such approvals shall not be unreasonably withheld. Forest management activities are prohibited unless conducted in accordance with a valid Forest Management Plan.

(d) Updates to the Forest Management Plan. The Forest Management Plan shall remain valid for ten (10) years from the date of approval by Grantee. The Forest Management Plan may be updated, with each updated plan also covering a period of ten (10) years. Interim updates to the Forest Management Plan are permitted to address a specific land or forest management concern. 10-Year or interim updates shall be subject to approval under the provisions of Paragraph 3.3(c) {Forest Management Plan Approval}.

(e) Harvesting Restrictions. The following harvesting restrictions apply to the Property:

- (i) A Harvest Plan must be submitted to the Grantee for its approval at least thirty (30) days prior to any harvest of timber in the Forested Areas and the Agricultural Areas. No commercial silvicultural activity may occur until the Forest Management Plan and a more specific Harvest Plan have been approved by the Grantee (only a Harvest Plan is required for forest management activities located in Agricultural Areas and in Timber Management Area). The Grantee reserves the right to waive, in writing, the required Harvest Plan, if, in consultation with the Grantor, it determines that the proposed harvest of timber is de minimis in nature.
- (ii) Grantee's approval of the Harvest Plan shall not be unreasonably withheld, but may be withheld or conditioned if prescribed actions may compromise the conservation values of the Property, or if it does not adequately address all required items listed above or other issues pertinent to the intent of this Conservation Easement.
- (iii) All forest management and harvesting activities on the Property must meet or exceed currently accepted silvicultural best management practices, as set forth in "Virginia's Forestry Best Management Practices for Water Quality (Virginia Department of Forestry, 2002)" and its successors.
- (iv) Highgrading harvest practices are prohibited.
- (v) Grantor shall have the right to maintain, repair, and replace existing forest management roads and associated bridges and culverts on the Property. Grantor shall also have the right to construct new forest management roads, permanent and temporary bridges, and associated Improvements, provided that such new construction is limited to roads that are necessary to harvest timber on the Property, and further provided that the approximate location of any new road shall have been provided for in the Forest Management Plan, or otherwise approved in writing by the Grantee. These provisions shall not apply to the establishment and use of temporary skid trails, which shall be permitted without prior approval of the Grantee. The siting, construction, and maintenance of new and existing Roads, associated Improvements, and skid trails must meet or exceed silvicultural

best management practices, as set forth in “Virginia's Forestry Best Management Practices for Water Quality (Virginia Department of Forestry, 2002)” and its successors.

### 3.4 Buffer Areas to Protect Aquatic Habitats and Water Quality.

(a) Except as permitted above, in order to protect aquatic habitats and water quality, within the Buffer Areas, there shall be:

- (i) No constructing or placing of any Improvements. Existing Improvements and Constructed Features, if any, which exist within the Buffer Areas as of the date of execution of this Conservation Easement may be maintained, repaired and replaced, but not enlarged.
- (ii) No constructing or placing of any Roads, Trails, or Utilities, except as provided herein. Roads, Trails, or Utilities existing in the Buffer Areas as of the date of this Conservation Easement may be maintained or repaired, but not enlarged. The existing Road through the Buffer Area and tidal wetlands to the dock site on \_\_\_\_\_ Creek may be repaired and maintained within the existing corridor and with permeable materials in keeping with applicable regulations. Should alterations in sea level or other significant changes occur making the existing dock site and dock Road location no longer feasible, a new dock Road and dock location shall be permitted with the prior written approval of the Grantee.

If a new Road is to be constructed that will pass through the Buffer Areas, the Grantor shall, prior to construction thereof, submit plans to Grantee for prior approval, which plans must address at minimum the following:

- No reasonable alternate routes exist that would eliminate the need for the new Road to cross the Buffer.
  - The Road passes through the Buffer in a manner that limits the linear extent of its intersection with the Buffer.
  - The Road crosses any stream at as close to a ninety degree (90°) angle as possible.
  - The stream crossing consists of a free-standing bridge or bridge and culvert design that allows for unobstructed water flow and wildlife movement.
  - The management of erosion and sedimentation issues during and after the Road construction.
- (iii) No septic tanks or septic fields are permitted within the Buffer Areas.

