

VOF Template February 7, 2018 Working Farm/Intensive Agriculture

This optional deed template is provided to assist landowners and their attorneys in preparing deeds of easement to be conveyed to Virginia Outdoors Foundation (VOF) on working farms. As each property contains unique conservation values, staff may recommend provisions appropriate to individual properties. Landowners should discuss present and future land management practices with staff before preparation of the deed of easement. VOF does not provide legal or tax advice or warrant that this sample will meet all IRS or Virginia Department of Taxation requirements or the Virginia Land Conservation Foundation's Conservation Value Review Criteria for easements valued \$2.5 million dollars or more. 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 prior to submission of their proposed easement to the VOF Board of Trustees for its consideration. Selection of optional provisions should be made and guidance instructions in italics and brackets should be deleted.

NOTE TO TITLE EXAMINERS: This open-space easement contains restrictions on permitted uses and activities on the property described below, which run with the land and are applicable to the property in perpetuity.

Prepared by: [landowner's attorney]

Return to: Virginia Outdoors Foundation
(Fill in regional office address here.)

TAX MAP NO. or PIN: _____

Exempt from recordation tax
under the Code of Virginia (1950), as amended,
Sections 58.1-811 (A) (3), 58.1-811 (D) and 10.1-1803
and from Circuit Court Clerk's fee under Section 17.1-266

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made this ___ day of _____, 20___, [between or among] _____
[Underline or capitalize surname of individual(s).] [Include marital status of Grantor.]
[collectively or together "Grantor"]; the VIRGINIA OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA, ("Grantee") (the designations "Grantor" and "Grantee" refer to Grantor and Grantee and their respective successors and assigns); [if lien] _____ ("Lender") to be indexed as Grantor; and _____ and _____, ("Trustee(s)"), to be indexed as Grantor, witnesseth:

RECITALS:

R-1 Grantor is the owner in fee simple of real property situated in _____ County, Virginia, containing in the aggregate _____ acres as further described below (the "Property"), and

desires to give, grant, and convey to Grantee a perpetual open-space easement over the Property as herein set forth.

R-2 Grantee is a governmental agency of the Commonwealth of Virginia and a “qualified organization” and “eligible donee” under Section 170(h)(3) of the Internal Revenue Code (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 provisions of any subsequent federal tax laws and regulations) (the “IRC”) and Treasury Regulation Section 1.170A-14(c)(1) and is willing to accept a perpetual open-space easement over the Property as herein set forth.

R-3 Chapter 461 of the Virginia Acts of 1966 provides in part “that the provision and preservation of permanent open-space land are necessary to help curb urban sprawl, to prevent the spread of urban blight and deterioration, to encourage and assist more economic and desirable urban development, to help provide or preserve necessary park, recreational, historic, and scenic areas, and to conserve 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. The balance of the Chapter is codified in Chapter 17, Title 10.1, Sections 10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the “Open-Space Land Act”).

R-4 Pursuant to the Open-Space Land Act, the purposes of this Easement (as defined below in Section I) include retaining and protecting open-space and natural resource values of the Property, and the limitation on division, residential construction, and commercial and industrial uses contained in Section II ensures that the Property will remain perpetually available for agricultural, forestal, or open-space use, all as more particularly set forth below.

R-5 Chapter 525 of the Virginia Acts of 1966, Chapter 18, Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia, declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Virginia Outdoors Foundation 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.

R-6 As required under Section 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the County of _____ Comprehensive Plan adopted on _____, and the Property is located within an area that is designated as _____ on the county’s future land use map.

R-7 This Easement is intended to constitute (i) a “qualified conservation contribution” as defined in IRC Section 170(h)(1) and as more particularly explained below, and (ii) a qualifying “interest in land” under the Virginia Land Conservation Incentives Act of 1999 (Section 58.1-510 *et seq.* of the Code of Virginia (1950), as amended).

R-8 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 and local governmental conservation policies

[Optional addition: , is for the scenic enjoyment of the general public,] and will yield a significant public benefit. [In almost all VOF easements the above IRC purpose involving governmental conservation policies is applicable. One or more of the following three IRC purposes may also be applicable and could be added: and is for (1) the preservation of land areas for outdoor recreation by, or the education of, the general public under IRC Section 170(h)(4)(A)(i), (2) the protection of a relatively natural habitat of fish, wildlife, or plants or similar ecosystem, under IRC Section 170(h)(4)(A)(ii) and/or (3) the preservation of an historically important land area or a certified historic structure under IRC Section 170(h)(4)(A)(iv).]

R-9 This open-space easement in gross constitutes a restriction granted in perpetuity on the use that may be made of the Property and is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below: [Cite state, local, or federal 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 of Virginia as set forth in:

a. Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

b. The Open-Space Land Act cited above;

c. Chapter 18, of Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia cited above;

d. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, Sections 58.1-510 through 58.1-513 of the Code of Virginia cited above, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth's unique natural resources, wildlife habitats, open spaces, and forested resources;

e. 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 has 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 of Virginia. Treasury Regulation Section 1.170A-14(d)(4)(iii)(B) states that such review and acceptance of a conservation easement by a governmental entity tends to establish a clearly delineated governmental conservation policy as required under IRC Section 170(h)(4)(A)(iii);

f., g., h., i, etc. (any other applicable state policies); and

(ii) Land use policies of the County of _____ as delineated in:

