

Prepared by: Virginia Eastern Shore Land Trust, Inc.
PIN#

**Deed of Gift of Conservation Easement
Virginia Eastern Shore Land Trust, Inc.
And
the (co-holder)**

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

THIS DEED OF GIFT of a CONSERVATION EASEMENT (this “Conservation Easement”), made this _____ day of _____, 2007, between NAME, herein called the “Grantor,” whose address is Address, 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, and the (co-holder), a political subdivision of the Commonwealth of Virginia, herein called the “Co-Holder Grantee,” whose address is _____. The Grantee and the Co-Holder Grantee together are herein called the “Grantees.” The real property subject to this Conservation Easement (referred to, and more fully described hereafter) is herein called the “Protected Property.”

The Protected Property, known generally as _____, comprises approximately _____ (_____) acres fronting _____, fronting also on State Route _____ and located near the town of _____ in the _____ Magisterial District of Northampton 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 _____, 2007.

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 concentration 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 _____ mile of vegetated buffer on _____ Creek, _____ acres of mature mixed forest and _____ acres of tidal marsh, all of which provide habitat of great value to migratory birds and waterfowl.

R-5. The Protected Property provides significant migratory stop-over habitat for protected species of raptors, shorebirds, waterfowl and songbirds (including both neotropical and temperate migratory birds), includes ecologically significant wetlands, marshes and forested areas, and provides a critical buffer area to protect the water quality of the Chesapeake Bay and its tributaries.

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."

R-8. Chapter 17, Title 10.1 of the Code of Virginia of 1950, as amended, entitled "Open-Space Land Act" (the "Open-Space Act") was enacted to preserve natural or open-space lands and authorizes certain public bodies, including "any soil and water conservation district," to receive easements in gross or other interests in properties for certain purposes including "retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property."

R-9. 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 Grantees desire to protect in perpetuity such conservation values of the Protected Property, and the Grantor and the Grantees 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 and the Open-Space Act as hereinafter set forth.

R-10. The General Assembly of the Commonwealth of Virginia enacted the Chesapeake Bay Preservation Act (Virginia Code Sections 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”) 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 2006 Comprehensive Plan Update (the “Plan”). The Protected Property lies within the County’s Chesapeake Bay Preservation Area and contains approximately _____mile of vegetated buffer on _____ Creek and _____ acres of tidal marsh, both providing a critical filter in the protection of water quality.

R-11. 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 in an area/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-12. 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 Protected Property lies within an area of the County designated 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.

R-13. 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 contains approximately _____ acres of prime agricultural soils and _____ acres of forest land within the County’s _____ Agricultural and Forestal District, and, thus, has been specifically identified by the County as worthy of protection for conservation purposes.

R-14. The Commonwealth of Virginia recognized the importance of the preservation of open-space and agricultural land by authorizing localities to adopt ordinances for “use value” taxation of such real property pursuant to Section 58.1-3231 of the Code of Virginia. Northampton County has specifically recognized the importance of the continued preservation of the Protected Property as open-space, agricultural and forest land by providing special assessment of the Protected Property for real property tax purposes under Sections 33.165 through 33.172 of the Northampton County Code. The preservation of the Protected Property as open space and

agricultural land will further Northampton County's clearly-delineated conservation policy as expressed in such special assessment of the Protected Property.

R-15. The Protected Property lies within view of drivers on Virginia State Route _____, the _____ Road, which is designated a Virginia Scenic By-Way pursuant to the Virginia Scenic Byway Program (Virginia Code §§33.1-62 *et seq.*) and contributes to the panorama of agricultural lands and scenic rural views enjoyed by the public therefrom.

R-16. The Protected Property is located adjacent to/in close proximity to _____ Farm, _____ acres under conservation easement to _____. A conservation easement on the Protected Property will contribute to and enhance the overall preservation of wildlife habitat and prime farm and forest land in the County.

