

**This is a form document only and subject to amendment based on the particular circumstances of a PDR agreement between the County and a property owner reached within the parameters of the County's PDR ordinance and the enabling laws of the Commonwealth. This sample deed is provided to assist landowners and their attorneys in preparing deeds of easement to be conveyed to Stafford County.**

**This is also a working document and may be amended generally from time-to-time.**

**The legal practitioner should use this form as a guide only, and produce the appropriate Deed to conform with the agreed terms. As each property contains unique conservation values, County staff may recommend provisions appropriate to individual properties. Landowners should discuss present and future land management practices with County staff before preparation of the deed of easement.**

**Stafford County does NOT provide legal or tax advice or warrant that this sample deed of easement will meet all IRS or Virginia Department of Taxation requirements or the Virginia Land Conservation Foundation's Conservation Value Review Criteria for easements valued over one million dollars. An easement will permanently change how the property may be used and its market value. Because this change can have major estate planning and tax consequences, landowners should consult legal counsel and/or other financial/tax/accounting advisers prior to submission of their proposed easement to Stafford County for its consideration.**

Prepared by: \_\_\_\_\_ (landowner's attorney)

Sample Deed of Easement prepared by and return to:  
Stafford County's Attorney's Office  
Post Office Box 339  
Stafford, VA 22554  
(Grantee's Address)

TAX MAP NO. *or* PIN: \_\_\_\_\_  
LOT: \_\_\_\_\_, SECTION: \_\_\_\_\_

This Deed of Easement is exempt from taxation under Virginia Code §§ 58.1-811(A)(3) and 58.1-811(C)(4).

### **DEED OF EASEMENT**

THIS DEED OF EASEMENT, made this day of \_\_\_\_\_ 20\_\_, by and between \_\_\_\_\_, Grantor (hereinafter referred to as the "Grantor"), and the COUNTY OF STAFFORD, VIRGINIA, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as the "County" or "Grantee"), whose address is 1300 Courthouse Road, Stafford, VA 22554, and \_\_\_\_\_, Trustee (hereinafter referred to as the "Trustee"), and

\_\_\_\_\_, Beneficiary (hereinafter referred to as the "Beneficiary").

**WITNESSETH**

WHEREAS, Grantor is the owner in fee simple of real property situated in Stafford County, Virginia, containing in the aggregate \_\_\_\_\_ acres as further described in "EXHIBIT A ATTACHED," and hereinafter referred to as the "Property." Grantor desires to give and convey to Grantee a perpetual conservation and open-space easement over the Property as herein set forth; and

WHEREAS, Grantee is a political subdivision of the Commonwealth and a "qualified organization" and "eligible donee" under Section 170(h)(3) of the Internal Revenue Code ("IRC") (references to the Internal Revenue Code in this Easement shall be to the United States Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings issued thereunder, or the corresponding provision of any subsequent federal tax laws and regulations) and Treasury Regulation Section 1.170A-14(c)(1) and is willing to accept a perpetual conservation and open-space easement over the Property as set forth herein; and

WHEREAS, Virginia Code Sections 10.1-1700 through 10.1-1705 ("Open Space Land Act") declare that the preservation of open-space land serves a public purpose by curbing urban sprawl, preventing the spread of urban blight and deterioration, and encouraging more economic and desirable urban development; helping provide or preserve necessary park, recreational, historic, and scenic areas, and conserving land and other natural resources; and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land; and

WHEREAS, pursuant to Virginia Code Sections 10.1-1700 and 10.1-1703, the purposes of this Easement include retaining and protecting open-space and natural resource values of the Property. The limitation on division, residential construction, and commercial and industrial uses contained in Section II ensure that the Property will remain perpetually available for agriculture, livestock production, forest, or open-space use, all as more particularly set forth below; and

WHEREAS, Virginia Code Sections 10.1-1700 *et seq.* and 10.1-1800 *et seq.* declare it to be the public policy of the Commonwealth to encourage preservation of open-space land, and Virginia Code Section 10-1700 *et seq.* authorizes Stafford County to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space, and recreational lands of the Commonwealth; and

WHEREAS, as required under Virginia Code Section 10.1-1701, the use of the Property for open-space land conforms to the Stafford County Comprehensive Plan adopted on \_\_\_\_\_, and is designated as \_\_\_\_\_ on the County's future land use map.