a. its comprehensive plan adopted on _____, to which plan the restrictions set forth in this Easement conform and which contains the following: [*Enumerate below any applicable goals, objectives, strategies, visions, policies, etc. of the comprehensive plan.*];

b. [*Applicable if locality has land use value assessment and the Property has been given such designation. Section _____ of the _____ County Code, which provides for use value assessment of real estate devoted to agricultural, forestal, horticultural, or open-space uses, the Property having been approved for use value assessment by the county*];

c. [*Applicable if Property is in an agricultural, forestal or agricultural and forestal district. Section _____ of the _____ County Code, which provides certain tax benefits and other protections for agricultural and forestal use of land to landowners who voluntarily limit development of their property under the terms of the applicable district, which ordinance was enacted pursuant to the Virginia Agricultural and Forestal Districts Act. The Property is located within the _____ Agricultural and Forestal District, and, as such, has been identified by _____ County as worthy of protection for conservation purposes*];

d. [*If available, add this: Correspondence dated _____ from _____ County acknowledging that contribution of this Easement to Grantee and the restrictions set forth herein conform to the land use plan and policies of the county*];

e., f., g., etc. [*any other applicable local policies*].

[*Add this if applicable:*

(iii) Land conservation policies of the United States as set forth in: _____]

R-10 According to the Farmland Information Center (FIC), a partnership between the U. S. Department of Agriculture, Natural Resources Conservation Service, and American Farmland Trust, between 1982 and 2007 the United States lost 23,163,500 acres of agricultural land to development, of which 462,300 acres was in Virginia. Because the loss of such agricultural land is detrimental to the federal, state, and local economies, the Commonwealth of Virginia has developed clearly delineated policies to promote agriculture and preserve agricultural land, which are set forth in the following statutes:

(i) Chapter 5 Soil and Water Conservation of Title 10.1 Conservation Sections 10.1-500 *et seq.* of the Code of Virginia, which sets forth the duties of the Virginia Soil and Water Conservation Board, including, among other duties, “the conservation of soil and water resources, control and prevention of soil erosion, flood water and sediment damages thereby preserving the natural resources of the Commonwealth”;

(ii) Chapter 1 General Provisions of Title 3.2 Agriculture, Animal Care, and Food Sections 3.2-100 *et seq.* of the Code of Virginia, which vests in the Commissioner of Agriculture

the power and duty, among others, “to promote, protect, and develop the agricultural interests of the Commonwealth” and “to preserve the Commonwealth’s agricultural lands”; and

(iii) Chapter 2 Preservation of Farm and Forest Lands of Title 3.2 Agriculture, Animal Care, and Food Sections 3.2-200 *et seq.* of the Code of Virginia, which established the Office of Farmland Preservation within the Department of Agriculture and Consumer Services with the power and duty to assist in the preservation of farmland in the Commonwealth.

R-11 The Property contains approximately _____ acres of Prime Farmland Soils and _____ acres of Soils of Statewide Importance as classified by the Natural Resources Conservation Service of the United States Department of Agriculture, and protection of the Property from intensive development hereunder will help preserve these productive soils for production of food and fiber in perpetuity.

R-___ [*List in recitals hereinbelow the particular conservation attributes of the Property, the public benefit they yield, and how the restrictions set forth below protect such attributes.*]

R-___ This Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in these recitals and in Section I below.

R-___ 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.

R-___ Grantee has determined that the restrictions set forth in Section II (the 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 this Easement.

R-___ Grantee, by acceptance of 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.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein and made a part hereof, and in consideration of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant, and convey to Grantee for the public purposes set forth in Section I below an open-space easement in gross (this “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*] [*VOF prefers that the legal description be set forth below rather than in a SCHEDULE A.*] and consists of _____ acres located in _____ County, Virginia, near _____, fronting on State Route _____ [*or road name*], to-wit:

_____ [*attorney to insert legal description keyed to each tax parcel*] _____

The Property is shown as Tax Map No. [or PIN] _____ among the land records of the County of _____, Virginia. *[Use if one tax parcel: Even if the Property may have been acquired previously as separate parcels, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole. Use if more than one tax parcel: Even though the Property consists of _____ parcels for real estate tax purposes and it may have been acquired previously as separate parcels, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.] [If the Property is a portion of or contains a portion of a tax parcel, revise the language above accordingly.]*

SECTION I -PURPOSES

The conservation 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 Baseline Documentation Report described in Section IV below, and include the Property's open-space, *[and if applicable: scenic, natural, historic, scientific, or recreational]* values *[Add if applicable: and its value as land preserved for rural uses such as forestry and agriculture (including livestock production)].* *[In Section II add specific restrictions needed to provide protection for such values.]*

Pursuant to the Virginia Land Conservation Foundation's Conservation Value Review Criteria, the further conservation purpose of this Easement is *[Insert one or more from VLCF criteria as applicable: preservation of land for agricultural use, forestal use, natural habitat and biological diversity, and/or natural resource-based outdoor recreation or education, historic preservation, watershed preservation, preservation of scenic open space, and/or preservation of open space designated by local government.]*

Grantor covenants that no acts or uses are currently being conducted or will be conducted on the Property which are: (i) inconsistent with the conservation purposes of the donation or (ii) consistent with the conservation purposes of the donation, but are destructive of other significant conservation interests unless such acts or uses are necessary for the protection of the conservation interests that are the subject of the donation.