R-17. The Protected Property contains _____ historic resources.

R-18. The Protected Property contains the following additional specific conservation values: approximately _____ acres of prime agricultural soils, _____ acres of mature and mixed forest, _____ acres of tidal marsh and approximately _____ mile of vegetated perennial stream buffer.

R-19. The Grantees have 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 Grantees, local government and the Commonwealth of Virginia.

R-20. The Grantor believes that such review and acceptance of this Conservation Easement by the Co-Holder Grantee, a government agency, tends to establish a clearly delineated governmental policy as required under Section 170(h)(4)(A)(iii) of the Code.

R-21. 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-22. The Grantor is the owner in fee simple of the real property hereinafter described, which he/she desires preserved as open-space land in the public interest.

R-23. Both Grantees are qualified organizations within the meaning of Section 170(h)(3) of the Code and the Co-Holder Grantee is a qualified public body under the Open-Space Act, as follows; (i) the Grantee is a publicly funded Virginia charitable corporation exempt from taxation under Section 501(c)(3) of the Code; (ii) the Co-Holder Grantee is a political subdivision of the Commonwealth of Virginia, the gift of this Conservation Easement is made for exclusively public purposes, and soil and water conservation districts are specifically authorized under the Open-Space Act to acquire open-space easements; and (iii) both Grantees have a commitment to preserve the conservation values of the Protected Property and have the resources to enforce the restrictions in this Conservation Easement. The Grantee will conduct an

annual monitoring of the Protected Property and maintains a dedicated endowment fund to cover the costs associated with monitoring and enforcement.

R-24. The restrictions and enforcement remedies hereinafter described shall vest to the Grantees 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 Grantees, the Grantor does hereby grant and convey to the Grantees an open-space easement in gross over, and the right **IN PERPETUITY** to restrict the use of the Protected Property, exclusively for conservation purposes, consisting of _____ acres described on Exhibit A attached hereto and made a part hereof:

[SEE EXHIBIT A]

The Protected Property is shown as parcel _____ among the tax records of the County and totals approximately ____ acres in the aggregate. **The Protected Property shall be considered to be 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 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 Grantees are hereby entitled to enforce, are and shall be as follows:

1. **PURPOSE.** As required under Section 10.1-1009 of the Conservation Easement Act, the general purposes of this Conservation Easement include retaining and protecting the natural and open-space values of the Protected Property, assuring the Protected Property's availability for agricultural and open-space use, protecting natural and historic resources, maintaining water quality, and preserving the rural, scenic aspects of the Protected Property. More specifically, the purpose of this Conservation Easement is to ensure that the Protected Property will be retained **in perpetuity** predominantly in its natural and scenic condition for conservation purposes and to prevent any use of the Protected Property that would significantly impair or interfere with the conservation values of the Protected Property, while allowing for 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, limited residential use, forest management, farming of existing fields, improvement of wildlife habitat and hunting.
2. **PROPERTY USES.** Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Easement 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 purpose of this Conservation Easement. 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 Grantees have determined that the allowed activities are not inconsistent with the purpose of this Conservation Easement. Additional retained rights of the Grantor are set forth in Article 3.

2.1 Subdivision. The Protected Property may not be subdivided or partitioned in any manner.

2.2 Existing Improvements. At the time of this Conservation Easement, there are _____ existing on the Protected Property. Such existing improvements are denoted in the Baseline Report and on Exhibit B, the Map of the Protected Property, attached hereto and made a part hereof.

The Grantor shall have the right to maintain, remodel and repair the two permitted residences and farm buildings and other structures, roads, causeways, drainage ditches, dikes, water tanks, fences, corrals, water wells, utilities and other improvements, now existing or hereafter constructed or permitted under this Conservation Easement, and in the event of their destruction, to reconstruct any such existing improvements with another of similar size, function, capacity, location and material, subject to all the restrictions outlined in Article 2.3.