- (iv) No livestock. If livestock are kept or maintained on the Property, they shall be excluded from the Buffer Areas by fencing to be installed and maintained by the Grantor.
  - (v) No removal, destruction, or cutting of native vegetation.
  - (vi) No use of fertilizers.
  - (vii) No use of biocides.
  - (viii) No dumping of organic or inorganic materials.
  - (ix) No disturbance of soils.
  - (x) No use of motorized vehicles unless on Roads existing as of the date of this Conservation Easement or expressly permitted herein, or unless on Trails as expressly set forth in Section 1.Y. hereof.
- (b) Notwithstanding the foregoing, the following activities are permitted within the Buffer Areas:
- (i) Where streams and/or wetlands do not already contain a forested Buffer Area, Grantor shall have the right to conduct twice yearly burning, mowing or haying provided such mowing or haying (i) is in a designated area of the Buffer Area, (ii) is conducted between August 1 and the end of the growing season; and (ii) leaves a grass height of at least six (6) inches if mowed or hayed. If native trees or shrubs are planted in the Buffer after the date of this Conservation Easement, Grantor must conduct mowing and/or haying operations so as to avoid cutting or otherwise damaging plantings.
  - (ii) Grantor shall have the right to remove, and consent to the removal of, Invasive Plants and Animals, and native plants which, in the sole opinion of the Grantee, compromise the conservation values of the Property. Grantor shall have the right to use biocides in these efforts.
  - (iii) Grantor shall have the right to conduct stream or riparian restoration activities. Restoration activities can involve soil disturbance, provided such activities are deemed necessary in a restoration plan. In addition, fertilizers can be selectively applied to add in the establishment of native vegetation planted as part of restoration efforts.
  - (iv) Recreational activities, provided they do not cause substantial damage to or removal of the trees or other vegetation in the Buffer Areas or otherwise harm riparian and aquatic habitats associated with the Buffer Areas.

- (v) Construct, maintain and replace one dock, as approved by appropriate regulatory authorities.
- (vi) Compensatory wetlands and stream mitigation activities, as required and approved by appropriate regulatory authorities in conjunction with activities expressly permitted by this Conservation Easement.
- (vii) Subject to the limits described herein, the Grantor shall have the right to create and maintain a view corridor not more than one hundred (100) feet in width for the benefit of the permitted Residence site on the Property which is depicted on Exhibit B as the "Tenant House Ruin." Such view corridor shall remain vegetated with native shrubs and grasses. Within the view corridor constructed pursuant to this paragraph, the Grantor shall plant or permit the regeneration of native soft mast producing shrubs and native grasses as to provide foraging areas for migratory birds. Shrubs shall be planted or maintained at a density of not less than one hundred (100) stems per acre. Shrubs within the view corridor greater than eight (8) feet in height may be trimmed to eight feet in order to maintain the view from the Residence site. The Grantee shall provide the Grantor with recommendations for the planting of shrubs in the area cleared for the view corridor to mitigate potential adverse impacts on available migratory songbird habitat.
- (viii) Subject to Grantee's prior written approval, Grantor may relocate the ditch which is located along the southwesterly edge of the yard of the existing Residence, as depicted on Exhibit B, to a non-forested location outside of the Buffer Areas.
- (ix) Conservancy's Consent. Prior to engaging in activities permitted under Paragraphs 3.4(b)(i)-(viii), Grantor shall submit written description of proposed activity, with accompanying maps or sketches as appropriate, to the Conservancy for its review. The description shall be sufficiently detailed to allow the Conservancy to evaluate the proposed activity's conformance to the Conservation Easement, specifically that the proposed activity will be conducted such that it does not pose a long-term threat to the ecological integrity of the Buffer Area. Grantor shall not commence proposed activities until the Conservancy reviews and approves the proposed action. The proposed action will be deemed approved unless the Conservancy objects in writing, within thirty (30) days of receipt of written description, setting forth with specificity the Conservancy's grounds for objections. The Conservancy agrees that if the proposed activity is consistent with the terms and provisions of this Conservation Easement, the Conservancy's approval shall not be unreasonably withheld.

(c) For purposes of applying the Buffer Area restrictions set forth in this Conservation Easement, the Buffer Area for that portion of the agricultural ditch, as depicted in Exhibit B, lying in close proximity to and along the southwesterly edge of the existing Residence yard shall be five (5) feet in width on the northeasterly side of said ditch. All remaining Buffer Area along and around the ends of said ditch shall conform to the requirements of this Conservation Easement as depicted on Exhibit B\_

Building Areas:

(a) Grantor shall have the right to engage in the following activities within the Building Areas:

- (i) Construct and maintain Improvements, including attendant utilities and access roads.
- (ii) Engage in activities permitted in Agricultural Areas, as outlined in Paragraph 3.2 hereof and as otherwise permitted by this Conservation Easement.
- (iii) Disturb or change the natural habitat in proximity to Improvements. Permitted activities shall include, but not be limited to, limited excavation and filling within Improvement access areas and yards created around new or relocated Improvements.