WHEREAS, this Easement is intended to constitute (i) a “qualified conservation contribution” as defined in IRC Section 170(h)(1) as more particularly explained below, and (ii) a qualifying “interest in land” under the Virginia Land Conservation Incentives Act of 1999 (Virginia Code Section 58.1-510 *et seq.*); and

WHEREAS, this Easement is intended to be a grant “exclusively for conservation purposes” under IRC Section 170(h)(1)(C) because it effects “the preservation of open space (including farmland and forest land)” under IRC Section 170(h)(4)(A)(iii). Specifically, the preservation of open-space on the Property is pursuant to clearly delineated state governmental conservation policies and will yield a significant public benefit; and

WHEREAS, this open-space easement in gross constitutes a restriction granted in perpetuity on the use which may be made of the Property; and is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below (*Cite federal, state, or local governmental policies that will be advanced by the preservation of the Property, and the public benefit of such preservation.*):

- i. Land conservation policies of the Commonwealth as set forth in:
  1. Article XI, § 1 of the Virginia Constitution, which states that it is the Commonwealth’s policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;
  2. The Open-Space Land Act cited above;
  3. Virginia Code Sections 10.1-1800 through 10.1-1804 cited above;
  4. Virginia Land Conservation Incentives Act, Virginia Code Sections 58.1-510 through 58.1-513 cited above, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth’s unique natural resources, wildlife habitats, open spaces, and forest resources;
  5. (*any other applicable state policies*); and
- ii. Land use policies of Stafford County as delineated in:
  1. Stafford County Comprehensive Plan, which the restrictions set forth in this Deed of Easement conform to, and which include, but are not limited to, the following: to "preserve and enhance opportunities for agricultural uses, agribusiness, and silviculture operations," "continue emphasis on the growth area concept and on the preservation of a rural character in areas outside of the growth

area," and "preserve and enhance the county's natural resources." (*enumerate other applicable goals, objectives, strategies, visions, or policies, etc.*); and

2. Stafford County Purchase of Development Rights Ordinance, Section 22A-1 *et seq.*, the purpose of which includes, but is not limited to the following: (a) Establishing a program that enables the county to acquire conservation easements voluntarily offered by property owners to serve as one means of assuring that Stafford County's resources are protected and efficiently used; (b) Establishing and preserving open space and the continuing rural character of the county; (c) Preserving farm and forest land; (d) conserving and protecting water resources and environmentally sensitive lands, waters and other resources; (e) conserving and protecting biodiversity, wildlife and aquatic habitat; (f) assisting in shaping the character, direction, and timing of development in the county; (g) improving the quality of life for the inhabitants of the county; and (h) promoting recreation and tourism through the preservation of scenic and historical resources.

3. Grantee's formal practices in reviewing and accepting this Easement. Grantee has engaged in a rigorous review, considered and evaluated the benefits provided by this Easement to the general public as set forth in these recitals, and concluded that the protection afforded the open-space character of the Property by this Easement will yield a significant public benefit and further the open-space conservation objectives of Grantee and the Commonwealth. Grantor believes that such review and acceptance of this Easement by Grantee tends to establish a clearly delineated governmental conservation policy as required under IRC Section 170(h)(4)(A)(iii); and

4. (*Applicable if locality has land use value assessment and Property has been given such designation*) Stafford County Code Section 23-26 *et seq.* that provides for land-use value assessment of the Property to encourage the preservation of the Property as real estate devoted to agricultural, forestal, horticultural, or open-space uses, which ordinance was enacted pursuant to Virginia Code Section 58.1-3231; and

5. (*any other applicable local policies*); and

WHEREAS, (*Cite here other studies or plans that will be advanced by the Property's preservation, conservation awards, or other recognition that the Property has received.*); and

WHEREAS, (*List here the particular conservation attributes of the Property and the public benefit they yield.*); and

WHEREAS, this Easement will yield significant public benefit to the citizens of Stafford County as set forth in these recitals and in Section I below; and

WHEREAS, Grantor and Grantee desire to protect in perpetuity the conservation values of the Property as specified in Section I by restricting the use of the Property as set forth in Section II; and

WHEREAS, Grantee has determined that the restrictions set forth in Section II (Restrictions) will preserve and protect in perpetuity the conservation values of the Property and will limit use of the Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by the Easement; and

WHEREAS, Grantee, by accepting this Easement, designates the Property as property to be retained and used in perpetuity for the preservation and provision of open-space land pursuant to the Open-Space Land Act; and