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.

(i) Separate conveyance of a portion of the Property or division of the Property is prohibited. [*Alternate language where division rights are retained: The Property shall not be divided into, or separately conveyed as, more than _____ parcels (_____ division(s) permitted)*]. For purpose of this Easement, division of the Property includes, but is not limited to, recordation of a subdivision plat, judicial partitioning of the Property, testamentary partitioning of the Property, or pledging for debt of a portion of the Property.

(ii) [*If applicable: Grantor shall give Grantee written notice prior to making the/a division of the Property.*] [*If applicable: In the event of a division and conveyance of a portion of the Property as provided in this Paragraph 1, the grantor making the conveyance retains the right to make the further permitted division(s) of the remainder of the Property not so conveyed, except to the extent the/any permitted division(s) is/are allocated by that grantor in the instrument creating the division or another recorded instrument.*] [*See VOF Guidelines for suggested density.*]

(iii) The acquisition of a *de minimis* portion of the Property adjacent to State Route(s) _____ for minor road improvements shall not be considered a division of the Property, and neither the acquisition of such a *de minimis* portion of the Property nor the use of the portion of the Property so acquired shall be prohibited by this Easement, provided that Grantee approves such conveyance or taking, which approval shall be contingent upon the project including all reasonable actions, such as making landscaping or topographic improvements, to minimize the project's impact on the Property and prevent harm to its conservation values. Grantor reserves its separate right to approve such acquisition. Use of the Property for such a project is limited to minor improvements to Route(s) _____ in its/their present alignment(s), including, but not limited to, maintenance, correction, repair, or upgrading of the existing public road(s). Such improvements could include, but are not limited to, the addition or renovation of ditches, box culverts, drainage swales, side slopes, curbing, re-grading, or enhancements, such as pull-offs, bike lanes, and restoration projects. For the purpose of this paragraph, "minor road improvements" does not include the addition of new travel lanes, except bike lanes. Any portion of the Property acquired from Grantor pursuant to this paragraph shall remain subject to the terms and restrictions of this Easement. [*This paragraph is not applicable if the Property has no road frontage.*]

[*If applicable:*

(iv) In the event that the/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 of the Property, and this Easement shall remain in force with respect to the dedicated portion.]

2. **FARMSTEAD AREA.** The Property includes a Farmstead Area containing approximately _____ acres [*The size of the Farmstead Area shall depend on the size, topography, and use of the Property as determined by the parties hereto.*] and shown on Exhibit _____, attached hereto and made a part hereof, on which certain buildings and structures may be located

and certain activities may be carried out. (*Except in special circumstances, only one Farmstead Area will be allowed on the Property.*) The boundaries of the Farmstead Area shall be subject to adjustment, provided that the Farmstead Area shall not be increased in size and further provided that prior written approval for the adjusted boundaries shall have been obtained from Grantee, which approval shall require that the adjustment equally or more fully protects the conservation values of the Property.

3. **BUILDINGS, STRUCTURES, ROADS, AND UTILITIES.**

(i) **Buildings and structures within the Farmstead Area:**

Within the Farmstead Area no buildings or structures, other than the following, are permitted:

(a) **Dwelling units and non-residential outbuildings and structures.** Dwelling units (“dwellings”), such as detached or attached dwellings, barn or garage apartments, or cabins, each of which may be used by one or more persons or families, and non-residential outbuildings and structures commonly and appropriately incidental to such dwellings sized appropriately to serve as amenities to residential use;

(b) **Farm buildings or structures.** Farm buildings or structures. For purposes of this paragraph (b), a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in Section II, Paragraph 4(i)(a) below;

(c) **Buildings for the processing and sale of farm or forest products or for certain animal-related uses.** Buildings for the processing and sale of farm or forest products produced or partially produced on the Property or, with Grantee’s prior written approval, buildings for kennels, wildlife rehabilitation centers, veterinary clinics, or similar enterprises. For purposes of this paragraph (c), a building for the processing and sale of farm or forest products or for animal-related uses shall mean a building originally constructed and used for the activities specified in Section II, Paragraph 4(i)(b) below. Approval of buildings for animal-related uses shall be contingent upon Grantee’s determination that the construction of such buildings is consistent with the conservation purposes of this Easement and protective of the conservation values identified herein;

(d) **Alternative energy structures.** Alternative energy structures used to harness natural renewable energy sources such as the sun, wind, water, or biomass and scaled to provide electrical energy or pump water for permitted dwellings, structures, and activities on the Property, which limitation shall not be deemed to prohibit the sale of excess power generated incidentally in the operation of such structures and associated equipment including, but not limited to, solar panels, wind turbines, and micro-hydro installations. In addition, such structures, if approved in writing by Grantee in accordance with Section II, Paragraphs 3(iii)(b)(2) and 4(i)(e) below, may provide electrical energy to neighboring properties;

(e) **Small-scale miscellaneous buildings or structures.** Small-scale miscellaneous buildings and structures, the existence of which is consistent with the conservation purposes of this Easement and which will not impair the conservation values protected herein, such as hunting stands, wildlife observation structures, fences, boardwalks, [*If applicable:* , structures for crossing streams or wetlands or portions of docks or piers (all subject to the limitations set forth in Section II, Paragraph 6(ii) below)];

(f) **Signs.** Signs (but not billboards or other signs larger than 32 square feet in area);

(g) **Natural resource-based educational, scientific, or recreational buildings and structures.** Natural resource-based educational, scientific, or recreational buildings and structures, not exceeding an aggregate of 4,000 square feet of above-ground enclosed living area and not individually exceeding 2,000 square feet of above-ground enclosed living area; and

(h) **Other buildings and structures.** Other buildings and structures, not exceeding an aggregate of _____ square feet in ground area and not individually exceeding _____ square feet in ground area, for commercial enterprises related to agriculture or forestry or small-scale commercial enterprises compatible with agriculture or forestry as permitted in Section II, Paragraph 4(ii) below.