The Grantor shall have the right to maintain, remodel and repair the two existing abandoned houses, provided that in no case shall there be permitted a total of more than two residences (whether new or restored) on the Protected Property. Any abandoned house that is renovated and restored will constitute a residence and will be counted as such for purposes of the foregoing overall limit of two single family residences. Any such restored residence will be subject to all the restrictions outlined in Article 2.3.

2.3 New Construction. Except as provided herein, no new structures or improvements may be placed or constructed on the Protected Property without the consent of the Grantees. Subject to the restrictions below, the following may be constructed on the Protected Property:

- i) a total of no more than _____ new single family residence(s);
- ii) structures incidental to the single family residences;
- iii) non-residential farm buildings and structures; and
- iv) driveways, utilities and wells to serve the residences, incidental structures and farm structures.

Any permitted new structure constructed on the Protected Property shall be subject to the following limitations, restrictions, notices and approvals:

The right to construct or restore the permitted (second) single family residence(s) on the

Protected Property shall remain exclusively with the Grantor and/or lineal descendants of the Grantor. The right to construct or restore the (second) single family residence(s) may not be assigned or transferred and shall expire when neither the Grantor nor lineal descendants of the Grantor own or retain any beneficial interest in the Protected Property.

Written notice, as provided in Article 14 shall be given to the Grantees 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 Grantees to judge the consistency of the proposed activity with the purpose of this Conservation Easement. The purpose of requiring such prior notice is to afford the Grantees an adequate opportunity (i) to object to such activities if the Grantees believe such activities are likely to have a material adverse impact on the conservation values of the Protected Property, or (ii) if the Grantees do not object to such activities, to monitor such activities to ensure they are carried out in a manner consistent with the purpose of this Conservation Easement.

The permitted new single family residence shall not exceed in the aggregate three thousand five hundred (3,500) square feet of enclosed living space.

The aggregate size of permitted structures incidental to the single family residences shall not exceed three hundred (300) square feet of enclosed space per structure.

Any new non-residential farm building or related structure, including, but not limited to horticultural structures, shall not exceed three thousand (3,000) square feet of enclosed space per structure without prior written approval of the Grantees.

Any new structures must be located a minimum horizontal distance of one hundred (100) feet, 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 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 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 shall be measured from the landward edge of wetlands.

Outdoor lighting shall be placed and shielded so as 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), wind turbine, utility or communications tower, satellite TV tower, conduit or line on or above the Protected Property.

In no event shall more than seven (7) percent of the total square footage of the Protected Property be occupied by structures, buildings, roads, driveways, recreational courts,

swimming pools, gardens, patios, lawns, boardwalks, docks, garages, kennels, decks, sheds, blinds and parking areas. Furthermore, no more than four (4) percent of all the area within five hundred (500) feet of a wetland or water body may be developed, paved or otherwise covered by impermeable surfaces.

2.4 Industrial & Commercial Property Uses. Industrial or commercial activities other than the following are prohibited: (i) agriculture, viticulture, 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 purpose of this Conservation Easement; 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. The Grantor shall have the right to harvest timber from 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 Grantees 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 so as 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 in order to create new pine plantations. However, any agricultural field in existence as of the date of this Conservation Easement may be planted as a pine plantation and subsequently reverted to an agricultural field after harvest of such pine trees. Existing fields are defined for the purpose of this Conservation Easement as those fields used for

agricultural activities at the date first written above 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, and to cut firebreaks. Any such activity inconsistent with the Forest Management Plan or the Baseline Report shall require the prior approval of the Grantees, except that such approval shall not be required in case of emergency firebreaks.

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 Endangered Species Act (16 U.S.C. Sections 1531-1544) and the Bald Eagle Protection Act (16 U.S.C. Section 668).

The Grantor shall notify the Grantees 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 shall be compensated 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 Alien Plant 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. 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 permitted to serve the residences, 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.