WHEREAS, the County's acquisition of this Easement furthers the purposes of the County's Purchase of Development Rights Program in that the acquisition, among other things, assures that County resources are protected and efficiently used, establishes and preserves open-space, and furthers the goals of the County's Comprehensive Plan to protect the County's natural, scenic, and historic resources; promotes the continuation of a viable agricultural and forestal industry and resource base; and protects the quality of County surface water and groundwater resources; and

THEREFORE, in consideration of the foregoing recitals incorporated herein and made a part hereof and in consideration of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant and convey to Grantee a conservation and open-space easement in gross (Easement) over, and the right in perpetuity to restrict the use of, the Property, which is described below *(or in SCHEDULE "A" attached hereto and made a part hereof) (the County prefers that the legal description be set forth below and not in SCHEDULE A)* and consists of \_\_\_\_\_ acres located in Stafford County, Virginia, near \_\_\_\_\_, fronting on State Route \_\_\_\_\_ [or road name] to-wit:  
\_\_\_\_\_  
\_\_\_\_\_ [attorney to insert legal description]

The Property is shown as Tax Map No. (or PIN) \_\_\_\_\_ among the land records of Stafford County, Virginia. Even if the Property consists of more than one parcel for real estate tax or any other purpose, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

### **SECTION I - PURPOSE**

The purpose of this Easement is to preserve and protect the conservation values of the Property in perpetuity by imposing the restrictions on the use of the Property set forth in Section II and providing for their enforcement in Section III. The conservation values of the Property are described in the above recitals, are documented in the

Documentation Report described in Section IV below and include its open-space (*and if applicable*: scenic, natural, historic, scientific or recreational) values and its values as land preserved for open-space and rural uses including (*include as applicable* agriculture [including livestock production] and forestry). (*In Section II add specific restrictions needed to provide protection for such values.*) Pursuant to the Stafford County Purchase of Development Rights Ordinance, Stafford County Section 22A-1 *et seq.* the further purpose of this Easement is preservation of land for (*Insert one or more criteria as applicable*: agricultural use, forestal use, natural habitat and biological diversity, historic preservation, natural resource-based outdoor recreation or education, watershed preservation, preservation of scenic open space, or preservation of open space designated by local government.).

*(Additional optional language: Consult with attorney about whether to include this overarching provision regarding exercise of reserved rights.) Grantor covenants that no acts or uses that are inconsistent with the purpose of this Easement or the conservation values herein protected shall be conducted on the Property.*

## **SECTION II – RESTRICTIONS**

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

1. **DIVISION.** Separate conveyance of a portion of the Property or division, or subdivision of the Property is prohibited. The Property shall not be divided or subdivided into, or separately conveyed as, more than \_\_\_\_\_ parcels. Grantor shall give Grantee written notice prior to making any division of the Property. In the event of a division of the Property as provided in this Paragraph 1, the grantor making the conveyance retains the right to make any further permitted division(s) of the Property unless permitted divisions are allocated by that grantor in the instrument creating the division or other recorded instrument.)

Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered separate conveyances of portions of the Property, or divisions or subdivisions of the Property, provided that Grantee approves the adjustments, is made party to any deed creating a boundary line adjustment, and at least one of the following conditions is met:

- a. The entire adjacent parcel is subject to a recorded open-space easement owned by Grantee; or
- b. Grantee has reviewed and approved the proposed boundary line adjustment in advance.

*[If applicable: In the event that a permitted division of the Property requires a road or street dedication, such dedication shall not be considered a separate*

*conveyance of a portion of the Property or a division or subdivision of the Property and construction of such road or street is permitted.]*

**2. BUILDINGS, STRUCTURES, ROADS, AND UTILITIES.** No buildings, structures, roads, or utilities, other than the following, are permitted on the Property:

A. **Dwelling.** One (1) single-family dwelling or dwelling unit, such as barn or garage apartments, per one-hundred (100) acres with the location approved by the Grantee (*a property less than 100 acres is permitted one single-family dwelling with the location approved by the Grantee*), which shall not exceed an aggregate of \_\_\_\_\_ square feet of above-ground enclosed living area [6,500 square feet per property suggested]. The dwelling shall not exceed \_\_\_\_\_ square feet [4,500 square feet generally suggested, depending on the character of the property] of above-ground enclosed living area without Grantee's prior review and written approval, which approval shall take into consideration the impact of the size, height, and siting of the proposed dwelling on the scenic and other conservation values of the Property. A dwelling currently existing on the Property shall be counted in the number of permitted dwellings. Grantor shall give Grantee 30 days' written notice before beginning construction or enlargement of a dwelling on the Property. [If applicable: In the event of division of the Property as provided in Section II, Paragraph 1, a permitted dwelling shall be shown on the instrument creating the division or other recorded instrument].