(ii) **Buildings and structures outside the Farmstead Area:**

Outside the Farmstead Area no buildings or structures, other than the following, are permitted:

(a) **Dwelling unit(s) and non-residential outbuildings and structures.** _____ dwelling unit(s) (“dwellings”), such as detached or attached dwellings, barn or garage apartments, or cabins, each of which may be used by one or more persons or families.

(1) Such dwelling(s) shall not [*if more than one:* individually] exceed _____ square feet 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(s) on the conservation values of the Property.

(2) [*if more than one:* Notwithstanding the permitted size of individual dwellings set forth above, the _____ dwellings shall not exceed an aggregate of _____ square feet of above-ground enclosed living area.]

(3) [*If applicable, select:* The dwelling/Dwellings currently existing outside of the Farmstead Area shall be counted in the number of permitted dwellings and in the permitted aggregate square feet of above-ground enclosed living area. or The dwelling/Dwellings currently existing outside the Farmstead Area shall be counted as the permitted dwelling(s).]

(4) Grantor shall give Grantee 30 days' written notice before beginning construction or enlargement of a dwelling outside the Farmstead Area.

(5) [*If applicable*: In the event of division of the Property as provided in Section II, Paragraph 1, the grantor making the division retains all permitted dwelling rights unless such rights are allocated (between *or* among) the parcels in the instrument creating the division or other recorded instrument. If permitted dwelling rights are allocated between or among the parcels, the square footage of above-ground enclosed living area should also be so allocated.]

(6) Non-residential outbuildings and structures commonly and appropriately incidental to such dwelling(s) sized appropriately to serve as amenities to residential use are permitted;

(b) **Farm buildings or structures.** Farm buildings or structures, except that a farm building or farm structure exceeding 2,000 square feet in ground area may not be constructed outside the Farmstead Area 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 building or structure on the conservation values of the Property. For purposes of this paragraph (b), a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in Section II, Paragraph 4(i)(a) below;

(c) **Buildings for the processing and sale of farm or forest products or certain animal-related uses.** Buildings for the processing and sale of farm or forest products produced or partially produced on the Property or, with Grantee's approval, buildings for kennels, wildlife rehabilitation centers, veterinary clinics, or similar enterprises not exceeding 4,000 square feet of enclosed area in the aggregate and not individually exceeding 2,000 square feet of enclosed area. For purposes of this paragraph (c), a building for the processing and sale of farm or forest products or for certain animal-related uses shall mean a building originally constructed and used for the activities specified in Section II, Paragraph 4(i)(b) below. Approval of buildings for animal-related uses shall be contingent upon Grantee's determination that the construction of such buildings is consistent with the conservation purposes of this Easement and protective of the conservation values identified herein;

(d) **Alternative energy structures.** Alternative energy structures used to harness natural renewable energy sources such as the sun, wind, water, or biomass and scaled to provide electrical energy or pump water for permitted dwellings, structures, and activities on the Property, which limitation shall not be deemed to prohibit the sale of excess power generated incidentally in the operation of such structures and associated equipment including, but not limited to, solar panels, wind turbines, and micro-hydro installations. In addition, such structures, if approved by Grantee in accordance with Section II, Paragraphs 3(iii)(b)(2) and 4(i)(e) below, may provide electrical energy to neighboring properties;

(e) **Small-scale miscellaneous buildings or structures.** Small-scale miscellaneous buildings and structures, the existence of which is consistent with the conservation purposes of this Easement and which will not impair the conservation values protected herein, such as hunting stands, wildlife observation structures, fences, boardwalks, [*If applicable:* , structures for crossing streams or wetlands or portions of docks or piers (all subject to the limitations set forth in Section II, Paragraph 6(ii) below)]; and

(f) **Signs.** Signs (but not billboards or other signs larger than 32 square feet in area).

(iii) **Roads and utilities on the Property.** No roads or utilities, other than the following are permitted on the Property:

(a) **Roads, driveways and trails.**

(1) Private roads to serve permitted buildings or structures and roads with permeable surfaces for permitted uses and activities, such as farming or forestry.

(2) Private roads or driveways and access easements over same to serve adjacent properties, provided that such roads or driveways have the written approval of Grantee, which approval shall take into consideration the impact of the roads or driveways on the conservation values of the Property.

(3) [*If applicable:* Public roads required to be constructed and dedicated in conjunction with (the) permitted division(s) of the Property, provided that Grantee determines that the construction, maintenance, and dedication of such public roads will not impair the conservation values of the Property and gives prior written approval of such construction. Any such dedication shall not be considered a separate conveyance of a portion of the Property or an additional division of the Property, and this Easement shall remain in effect with respect to the portion of the Property so dedicated.]