2.9 Water Resources. The Grantor retain the right to enhance those water resources

and wetlands on the Protected Property for purposes of wildlife habitat 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. Permitted activities shall include, but are not limited to, the right to create, restore and enhance water resources, such as ponds or wetlands, for fisheries and wildlife improvement or for crop irrigation.

2.10 Historic Resources. There shall be no intentional destruction or significant alteration of the historic _____, which is denoted on Exhibit B, other than general maintenance or restoration or as may, in the discretion of the Grantor, be deemed necessary for safety considerations. Archaeologically significant deposits, sites or features on the Protected Property shall not be intentionally disturbed or excavated except by or under the supervision of a professionally qualified archaeologist, accredited by the Commonwealth of Virginia.

2.11 Scenic Byway. There shall be no significant alteration of the rural scenic values on the Protected Property, as seen from Virginia Route _____, the _____ Road. Siting of the permitted new single family residences and any new farm structures shall reflect the traditional land use patterns in the _____ community, and shall be subject to sixty (60) days notice to the Grantees before the start of any clearing or construction.

2.12 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.

2.13 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.

2.14 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.

2.15 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.

2.16 No Biocides. There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides and herbicides in any manner that could harm the conservation values of the Protected Property. Pesticides and biocides may be used as needed around improvements on the Protected Property, in existing agricultural fields, and to facilitate forestry management as outlined in the “Forest Management Plan,” as approved by the Grantees, to control invasive species detrimental to the conservation values of the Protected Property.

2.17 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.

2.18 No Pollution. There shall be no pollution of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall activities be conducted on the Protected Property that would be detrimental to water quality or purity nor activities that could alter the natural water level or flow in or over the Protected Property (except as permitted pursuant to Article 2.9).

2.19 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 Grantees 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 Grantees, 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.

2.20 Boundary Line Adjustments. The Grantor shall have the right to make *de minimis* boundary line adjustments with adjoining parcels of land, provided that the Grantees are notified in writing at least sixty (60) days prior to the completion of such boundary line adjustment and provided that one of the following conditions are met: (i) the entire adjacent parcel is subject to an existing, recorded and permanent open space easement conveyed to the Grantee, the Co-Holder Grantee or other Qualified Organization as defined in Article 9; or (ii) the proposed boundary line adjustment is reviewed and approved in advance by the Grantees.

2.21 Use Inconsistent with Purpose. 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 purpose of this Conservation Easement or that threatens the purpose of this Conservation Easement is prohibited. In the event that there is a dispute between the Grantor and either of the Grantees as to whether or not an activity or use not specifically addressed herein is prohibited under this Article 2.21, the parties will arbitrate the matter in accordance with the provisions of Article 7 of this Conservation Easement.

3. **ADDITIONAL RIGHTS RETAINED BY THE GRANTOR.** The Grantor reserves to him/herself, and to him/her successors and assigns, all rights accruing from their 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 not expressly prohibited herein, provided such uses are not inconsistent with the purpose of this Conservation Easement. Without limiting the generality of the foregoing, and subject to the terms of Article 2, 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, limited residential and 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 Grantees. 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 Grantees. Notwithstanding the foregoing, pursuant to Treas. Reg. Section 1.170A-14(g)(5)(ii), before exercising any reserved right that may, if not exercised in accordance with the limitations imposed by this Conservation Easement, reasonably be expected to have a material adverse impact on the conservation values of the Protected Property, the Grantor shall notify the Grantees in writing to allow the Grantees a reasonable opportunity to determine whether the exercise of such right would violate the terms of this Conservation Easement.

4. **THE GRANTEE'S RIGHTS.** To accomplish the purpose of this Conservation Easement, the following rights are granted to the Grantees 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 purpose or the terms of this Conservation Easement. When a violation of this Conservation Easement has caused injury to the Protected Property, the Grantees have the right to require the restoration of the Protected Property, all as more particularly set forth in Article 6.