The location, approved by the Grantee, for one (1) single-family dwelling per one-hundred (100) acres shall be identified on a plat of survey entitled \_\_\_\_\_, which plat is dated \_\_\_\_\_ made by \_\_\_\_\_, a copy of which is recorded in the Clerk's Office of the Stafford County Circuit Court, Virginia, as Instrument No. \_\_\_\_\_ or identified on a plat of survey entitled \_\_\_\_\_, which plat is dated \_\_\_\_\_ made by \_\_\_\_\_, a copy of which attached to, incorporated herein, and recorded with this Deed of Easement as Attachment \_\_\_\_\_.

[Alternatively, the number and square footage of dwellings may be set forth above, distinguishing between primary and secondary dwellings. For example, one parcel could have a main or primary dwelling and one secondary dwelling, such as a tenant house, cabin, or guest cottage.]

B. **Non-residential outbuildings and structures.** Non-residential outbuildings and structures commonly and appropriately incidental to permitted dwellings, and sized appropriately to serve as amenities to single-family residential use, provided that the aggregate footprint of non-residential outbuildings for each permitted dwelling shall not exceed 2,500

square feet in ground area unless prior written approval shall have been obtained from Grantee that a larger footprint is permitted considering the purpose of this Easement and the scale of the proposed outbuilding or structure in relation to the surrounding area. [Optional addition: Additionally, all non-residential outbuildings shall be located near such dwellings. For the purpose of this paragraph, “near” means within 200 feet of such dwelling, unless prior written approval shall have been obtained from Grantee that a greater distance is permitted considering the purpose of this Easement and the scale of the proposed outbuilding in relation to the surrounding area]; and

- C. **Farm buildings or structures.** Farm buildings or structures, except that a farm building or farm structure exceeding \_\_\_\_\_ square feet in ground area [4,500 square feet recommended for properties over 50 acres. County staff will work with landowner to determine an appropriate size for large and actively farmed agricultural properties.] may not be constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the conservation values of the Property. For purposes of this paragraph, a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in Section II Paragraph 3(A) or (B); and
- D. **Roads.** Private roads to serve permitted buildings or structures [if applicable: private roads to parcels created by permitted division(s) of the Property], [if applicable: public roads required to be constructed in conjunction with permitted division(s) or subdivision(s) of the Property, provided that Grantee determines that the construction of such public roads will not impair the conservation values of the Property and gives prior written approval of such construction,] and roads with permeable surfaces for other permitted uses, such as farming or forestry; and
- E. **Utilities.** Public or private utilities to serve permitted buildings or structures [if applicable: and public or private utilities to serve parcels created by permitted division(s) of the Property]. Public or private utilities to be constructed in whole or in part to serve other properties shall not cross the Property unless Grantee determines that the construction and maintenance of such utilities will not impair the conservation values of the Property and gives its prior written approval for such construction and maintenance, which approval shall take into consideration the visibility and other impact of such utilities on the conservation values of the Property. Grantor reserves its separate rights to approve such public or private utilities.



- F. Grantor shall have the right to construct new dwellings, other buildings, structures, roads, and utilities permitted in this Section II Paragraph 2, and to repair, maintain, renovate, and replace all new and existing permitted dwellings, other buildings, structures, roads, and utilities on the Property, within the limitations set forth in this Easement.
- G. To protect the scenic values of the Property, no building larger than \_\_\_\_\_ square feet in ground area shall be constructed within \_\_\_\_ feet of State Route \_\_\_\_ as measured from [Select: the center line of the road or the edge of the right of way]. [Add where appropriate: or above the \_\_\_\_\_ contour elevation or within the designated no-build area shown on the sketch attached hereto as Exhibit \_\_\_\_.] [In order to comply with Treas. Reg. § 1.170-14(e)(2) it is strongly recommended that site control of dwellings and other buildings be included herein to prevent destruction of significant conservation interests such as scenic vistas, historic features, farmland, etc.]
- E. The collective footprint of all buildings and structures on the Property, excluding roads, shall not exceed \_\_\_\_% of the total area of the Property, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values of the Property, Grantee may approve such increase. For the purpose of this paragraph the collective footprint is the ground area measured in square feet of the buildings and structures set forth in (i) (a) through (c) above and all other impervious surfaces, excluding roads. [Addition where appropriate: In the event of division of the Property, the collective footprint of the buildings and structures and all other impervious surfaces on each parcel, excluding roads, shall not exceed 1% of the total area of such parcel unless otherwise allocated in the instrument of transfer or other recorded instrument.] [Proviso: Carefully calculate the permitted footprint for any parcel(s) with small acreage.]
3. **INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Industrial or commercial activities are prohibited with the exception of the following:
- A. agriculture (including livestock production), equine activities and forestry;
  - B. small-scale incidental commercial or industrial operations related to activities set forth in (i) above that Grantee approves in writing as being consistent with the conservation purpose of this Easement;
  - C. processing and sale of products produced on the Property as long as no additional buildings are required;
  - D. temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property and that do not diminish the conservation values of the Property herein protected; and
  - E. activities that can be and in fact are conducted within permitted buildings without material alteration to their external appearance.