(4) Trails, including, but not limited to, hiking, biking, and equestrian trails; and

(b) **Utilities.**

(1) Public or private utilities within existing rights-of-way therefor, consistent with any recorded instrument granting such rights-of-way.

(2) Public or private utilities to serve permitted buildings, structures, or activities on the Property. In addition, public or private utilities, including alternative energy structures permitted in Section II, Paragraph 3(i)(d) and 3(ii)(d) above, to be constructed in whole or in part to serve other properties on, under, or over the Property, provided that 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. Approval or disapproval of such construction and maintenance shall take into consideration the visibility and any other adverse impact of

such utilities on the conservation values of the Property. Grantor reserves its separate right to approve such public or private utilities.

(iv) **Right to construct, use, and maintain.** Grantor shall have the right to construct any dwellings, other buildings, structures, roads, driveways, trails, and utilities permitted in Section II, Paragraph 3(i), (ii), and (iii) above and to repair, maintain, renovate, expand, and replace any permitted dwellings, other buildings, structures, roads, driveways, trails, and utilities on the Property, within the limitations set forth in this Easement.

[In order to comply with Treasury Regulation Section 1.170-14(e)(2) and the Virginia Land Conservation Foundation's Conservation Value Review Criteria it is strongly recommended that site control of dwellings and other buildings be included herein to prevent destruction of significant conservation interests such as scenic vistas, historic features, farmland, etc.]

(v) **Resource Protection Area(s).** To protect *[Select one or more or add whatever other features are being protected: the agricultural soils on the Property, the wildlife habitat area, the cave system, or the historic _____ on the Property], [Add as appropriate: no buildings or structures larger than _____ square feet in ground area shall be constructed (a) in the Restricted Build Area shown on Exhibit ____, attached hereto and made a part hereof, (b) within ____ feet of State Route ____ as measured from the center line of the road, and/or (c) above the _____-foot contour elevation.] [If there is a riparian protection zone below, add this: (See Section II, Paragraph 6(i) for further restrictions on improvements within the riparian protection zone(s).)]*

(vi) **Collective Footprint.** 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 Section II, Paragraph 3(i)(a) through (e), (g), and (h) and 3(ii)(a) through (e) above and all other impervious surfaces, excluding linear surfaces, such as roads, driveways, walls, fences, and boardwalks. The collective footprint shall not exceed _____% of the total area of the Property *[In general, between one-half of one (1/2 of 1%) percent and one (1%) percent is recommended. Properties will be evaluated on a case-by-case basis, and characteristics of the Property as well as size will be taken into consideration. For example, smaller properties or working farms may require larger collective footprints, while larger properties or steep wooded properties may require lesser ones.],* 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. *[Addition when appropriate: In the event of division of the Property, the collective footprint of each created parcel shall not exceed _____ (____%) percent of the total area of such parcel unless otherwise allocated in the instrument of transfer or another recorded instrument or allocated de facto by conveyance of a parcel with existing structures.] [Proviso: Carefully calculate the permitted footprint for any parcel(s) with small acreage. For example, the one-half percent collective footprint for a ten-acre parcel is 2,178 square feet unless otherwise allocated in the instrument of transfer.]*

4. INDUSTRIAL AND COMMERCIAL ACTIVITIES ON THE PROPERTY.

(i) **Industrial or commercial activities outside the Farmstead Area.** Industrial or commercial activities outside the Farmstead Area are limited to the following:

(a) agriculture (including livestock production), equine activities, or forestry;

(b) processing or sale of farm or forest products produced or partially produced on the Property and approved animal-related uses in buildings permitted in Section II, Paragraph 3(i)(c) and 3(ii)(c) above;

(c) small-scale incidental commercial or industrial operations compatible with activities set forth in (a) above that Grantee approves in writing as being consistent with the conservation purpose of this Easement;

(d) activities, other than those already permitted in (a) and (b) above, that can be, and in fact are, conducted within permitted buildings without material alteration to their external appearance, provided that such activities to be conducted in buildings exceeding 10,000 square feet in ground area are subject to the written approval of Grantee, which approval shall take into consideration the impact of the activities and any proposed associated infrastructure improvements on the conservation values of the Property;

(e) the sale of power generated in the operation of approved alternative energy structures and associated equipment as provided in Section II, Paragraph 3(i)(d), 3(ii)(d), and 3(iii)(b)(2) above;

(f) activities to restore or enhance wetlands or streams or restore, enhance, or develop other ecosystem functions on the Property including, but not limited to, stream bank restoration, wetland and stream mitigation, biological carbon sequestration and biodiversity mitigation, provided that such activities are not in conflict or inconsistent with the conservation purpose of or the restrictions set forth in this Easement and that prior written approval for same shall have been obtained from Grantee. Grantee is not responsible for monitoring any such activities and has no obligation to enforce the provisions of any permit(s), restriction(s), or easement(s) therefor. Subject to Grantee's approval, Grantor is free to participate in same in Grantor's discretion and to retain any remuneration derived therefrom;

(g) outdoor activities that do not permanently alter the physical appearance of the Property and that do not impair the conservation values of the Property herein protected;

(h) natural resource-based educational, scientific, or recreational activities, provided that they are consistent with the conservation purposes of this Easement and do not impair the conservation values protected herein; and

(ii) **Industrial or commercial activities within the Farmstead Area.** Industrial or commercial activities within the Farmstead Area are limited to the following: All the activities set forth in this Paragraph 4(i)(a) through (h) above and, in addition, commercial

enterprises related to agriculture or forestry and small-scale commercial enterprises compatible with agriculture or forestry, including, but not limited to, farm machinery repair; agri-tourism; processing, packaging, and marketing of farm or forest products; and small-scale farm wineries, cafés, shops, and studios for arts or crafts.