(b) Improvements shall be located within the Building Areas in a manner that causes the least disturbance as practicable to the conservation values of the Property. In no event shall the Building Areas be expanded into the Buffer Areas or Forested Areas.

3.6 Density. Neither the 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 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 Property.

4. **ADDITIONAL RIGHTS RETAINED BY GRANTOR.** Grantor retains the following additional rights:

4.1 Existing Uses. The right to undertake or continue any activity or use of the Property not prohibited by this Conservation Easement. Prior to making any change in use of the Property, Grantor shall notify Grantee in writing to allow Grantee a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement.

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

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

5.1 Right to Enforce. The right to preserve and protect the conservation values of the Property and enforce the terms of this Conservation Easement.

5.2 Right of Entry. The right of Grantee's staff, contractors and associated natural resource management professionals to enter the Property after prior written notice to Grantor, for the purposes of:

- (i) inspecting the Property to determine if Grantor is complying with the covenants and purposes of this Conservation Easement;
- (ii) management of Invasive Plants and Animals as described below; and
- (iii) enforcing the terms of this Conservation Easement.

Prior written notice is not required if Grantee is entering upon the Property because of an ongoing or imminent violation that could, in the sole discretion of Grantee, substantially diminish or impair the conservation values of the Property, as described in Paragraph 8 herein.

5.3 Management of Invasive Plants and Animals. The right, but not the obligation, to control, manage or destroy Invasive Plants and Animals that threaten the conservation values of the Property. Grantee will consult with Grantor prior to implementing management activities.

5.4 Discretionary Consent. The Grantee's consent for activities otherwise prohibited or requiring Grantee's consent under Paragraph 3 above, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the prohibited activities listed in Paragraph 3 are deemed desirable by both the Grantor and Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and 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 purpose of this Conservation Easement. The Grantee may give its permission only if it determines, in its sole discretion, that such activities (i) do not violate the purpose of this Conservation Easement and (ii) either enhance or do not impair any significant conservation interests associated with the Property. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Conservation Easement.

6. **RESPONSIBILITIES OF GRANTOR AND GRANTEE NOT AFFECTED.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantor, or in any way to affect any existing obligation of the Grantor as owner of the Property. Among other things, this shall apply to:

- (i) Taxes. The Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property.
- (ii) Upkeep and Maintenance. The Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property. The Grantor agrees to maintain adequate liability insurance on the Property.

7. **ACCESS.** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement. However, the public has the right to view the Property from adjacent publicly accessible areas such as public roads and waterways.

8. **ENFORCEMENT.** If the Grantee becomes aware of a violation of the terms of this Conservation Easement, the Grantee shall give notice to the Grantor of such violation and request corrective action sufficient to abate such violation and restore the Property to a condition sufficient to bring the Property into compliance with the Conservation Easement. Grantor agrees that the Baseline Report, also known as a Baseline Documentation Report, shall be deemed to provide objective information concerning the Property's condition at the time of this grant. Failure by the Grantor to abate the violation and take such other corrective action as may be requested by the Grantee within thirty (30) days after receipt of such notice shall entitle the Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement; to require the restoration of the Property to a condition of compliance with the terms of this Conservation Easement as existed on the date of the gift of this Conservation Easement, except to the extent such condition thereafter changed in a manner consistent and in compliance with the restrictions contained herein; to enjoin the non-compliance by ex parte temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from the noncompliance. Such damages, when recovered, may be applied by the Grantee, in its sole discretion, to corrective action on the Property. If the court determines that the Grantor has failed to comply with this Conservation Easement, the Grantor shall reimburse the Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court.

8.1 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 of the Property, the Grantee may pursue its remedies under this paragraph without prior notice to the Grantor or without waiting for the period for cure to expire.

8.2 Failure to Act or Delay. The Grantee does not waive or forfeit the right to take action as may be necessary to ensure compliance with 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, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Conservation Easement.

8.3 Violations Due to Causes Beyond Grantor's Control. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Property due to 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 its right of action to the Grantee, to join in any suit, or to appoint the Grantee its attorney-in-fact for the purposes of pursuing enforcement action, all at the election of the Grantee.

8.4 Standing. By virtue of Grantee's acquisition of rights under this Conservation Easement, it shall be entitled, at its option, to standing before appropriate courts of law to pursue remedies or other matters which are necessary or incidental to the protection of the property which is subject to this Conservation Easement.

9. **TRANSFER OF EASEMENT.** The parties recognize and agree that the benefits of this easement are in gross and assignable. The Grantee shall have the right to transfer or assign this Conservation Easement to an organization that at the time of transfer, is a "qualified organization" under Section 170(h) of the U.S. Internal Revenue Code, provided the organization expressly agrees to assume the responsibility imposed on the Grantee by this Conservation Easement. If the Grantee ever ceases to exist or no longer qualifies under Sec. 170(h) or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility.