Temporary outdoor activities involving 100 or more people shall not exceed 7 consecutive days in any 90-day period without prior written approval of Grantee.

[Optional: Notwithstanding any other provision of this easement, no commercial recreational use (except for de minimis commercial recreational uses) shall be allowed on the Property.]

4. **AGRICULTURAL RESOURCE MANAGEMENT.** The application of Best Management Practices, as such term is defined and established by the Virginia Department of Agriculture, shall be undertaken in all agricultural activities conducted upon the Property to control erosion and sedimentation and to protect water quality.
5. **FORESTAL RESOURCE MANAGEMENT.** Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any timber harvest (other than those in the following paragraph) or land-clearing activity is undertaken. All material timber harvest activities on the Property shall be guided by a Forest Stewardship Management Plan approved by Grantee. A pre-harvest plan consistent with the Forest Stewardship Management Plan shall be submitted to Grantee for approval 30 days before beginning any material timber harvest, which approval shall be limited to determination of whether or not the pre-harvest plan is in compliance with the Forest Stewardship Management Plan and is consistent with the purpose of this Easement. Without limiting the foregoing requirement regarding submission of pre-harvest plans, Grantee shall be notified 30 days prior to the clearing of over 10 acres of forestland for conversion into grassland, crop land, or in association with the construction of permitted buildings.

Neither a Forest Stewardship Management Plan nor a pre-harvest plan shall be required for the following permitted non-commercial activities: (i) cutting of trees for the construction of permitted roads, utilities, buildings and structures, (ii) cutting of trees for trail clearing, (iii) cutting of trees for firewood, or for other domestic uses of Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

*(VOF strongly recommends a riparian buffer for properties abutting or containing a section of a river, creek, perennial stream, etc., and may require a riparian buffer if the watercourse is, for example, a native trout stream or upstream from a public water supply intake. Landowners should discuss present and future land management practices with staff in the development of the riparian buffer provision.)*

6. **RIPARIAN BUFFER.** To protect water quality, riparian buffer strips shall be maintained as follows:

- A. Forested Buffer: (*provision where the land adjacent to the body of water or water course is or shall become forested or naturally vegetated*) a \_\_\_\_\_-foot buffer strip shall be maintained in forest or be permitted to revegetate naturally along (*the, each*) edge of the \_\_\_\_\_ [Insert: River, Creek, perennial stream, intermittent stream] as measured from the top of the bank (or if applicable [from the high water mark in tidal creeks, streams, etc.]). Except from mid-April to mid-August of each year limited mowing only to control non-native or invasive species or protect trees and other plants planted in the buffer strip is permitted. Notwithstanding the above, native trees and plants may be planted in the buffer.

There shall be no grazing of livestock within this buffer; and/or

- B. Buffer for Cropland and Pasture, including Wooded Pasture: (*provision where the land adjacent to the body of water or water course is not forested or naturally vegetated*) a \_\_\_\_\_-foot buffer strip in which no plowing, cultivation or other earth-disturbing activity is permitted, except as set forth below, shall be maintained along (the, each) edge of the \_\_\_\_\_ [River, Creek, perennial stream, intermittent stream] as measured from the top of the bank (*or if applicable* [from the high water mark in tidal creeks, streams, etc.]). [*Additional optional language: Mowing within the buffer strip is permitted, except from mid-April to mid-August of each year or Mowing within the buffer strip is permitted.*]