[*Optional: (Adding this may enable Grantor to obtain an estate tax benefit under IRC §2031(c).)*]

(iii) Notwithstanding any other provision of this Easement, no commercial recreational use (except for *de minimis* commercial recreational uses) shall be allowed on the Property.]

5. MANAGEMENT OF FOREST.

(i) Best Management Practices (BMPs), as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material timber harvest (whether of healthy or diseased trees) or land-clearing activity is undertaken. A pre-harvest plan shall be submitted to Grantee for approval no later than fourteen (14) days before the proposed date of a material timber harvest, which approval shall take into consideration whether the pre-harvest plan is consistent with the terms of this Easement. The pre-harvest plan shall describe the BMPs to be used in sufficient detail to ensure that water quality will be protected.

(ii) The cutting, clearing, or removal of trees on less than ten (10) acres of the Property at any one time does not constitute material timber harvesting or land clearing, and does not require the use of BMPs or a pre-harvest plan, if:

(a) the cutting, clearing or removal trees is necessary for the construction or maintenance of permitted roads, driveways, trails, utilities, buildings, structures, food plots, or ponds;

(b) the trees are used for firewood for Grantor's domestic use;

(c) the trees are invasive species;

(d) the trees pose a threat to the health or safety of persons, property or livestock;

(e) the trees are dead, deceased, or dying; or

(f) the cutting, clearing, or removal of trees is necessary for other permitted activities on the Property, except timber harvesting or land clearing, provided that the clearing of land to preserve or reclaim fields is permitted.

[*VOF strongly recommends, and may require, that riparian protection zones be maintained for certain water-related features, as referenced below.*]

6. RIPARIAN PROTECTION ZONE(S). [*Make everything in this Paragraph plural if there are two or more riparian protection zones on the Property, e.g., a creek traverses the Property, so both sides are buffered.*]

To protect water quality and natural habitat, a riparian protection zone (RPZ) shall be maintained on the Property [*If applicable, add: as shown on Exhibit ____, attached hereto and made a part hereof, and as shown in the Baseline Documentation Report*].

[*Option 1 for watercourse only with buffer*] Such zone is made up of a _____-foot riparian buffer along the edge of the [*Add as appropriate: _____ River, _____ Creek, perennial stream, and/or intermittent stream*] on the Property, as measured [*Select: from the top of the bank of the _____ (or if tidal watercourse) from the high-water mark of the _____*].

(*and/or*)

[*Option 2 for watercourse and contiguous wetlands with buffer*] Such zone is made up of wetlands contiguous to the [*Add as appropriate: _____ River, _____ Creek, perennial stream, and/or intermittent stream on the Property*] and a _____-foot wetland buffer extending in a landward direction from the edge of the wetlands.

(i) Within the RPZ there shall be:

- (a) no buildings or other substantial structures constructed, except as permitted in Section II Paragraph 5(ii) below;
- (b) no new paved roads or paving of existing roads without Grantee's approval;
- (c) no storage of manure, fertilizers, chemicals, machinery, or equipment;
- (d) no removal of trees, except
 - (1) removal of invasive species,
 - (2) removal of dead or diseased trees,
 - (3) removal of trees posing a threat to human or livestock health or safety,
 - (4) minimal removal of trees for the purpose of maintaining existing roads,
 - (5) minimal removal of trees for creation of small wildlife plots,
 - (6) minimal removal of trees for construction and maintenance of new permitted roads, stream crossings, dams, and any other structures permitted in subparagraph (ii) below; and
- (e) no plowing, cultivation, filling, dumping, or other earth-disturbing activity, except as may be reasonably necessary for the activities set forth in Section II Paragraph 5(ii) below.

[*Recommended additional language if livestock could be maintained on the Property, but are to be excluded from the RPZ or the watercourse:*

In addition, livestock shall be excluded from the [*Select: RPZ or the _____ (whatever watercourse)*] except (a) for brief periods of flash grazing, (b) during times of drought or other emergencies, (c) for stream crossings, or (d) for watering at limited access points.]

(ii) Permitted within the RPZ are:

- (a) erosion control or restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3 (i)(f) above;
- (b) fencing along or within the RPZ;
- (c) construction and maintenance of stream crossings (including improvements over the RPZ to access crossings) for pedestrians, livestock, and vehicles, which crossings minimize obstruction of water flow;
- (d) creation and maintenance of trails and roads without hard surfaces, and maintenance of existing trails and existing and new permitted roads;
- (e) creation and maintenance of natural habitat and small wildlife plots;
- (f) planting of trees, shrubs, grasses, or other vegetation; and
- (g) clearing, grading and dam construction and maintenance to create and maintain ponds (but not storm water retention or detention ponds to serve other properties).

[Add and number other applicable exceptions as needed, such as: (1) diversion of water for agricultural use on the Property, (2) construction and maintenance of portions of shoreline stabilization structures, and/or (3) portions of piers or docks for recreational or aquaculture purposes with access thereto.]