4.2 Right of Entry. The Grantees and their 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 easement. The Grantees 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 easement require immediate entry. The Grantor or the Grantor's representative may accompany the Grantees, their staff, contractors and associated natural resource management professionals on any such visit.

4.3 Discretionary Consent. The Grantee's or the Co-Holders Grantees' 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 Grantees' consent shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantees to judge the consistency of the proposed activity with the purpose of this Conservation Easement. The Grantees may give their permission only if they determine, in their sole discretion, that such activities (i) are consistent with the purpose of this Conservation Easement, and (ii) either enhance or do not impair the conservation values of the Protected Property.

5. **RESPONSIBILITIES OF THE GRANTOR AND THE GRANTEEES 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 Protected Property. The Grantor shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. 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 Grantors remain 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 Grantees 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. **GRANTEES' REMEDIES.** If one or both of the Grantees become aware of a violation of the terms of this Conservation Easement, one or both of the Grantees 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 Protected Property, such written notice to the Grantor shall request corrective action sufficient to restore the Protected Property to its condition existing as of the time of the donation of this Conservation Easement or, in the discretion of the Grantees, such written notice may request corrective action sufficient to restore the Protected Property to its condition prior to the injury, provided that such prior condition was 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 at the time of this grant. If the Grantor fails to cure the violation within thirty (30) days after receipt of notice from one or both of the Grantees, 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, one or both of the Grantees 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 noncompliance, including damages for injury to the Protected Property and the costs of restoration. Such damages, when recovered, may be applied by the Grantees, in their sole discretion, 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 Grantees 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 one or both of the Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Protected Property, one or both of the Grantees may pursue their remedies under this Article without prior notice to the Grantor and without waiting for the period for cure to expire

6.2 Failure to Act or Delay. The Grantees do 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 Grantees in acting to enforce any restriction or to exercise any rights under this Conservation Easement.

6.3 Violations Due to Causes Beyond The Grantors' Control. Nothing herein shall be construed to entitle the Grantees to institute any enforcement proceedings against the Grantors (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 Grantees, to assign its right of action to either or both of the Grantees, to join in any suit, or to appoint either or both of the Grantees as its attorney-in-fact for the purposes of pursuing enforcement action, all at the election of the Grantees.

7. **ARBITRATION.** In the event of a disagreement between the Grantor and the Grantees as to whether or not a use or activity not specifically addressed in this Conservation Easement violates Article 2.21 (hereinafter “Arbitration Issue”), the Arbitration Issue will be resolved by a committee made up of three (3) individuals (the “Committee”) who have reasonable experience with conservation easements and land use of similar properties. One individual will be selected by the Grantor, one individual will be selected by the Grantee or Co-Holder Grantee, and the other individual will be selected by the two individuals selected by the Grantor and the Grantees. The Committee will determine by majority vote the Arbitration Issue. The Committee shall follow the procedural rules established by the American Arbitration Association. The parties shall share the cost of the Committee equally. The decision of the Committee will be binding on the Grantor and the Grantees, provided, however, that no acts on or uses of the Protected Property that are inconsistent with the purpose of this Conservation Easement shall be permitted, and the Grantees shall provide the Office of the Attorney General of the Commonwealth of Virginia with written notice of the Committee’s decision no later than thirty (30) days after such decision, and the Attorney General shall have an opportunity to object to such decision on the grounds that it permits acts on, or uses of, the Protected Property that are inconsistent with the purpose of this Conservation Easement.
8. **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 purpose of this Conservation Easement, as set forth in Article 1.
9. **TRANSFER OF EASEMENT.** The parties recognize and agree that this Conservation Easement is assignable, provided, however, that neither the Grantee nor the Co-Holder Grantee shall transfer its interest in this Conservation Easement unless (i) the transferee is an organization then qualifying as an eligible donee as defined in Section 170(h) of the Code and as a “holder” under Virginia law (a “Qualified Organization”); and (ii) the Grantee or the Co-Holder Grantee (as applicable) requires, as a condition of the transfer, that the purpose of this Conservation Easement shall continue to be carried out in perpetuity.