[*Additional optional language: There shall be no grazing of livestock in the buffer strip. or Livestock shall be fenced out of the \_\_\_\_\_ at a minimum distance of \_\_\_ feet. or Grazing of livestock within this buffer strip shall be restricted to brief periods of flash grazing during the active growing season, not to exceed a few days per season. or Grazing of livestock is permitted in the buffer strip.*]

(*Add this paragraph to (i) and/or (ii) above.*) Within this (*or these*) buffer strip(s) there shall be (a) no buildings or other substantial structures constructed, (b) no storage of compost, manure, fertilizers, chemicals, machinery or equipment, (c) no removal of trees except removal of invasive species or removal of dead, diseased or dying trees or trees posing a human health or safety hazard, and (d) no plowing, cultivation or other earth-disturbing activity, except as may be reasonably necessary for (1) wetland or stream bank restoration, or erosion control, pursuant to a government permit, (2) fencing along or within the buffer area, (3) construction and maintenance of stream crossings that minimize obstruction of water flow, (4) creation and maintenance of foot or horse trails with unimproved surfaces, and (5) dam construction to create ponds.

Should the \_\_\_\_\_ (*watercourse*) meander or change course naturally, the riparian buffer shall remain the same width, but move relative to the movement of the \_\_\_\_\_. In such event any buildings or structures that were outside of the original buffer strip and are determined to be within the new buffer strip shall not be considered in violation of these restrictions and may be maintained at such locations.

7. **GRADING, EXCAVATION, EARTH REMOVAL, BLASTING, AND MINING.** Earth removal and blasting are prohibited. The exploration for, or development and extraction of minerals and hydrocarbons by mining or any other method is prohibited. Grading and excavation is allowed as necessary for the construction and installation of allowable structures but shall not materially alter the topography of the Property. Grading and excavation shall be allowed for dam construction to create private containment ponds or lakes, and during the construction of permitted structures or associated improvements. Common agricultural activities such as plowing, tilling, erosion control and restoration are permitted activities that do not materially alter the topography of the Property.
8. **ACCUMULATION OF TRASH AND WASTE MATERIAL.** There shall be no accumulation or dumping of trash, refuse, or junk on the Property. This restriction shall not prohibit customary agricultural, horticultural, or wildlife management practices including, but not limited to, establishing brush, compost piles, or the routine and customary short-term accumulation of household trash.
9. **BILLBOARDS, SIGNS, AND ADVERTISEMENTS.** There shall be no display of billboards, signs or other advertisements on the Property, except a single sign that (a) states solely the name of the Grantor, the name of the farm, and/or the address of the Property; (b) advertises the sale or lease of the Property; (c) advertises the sale of goods or services produced pursuant to a permitted use of the Property; (d) gives directions to visitors; (e) recognizes historic status or participation in a conservation program; or (f) provides warnings or restrictions pertaining to trespassing, hunting, dangerous conditions, and other similar such warnings. No sign shall exceed twenty-four square feet in overall size, to include the outer dimensions of the frame of the sign.

### **SECTION III – ENFORCEMENT**

In addition to any remedy provided by law or equity to enforce the terms of this Deed of Easement, the parties shall have the following rights and obligations:

1. **MONITORING AND RIGHT OF INSPECTION.** Employees or agents of Grantee are granted permission to enter the Property from time-to-time, as Grantee may deem reasonable in Grantee's sole discretion, for the purpose of monitoring compliance with the terms of this Deed of Easement. Grantee shall make a reasonable effort to give reasonable prior notice before entering the Property.

2. **ACTION AT LAW INADEQUATE REMEDY.** The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions, and restrictions in this Deed of Easement. Therefore, in the event that the Grantors, their successors or assigns, violate or breach any of the terms, conditions, or restrictions contained in this Deed, the Grantee, its successors, or assigns, may institute a suit, and shall be entitled, to enjoin by *ex parte* temporary and/or permanent injunction any violation and to require the restoration of the Property to its prior condition.

3. **RESTORATION UPON ANY BREACH BY GRANTOR OF THE TERMS OF THIS DEED OF EASEMENT.** Grantee may require by written demand to the Grantor that the Property be restored promptly to the condition required by this Deed of Easement. Furthermore the Grantee retains the right to enter the property and restore the Property to a condition consistent with the terms of this Deed of Easement and assess the cost of such restoration against the owner of the parcel in violation of this Deed of Easement; and the cost of such restoration shall be a lien against the Property, provided however, that no such lien shall affect the rights of a subsequent bona fide purchaser unless a memorandum of such lien was recorded among the Stafford County, Virginia land records prior to such purchase, and such lien shall be subordinate to any deed of trust recorded prior to the recordation of a memorandum of such lien.

Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage to the Property or change in the condition of the Property (a) caused by fire, flood, storm, Act of God, governmental act or other cause outside of Grantor's control, or (b) resulting from prudent action by Grantor to avoid, abate, prevent, or mitigate damage to or changes in the condition of the Property from such causes.

4. **FAILURE TO ENFORCE DOES NOT WAIVE RIGHT TO ENFORCE.** Grantee's failure to enforce any term of this Deed of Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantor from complying with any term. Furthermore, Grantor waives any defense of laches, estoppel, or prescription.

5. **ENFORCEMENT COSTS.** If the court determines that Grantor failed to comply with this Deed of Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including, without limitation; restoration costs, court costs and attorney's fees, in addition to any other payments ordered by the court.

6. **NO PUBLIC RIGHT OF ENFORCEMENT.** This Deed of Easement does not create, and shall not be construed to create, any right of the public to maintain a suit for any damages against the Grantor for any violation of this Deed of Easement.

## **SECTION IV – BASELINE DOCUMENTATION**

In order to establish the present condition of the Property, the Grantee has examined the Property and prepared an inventory of relevant features, conditions, and improvements ("Baseline Documentation"), which is incorporated by this reference. A copy of the Baseline Documentation has been provided to Grantor, and the original shall be placed and remain on file with Grantee. Grantor and Grantee agree that the Baseline Documentation is an accurate representation of the Property at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with this Deed of Easement. Grantor and Grantee further agree that in the event a controversy arises with respect to the condition of the Property or a particular resource, the Grantor and Grantee shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy.

## **SECTION V – GENERAL PROVISIONS**

1. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions and restrictions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
2. **NO PUBLIC ACCESS AND GRANTOR'S RETENTION OF USE.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Grantor retains the exclusive right to access and use the Property subject to the terms of this Deed of Easement and the County's Purchase of Development Rights Ordinance.
3. **TITLE.** Grantor covenants and warrants that Grantor has good title to the Property, that Grantor has all right and authority to grant and convey this Easement, and that the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record) including, but not limited to, any mortgages or deeds of trust not subordinated to this Easement.
4. **ACCEPTANCE.** Acceptance of this conveyance by Grantee is authorized by Virginia Code Section 10.1-1701 and is evidenced by the signature of the County Administrator of Stafford County, by authority granted by the Board of Supervisors of Stafford County.

5. **NO BUY-BACK OPTION.** Grantor, by executing this document, understands and agrees that he shall not have the option to reacquire any property rights relinquished by this Deed of Easement.
6. **HOLD HARMLESS.** Grantor shall hold harmless, indemnify, and defend Grantee and its employees, agents, successors and assigns from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees arising from or in any way connected with the result of a violation or alleged violation on the Property, of any State or Federal environmental statute or regulation.
7. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or regulation. This Deed of Easement does not replace, abrogate, or otherwise supersede any federal, state, or local law applicable to the Property.

Neither the Property, nor any portion of it, has been or shall be dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; dedicated as open space in, or as part of, any real estate development plan; or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.

8. **CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses consistent with the purpose of and not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a “qualified conservation contribution” as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations Section 1.170A-14. The restrictions and other provisions of this Deed of Easement shall be construed and applied in a manner that will facilitate this Easement qualifying as a qualified conservation contribution.
9. **REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number, or other appropriate reference in any deed or other instrument conveying any interest in the Property. Grantor’s failure to comply with this requirement shall not impair or affect the validity of the Easement or limit its enforcement in any way.

10. **NOTICE TO GRANTEE.** For the purpose of giving notices hereunder the current address of Grantor is \_\_\_\_\_, and the current street address of Grantee is Office of the County Administrator, County of Stafford, 1300 Courthouse Road, P.O. Box 339, Stafford, Virginia 22555-0339 and the current mailing address of Grantee is Office of the County Administrator, County of Stafford, P.O. Box 339, Stafford, Virginia 22555-0339.

Grantor agrees to notify Grantee in writing before exercising any reserved right that Grantor believes may have an adverse effect on the conservation or open-space values or interests associated with the Property (the purpose of requiring such notice is to afford Grantee an adequate opportunity to monitor such activities to ensure that they are carried out in a manner consistent with the purpose of this Easement; such notice shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement).