[Use only for Option 1] (iii) Subsequent to the Effective Date, the _____ *[whatever watercourse]* may meander or change course naturally, or as a result of the restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 4 (i)(f) above. In such event, the RPZ shall remain the same width, but move relative to the movement of the _____ *[whatever watercourse]*. Any buildings or structures that were outside of the original RPZ and are determined to be within the new RPZ shall not be considered in violation of these restrictions and may be maintained and replaced at such locations, but not enlarged.

7. GRADING, BLASTING, FILLING AND MINING.

(i) Grading, blasting, filling, or earth removal shall not materially alter the topography of the Property except (a) for clearing, grading, and dam construction to create and maintain ponds (but not storm water retention or detention ponds to serve other properties), (b) for restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 4(i)(f) above, (c) for erosion and sediment control pursuant to an erosion and sediment control plan, or (d) as required in the construction of permitted buildings, structures, roads, driveways, trails, and utilities. Grantee may require appropriate sediment and erosion control practices to be undertaken for buildings, structures, roads, driveways, trails, or utilities that require Grantee's approval in Section II, Paragraph 3(i) through (iii) above, as a condition of such approval.

(ii) Grading, blasting, filling, or earth removal in excess of one acre for the purposes set forth in subparagraphs (a) through (d) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities, including the conversion of forest land into farmland, shall not constitute a material alteration of the topography. *[Select: Surface*

mining on the Property, subsurface mining from the surface of the Property, and dredging on or from the Property are prohibited. *or* Surface mining on the Property and subsurface mining from the surface of the Property are prohibited. Dredging on or from the Property is prohibited, except for maintenance of any ponds on the Property.]

SECTION III – ENFORCEMENT

1. RIGHT OF INSPECTION. Representatives of Grantee may enter the Property from time to time for purposes of inspection (including photographic documentation of the condition of the Property) and enforcement of the terms of this Easement after permission from or reasonable notice to Grantor or Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with notice to Grantor or Grantor's representative being given at the earliest practicable time.

2. ENFORCEMENT.

(i) Grantee, in accepting this Easement, commits to protecting the conservation purposes of the Easement and has the resources necessary to enforce the restrictions set forth herein. Grantee has the right to bring a judicial proceeding to enforce the restrictions, which right specifically includes the right (a) to require restoration of the Property to its condition on the Effective Date or to require restoration of the Property to its condition prior to a violation hereof, provided that such prior condition was in compliance with the provisions of this Easement; (b) to recover any damages arising from non-compliance; (c) to compel Grantor to disgorge to Grantee any proceeds received in activities undertaken in violation of the restrictions set forth herein; (d) to require Grantor to replant or pay for the replanting of trees on the Property in the event that Grantor harvests timber in violation of any restrictions set forth in Section II above; (e) to enjoin non-compliance by temporary or permanent injunction; and (f) to pursue any other appropriate remedy in equity or law. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs, expert-witness costs, and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay shall not waive or forfeit its right to take such action as may be necessary to ensure compliance with this Easement, and Grantor hereby waives any defense of waiver, estoppel, or laches with respect to any failure to act by Grantee.

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

(iii) Nothing in this Easement shall create any right in the public or any third party to maintain any judicial proceeding against Grantor or Grantee.

SECTION IV – DOCUMENTATION

Grantor has made available to Grantee, prior to conveyance of this Easement, documentation sufficient to establish the condition of the Property at the time of the conveyance, and documentation retained in the office of Grantee, including, but not limited to, the Baseline Documentation Report (BDR), describes the condition and character of the Property at the time of the conveyance. The BDR may be used to determine compliance with and enforcement of the terms of this Easement. However, the parties are not precluded from using other relevant evidence or information to assist in that determination. The parties hereby acknowledge that the BDR contained in the files of Grantee is an accurate representation of the Property and contains a statement signed by Grantor and a representative of Grantee as required by Treasury Regulation Section 1.170A-14(g)(5)(i).

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, Grantor and its successors in title to the Property, or any portion thereof or interest therein, and Grantee and its successors or 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. Subject to the terms hereof, Grantor retains the exclusive right to such access and use including, but not limited to, the right to hunt, fish, or trap on the Property.
3. **GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor represents, covenants, and warrants that (i) Grantor has good fee simple title to the Property (including the mineral rights located under the surface of the Property), (ii) Grantor has all right and authority to give, grant and convey this Easement, (iii) 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 leases, option contracts, mortgage liens, deeds of trust liens, or other liens not subordinated to this Easement, and (iv) no consent of any third party is required for Grantor to enter into this Easement. [*Add if applicable:* (v) each person and/or entity signing on behalf of Grantor is authorized to do so, *and/or* (vi) Grantor is duly organized and legally existing under the laws of the Commonwealth of Virginia *and/or* (vii) all beneficiaries' consents have been obtained to enter into this Easement.]
4. **ACCEPTANCE.** Grantee accepts this conveyance pursuant to Virginia Code Section 10.1-1801, which acceptance is evidenced by the signature of a Deputy Director or Staff Attorney by authority granted by Grantee's Board of Trustees.

5. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, has been or shall be proffered or dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; proffered or dedicated as open space in, or as part of, any real estate development plan; or proffered 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.