For as long as the Co-Holder Grantee retains co-holder status on this Conservation Easement, any attempt by the Grantee to transfer its interest and rights in this Conservation Easement shall be invalid unless the Grantee obtains the written approval of the Co-Holder Grantee prior to the transfer. At any time, the Co-Holder Grantee shall have the right to transfer its interest and rights in this Conservation Easement to any Qualified Organization. Any time after January 6, 2008, the Grantee shall, at the request of the Co-Holder Grantee, accept a transfer of the Co-Holder Grantee’s interest and rights

in this Conservation Easement, unless the Grantee fails at that time to be a Qualified Organization. If both of the Grantees ever cease to exist or cease to be Qualified Organizations, a court of competent jurisdiction shall transfer this 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.

10. **TRANSFER OF PROPERTY.** Any time the Protected Property, or any interest therein, is transferred by the Grantor to any third party, the Grantor shall notify the Grantees 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.
11. **AMENDMENT OF EASEMENT.** This Conservation Easement may be amended only by written agreement signed by the Grantor and the Grantees and recorded in the land records of the jurisdiction in which the Protected Property is located. Any such amendment shall be consistent with the purpose of this Conservation Easement and shall not affect the qualification of this Conservation Easement under Section 170(h) of the Code, or any regulations promulgated in accordance with that section. Any such amendment also shall be consistent with the Conservation Easement Act and/or the Open-Space Act, as applicable.

Except as provided under Article 12, the Grantees and the Grantor have no right or power to agree to any amendment that would (i) be inconsistent with the purpose of this Conservation Easement; (ii) impair the enforceability of this Conservation Easement; (iii) permit any use or activity that would result in the termination or extinguishment of this Conservation Easement; or (iv) allow any residential, commercial or industrial structures or uses expressly prohibited by the original terms of this Conservation Easement.

12. **TERMINATION OF EASEMENT.** If it is determined that conditions on or surrounding the Protected Property have changed so much that it is impossible to fulfill the purpose of this Conservation Easement, a court of competent jurisdiction may, at the joint request of both the Grantor and the Grantees, terminate this Conservation Easement. If condemnation of all or a part of the Protected Property by public authority renders it impossible to fulfill the purpose of this Conservation Easement, the Conservation Easement may be terminated through condemnation proceedings.

At the time of the conveyance of this Conservation Easement to the Grantees, this Conservation Easement gives rise to a real property right, immediately vested in the Grantees. If this Conservation Easement is terminated and the Protected Property is sold or taken for public use, then the Grantees shall be entitled to the greater of (i) the fair market value of the Grantees' property right hereunder at the time of such sale, exchange or conversion, determined using a "before and after" or similar method of appraisal; or (ii) a percentage of the gross sale proceeds or condemnation award (minus any amount

attributable to new improvements made after the date of this conveyance, which amount shall be reserved to the Grantors) equal to the ratio of the appraised value of this Conservation Easement to the unrestricted fair market value of the Protected Property, as these values are determined as of the date first written above. The Grantees shall use any proceeds received pursuant to this Article in a manner consistent with the purpose of this Conservation Easement.

13. **INDEMNIFICATION.** Except as otherwise provided in this easement, the Grantor shall hold harmless, indemnify and defend each of the Grantees 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 Grantees 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 negligent acts or acts of misconduct by the Grantees, and except those arising out of the Grantees' workers' compensation obligations, if any. The Grantor release and agree to hold harmless, indemnify and defend each of the Grantees from any and all liabilities arising from or in any way connected with: (i) injury to, or the death of, any person or physical damage to any property resulting from any act, omission, condition or other matter related to, or occurring on or about, the Protected Property, regardless of cause, unless due solely to the negligence of one of the Grantees, in which case the Grantor's obligation extends only to the non-negligent Grantee or Co-Holder Grantee, if any; (ii) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation or requirement, including, without limitation, 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, by any person in any way affecting, involving, or relating to the Protected Property; and (iii) the presence or release in, on, from, or about the Protected Property, at any time, 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.