10. **TRANSFER OF PROPERTY.** Any time the Property, or any interest therein, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee in writing at least thirty (30) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Conservation Easement.

11. **AMENDMENT OF EASEMENT.** This Conservation Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Sec. 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with the Virginia Conservation Easement Act, VA Code Ann. § 10.1-1009 *et seq.*, or any regulations promulgated pursuant to that law. The Grantor and Grantee have no right or power to agree to any amendment that would affect the enforceability of this Conservation Easement.

12. **TERMINATION OF EASEMENT.** The Grantor hereby agrees that at the time of the conveyance of this Conservation Easement to the Grantee, this Conservation Easement gives rise to a real property right, immediately vested in the Grantee, with a fair market value of the Conservation Easement as of the date of the conveyance that is at least equal to the proportionate value that this Conservation Easement at the time of the conveyance bears to the fair market

value of the Property as a whole at that time. That proportionate value of the Grantee's property rights shall remain constant.

When a change in conditions takes place which makes impossible or impractical any continued protection of the Property for conservation purposes, and the restrictions contained herein are extinguished by judicial proceeding, the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement (minus any amount attributable to new improvements allowed under this Conservation Easement made as of the date of the sale, exchange or conversion, which amount shall be reserved to Grantor). The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in and defined under P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended and in regulations promulgated thereunder.

13. **EMINENT DOMAIN.** Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Grantee's and Grantor's interests, and Grantee's proceeds shall be used as specified above. All expenses incurred by the Grantor and the Grantee in such action shall be paid out of the recovered proceeds.

14. **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 its conservation purposes.

15. **INDEMNIFICATION.** Each party agrees to hold harmless, defend and indemnify the other from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees that the indemnified party may suffer or incur as a result of or arising out of the activities of the other party on the Property that causes injury to a person(s) or damage to property.

16. **TITLE.** The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey this Conservation Easement; that the Property is free and clear of any and all encumbrances, including but not limited to, any deeds of trust or 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. **NOTICES.** Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee, respectively, at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor:

To the Grantee:

NAME  
MAILING ADDRESS  
FAX

Legal Department  
The Nature Conservancy  
ADDRESS  
FAX  
With a copy to:  
The Nature Conservancy  
ADDRESS  
FAX

18. **ENVIRONMENTAL CONDITION.** The Grantor covenants and represents that he has no knowledge that any hazardous substance or toxic waste exists nor has been generated, treated, disposed of, or deposited in or on the Property, and that there are not any underground storage tanks located on the Property, with the exception of one underground home heating oil tank of five hundred fifty (550) gallons capacity currently serving the primary Residence. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation as required by appropriate regulatory authorities, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability to 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 become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and any corresponding state statute.

19. **SEVERABILITY.** If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.

20. **PARTIES.** Every provision of this Conservation Easement that applies to the Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear.

21. **RE-RECORDING.** In order to ensure the perpetual enforceability of the Conservation Easement, the Grantee is authorized to re-record this instrument or any other appropriate notice or instrument.

22. **MERGER.** The parties agree that the terms of this Easement shall survive any merger of the fee and easement interest in the Property.

23. **SUBSEQUENT LIENS ON PROPERTY.** No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinate to this Conservation Easement.

24. **ACCEPTANCE & EFFECTIVE DATE.** As attested by the signature of the authorized representative of The Nature Conservancy affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Clerk's Office of the Circuit Court of Northampton County, Virginia.

Grantee makes no express or implied warranties regarding whether any tax benefits will be available to Grantor from donation of this easement, nor whether any such tax benefits might be transferable, nor whether there will be any market for any tax benefits which might be transferable.

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto the Grantee, its successors and assigns, forever.

WITNESS the following signature and seal; and

IN WITNESS WHEREOF, The Nature Conservancy, a District of Columbia non-profit corporation, has caused this instrument to be executed on its behalf by its duly authorized representative.

GRANTOR:

\_\_\_\_\_ [SEAL]

GRANTEE:

THE NATURE CONSERVANCY  
a District of Columbia non-profit corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2006 by \_\_\_\_\_.

\_\_\_\_\_

NOTARY PUBLIC

My commission expires:

\_\_\_\_\_

STATE OF \_\_\_\_\_  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_, who is \_\_\_\_\_ of The Nature Conservancy, a District of Columbia non-profit corporation, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_

EXHIBIT A  
Real Estate Description

Exhibit B – Maps 1 – \_\_\_\_ (depicting various spatial concepts as defined at start of easement)