Grantor shall notify the Grantee in writing at the time of or prior to closing on any transfer or sale of all or part of the Property. In any deed conveying all or any part of the Property, this Deed of Easement shall be referenced by deed book and page number in the deed of conveyance and shall clearly and legibly state that this Deed of Easement is binding upon all successors in interest in the Property in perpetuity and the restrictions run with the land.

11. **TAX MATTERS.** The parties agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations (*see* Section 1.170A-13(c)(5)), and that the appraisal is subject to review and audit by all appropriate tax authorities. The parties agree and understand that Grantee is not responsible for providing or funding any appraisal undertaken for any tax purposes. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from donation of this Easement, or that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.
12. **NO MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.
13. **TRANSFER OF EASEMENT BY GRANTEE.** Neither Grantee nor their successors and assigns may transfer, convey, or lease the conservation easement established and conveyed hereby unless the Grantee conditions the transfer, conveyance or lease on the requirements that: (a) the transfer, conveyance, or



lease is subject to contractual arrangements that will assure that the Property is subject to the restrictions and conservation purposes set forth in this Deed of Easement, in perpetuity; and (b) the transferee is an organization then qualifying as an eligible donee as defined by IRC Section 170(h)(3) and the applicable Treasury Regulations, or is a public body within the meaning of Virginia Code Section 10.1-1700.

- 14. GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the donation of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time.
- 15. CONVERSION OR DIVERSION.** Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Virginia Code Section 10.1-1704 which does not permit loss of open space.
- 16. EXTINGUISHMENT.** Notwithstanding the provisions of Virginia Code Section 10.1-1704, should an attempt be made to extinguish this Easement, such extinguishment can be carried out only by judicial proceedings and only if in compliance with Virginia Code Section 10.1-1704 and IRC Section 170(h) and applicable Treasury Regulations. In any sale or exchange of the Property resulting from an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Paragraph 14 above, but not to be less than the proportion that the value of this Easement at the time of extinguishment bears to the then value of the Property as a whole. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this Easement and the Open-Space Land Act.
- 17. AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property, provided that no amendment shall (a) affect this Easement's perpetual duration; (b) conflict with or be contrary to or inconsistent with the conservation purpose of this Easement; (c) reduce the protection of the conservation values; (d) affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land"; or (e) affect the status of Grantee as a "qualified organization" or "eligible donee." No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded among the land records of Stafford County, Virginia.
- 18. SEVERABILITY.** If any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.

- 19. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement.
- 20. **CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia, resolving any ambiguities or questions of the validity of specific provisions in order to give maximum effect to its conservation purpose.
- 21. **RECORDING.** This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of Stafford County, Virginia. Grantee may re-record it any time as may be required to preserve its rights under this Easement.
- 22. **COUNTERPARTS.** This Easement may be executed in one or more counterpart copies, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto shall not affect the validity of the Easement.

*Consent of trustee and beneficiary to subordinate lien,, if applicable.*

By deed of trust dated \_\_\_\_\_, of record in said Clerk's Office in Deed Book \_\_\_\_\_ at Page \_\_\_\_\_, the Grantor conveyed the subject Property to \_\_\_\_\_, Trustee, to secure an outstanding obligation owed to \_\_\_\_\_, Beneficiary. Pursuant to the authorization of the Beneficiary, as evidenced by its signature hereto, the Trustee joins in this deed to subordinate the lien of such deed of trust to the easement conveyed hereby.

The County of Stafford, Virginia, acting by and through its County Administrator, he being hereto duly authorized by Resolution No. \_\_\_\_\_, adopted by the Stafford County Board of Supervisors on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, does hereby accept the conveyance of the interest in real estate made by this deed.

**WITNESS** the following signatures and seals on the date first above written:

\_\_\_\_\_  
Grantor

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_, by \_\_\_\_\_, Grantor.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
Printed Name:

BENEFICIARY

By: \_\_\_\_\_  
Name:  
Title:

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_, Beneficiary.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
Printed Name:

TRUSTEE

\_\_\_\_\_  
Name:

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_, Trustee.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
Printed Name:

STAFFORD COUNTY, VIRGINIA

By: \_\_\_\_\_  
Anthony J. Romanello, County Administrator

COMMONWEALTH OF VIRGINIA

COUNTY OF STAFFORD, to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_ by Steve Crosby, in his capacity as County Administrator for Stafford County, Virginia, on behalf of the County.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
Printed Name:

APPROVED AS TO FORM:

\_\_\_\_\_  
Stafford County Attorney's Office  
By:

DRAFT