14. **NOTICES.** Any notices required in this Conservation Easement shall be either personally delivered or sent postage prepaid by registered or certified mail, return receipt requested, to the parties hereto at the following addresses or at such other addresses as may be hereafter specified by notice in writing:

Grantee: Virginia Eastern Shore Land Trust Inc., P.O. Box 1114, Exmore, VA 23350.

With a copy to the Co-Holder Grantee: _____.

Grantor: _____.

15. **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.

16. **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 Grantees and their respective agents, officers, employees, personal representatives, heirs, devisees, successors and assigns, and all other successors to them in interest and shall continue as a servitude running in perpetuity with the Protected Property. Whenever used herein, "Grantor" shall include the Grantor and his/her agents, officers, employees, successors and assigns, and all other successors to them in interest, and "Grantees" shall include the Grantee, the Co-Holder Grantee and their respective agents, officers, employees, successors and assigns and all other successors to them in interest.
17. **TITLE.** The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Protected Property in fee simple and has 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 Grantees shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.
18. **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.
19. **BASELINE REPORT.** The Grantor and the Grantees agree that the Baseline Report provides an accurate representation of the Protected Property and the condition of the Protected Property as of the date of this Conservation Easement, 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 copies held by both the Grantor and the Co-Holder Grantee.
20. **HAZARDOUS WASTE.** The Grantor does further covenant and represent that to the best of his/her 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 he/she knows of no underground storage tanks located on the Protected Property whose presence, age and location have not been fully disclosed.
21. **COMPLIANCE WITH LAWS.** The conveyance of this Conservation Easement by the

Grantor to the Grantees 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.

22. **RECORDING.** The Grantees are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement; for such purpose, the Grantor appoints the Grantees their attorney-in-fact to execute, acknowledge and deliver any necessary instrument on the Grantors' behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.
23. **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.
24. **EFFECTIVE DATE.** The Grantor and the Grantees intend that the restrictions arising hereunder take effect on the day and year this Deed of Gift of Conservation Easement is recorded in the Clerk's Office of the Circuit Court for the County of Northampton, Virginia, after all required signatures have been affixed hereto. The Grantee may re-record this instrument at any time as may be required to preserve its rights in this Conservation Easement.
25. **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 Northampton County shall be controlling.

The parties hereto 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 Grantees 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 Grantees have caused this instrument to be executed by their duly authorized representatives as of the date first above written:

THE GRANTOR:

Name

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

I, _____, a Notary Public for the Commonwealth
aforesaid, hereby certify that NAME, the Grantor, personally appeared before me this day and
acknowledged the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 2007.

(SEAL)
Notary Public

My commission expires: _____

Accepted:
VIRGINIA EASTERN SHORE LAND TRUST, INC.

By: _____
Harry S. Holcomb III, President

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

I, _____, a Notary Public for the Commonwealth aforesaid, hereby certify that Harry S. Holcomb III, 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 _____, 2007.

_____(SEAL)
Notary Public

My commission expires: _____

Accepted:
Co-holder

By: _____
Name

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

I, _____, a Notary Public for the Commonwealth
aforesaid, hereby certify that _____, a political subdivision of
the Commonwealth of Virginia, herein the Co-Holder Grantee, personally appeared before me
this day and acknowledged the foregoing instrument on behalf of the Backup or Co-Holder
Grantee.

WITNESS my hand and official seal this _____ day of _____, 2007.

_____(SEAL)

Notary Public

My commission expires: _____.

EXHIBIT A

Legal Description of the Protected Property

Your attorney will provide this.

EXHIBIT B

Map of the Protected Property

Prepared by the Land Trust