6. **CONSTRUCTION.** Pursuant to the public policy of the Commonwealth of Virginia favoring land conservation, any general rule of construction to the contrary notwithstanding (including the common-law rule that covenants restricting the free use of land are disfavored and must be strictly construed), it is the intent of the parties hereto that this Easement and all language contained herein shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policies and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation that is consistent with the purposes of this Easement (to protect the conservation values of the Property and prevent the exercise of reserved rights in a way that would impair such values) and 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 purposes 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 IRC Section 170(h)(1) and Treasury Regulation Section 1.170A-14, and the restrictions and other provisions of this Easement shall be construed and applied in a manner that will not prevent it from being a qualified conservation contribution.

7. **REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number, or other appropriate reference in any deed or other instrument conveying any interest in the Property. Failure of Grantor to comply with this requirement shall not impair the validity of the Easement or the conveyance or limit the Easement’s enforceability in any way.

8. **NOTICE TO GRANTEE AND GRANTOR.** For the purpose of giving notices hereunder the current address of Grantee is Main Street Centre, 600 East Main Street, Suite 402, Richmond, Virginia 23219, and any notice to Grantor shall be given to the recipient at the address at which the real estate tax bill is mailed for the Property or portion thereof that is the subject of the notice and which is currently _____.

Grantor shall notify Grantee in writing at or prior to closing on any *inter vivos* transfer, other than a deed of trust or mortgage, of all or any part of the Property.

In addition, Grantor agrees to notify Grantee in writing before exercising any reserved right, which may have an adverse effect on the conservation interests associated with the Property as encumbered by this Easement. (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 purposes 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 purposes of this Easement.)

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

9. **TAX MATTERS.** The parties hereto 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 Treasury Regulation Section 1.170A-13(c)(5), and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from conveyance of this Easement, that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable.
10. **GOODS AND SERVICES.** 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.
11. **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.
12. **ASSIGNMENT BY GRANTEE.** Assignment of this Easement is permitted by Virginia Code Section 10.1-1801, but Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (i) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity, (ii) the transferee then qualifies as an eligible donee as defined in IRC Section 170(h)(3) and the applicable Treasury Regulations, and (iii) the transferee is a public body as defined in Section 10.1-1700 of the Open-Space Land Act.
13. **GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the conveyance of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that this Easement on the Effective Date bears to the value of the Property as a whole at that time.
14. **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 Section 10.1-1704 of the Open-Space Land Act, which does not permit loss of open space.

15. **EXTINGUISHMENT.** If any unexpected change in the conditions surrounding the Property can make impossible or impractical the continued use of the Property for the conservation purposes of this Easement, the provisions of this Easement can be extinguished through a judicial proceeding. In such case, on a sale or exchange of the Property subsequent to and resulting from such 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 Section V, Paragraph 13 above. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purposes of this Easement and the Open-Space Land Act.
16. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property by an amended deed of easement, provided that no amendment shall (i) affect this Easement's perpetual duration, (ii) conflict with or be contrary to or inconsistent with the conservation purposes of this Easement, (iii) reduce the protection of the conservation values, (iv) affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land", (v) affect the status of Grantee as a "qualified organization" or "eligible donee", or (vi) create an impermissible private benefit or private inurement in violation of federal tax law. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded in the Clerk's Office of the Circuit Court of _____ County, Virginia.
17. **COST RECOVERY CHARGES.** Grantee reserves the right to recover its costs incurred in responding to requests initiated by Grantor involving matters such as boundary line adjustments, easement amendments, project reviews for ecosystem services, preparation of reports to facilitate sales, access or utility easements over the Property, and review of gas or oil plans. Such cost recovery charges shall be determined and periodically adjusted by its Board of Trustees, as set forth in a published fee schedule.
18. **JOINT OWNERSHIP.** If Grantor at any time owns the Property or any portion of or interest therein in joint tenancy, tenancy by the entirety, or tenancy in common, all such tenants shall be jointly and severally liable for all obligations of Grantor set forth herein.
19. **SEVERABILITY.** It is the express intent of the parties hereto that all provisions of this Easement be considered and construed as part of the whole and that no provision shall be applied in isolation without consideration of the overall purposes of this Easement. Nevertheless, 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.
20. **ENTIRE AGREEMENT.** This instrument [*Add if applicable: Schedule(s) ____, and/or Exhibit(s) _____*] set(s) forth the entire agreement of the parties with respect to this Easement and supersede(s) all prior discussions, negotiations, understandings, or agreements relating to the Easement.

21. **CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia and the United States, resolving any ambiguities or questions of the validity of specific provisions in a manner consistent with the provisions of Section V, Paragraph 6 above in order to give maximum effect to its conservation purposes.
22. **RECODIFICATION AND AMENDMENT OF STATUTES AND REGULATIONS**
This Easement cites various federal and state statutes and regulations applicable to open-space easements. In the event that such statutes or regulations are re-codified or amended, this Easement will be interpreted and enforced according to the re-codified or amended statutes and regulations most closely corresponding to those cited herein and carrying out the purposes recited herein.
23. **RECORDING.** This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of _____, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.
24. **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.
25. **DEFINITIONS.** For purposes of this Easement, the phrase "Effective Date" shall mean the date upon which this Easement was first put to record in the Office of the Clerk of the Circuit Court of _____ County, Virginia. The words "currently" or "existing" shall mean currently or existing on the Effective Date. Time shall be calculated in calendar days, not business days.

[Add Additional Grantor paragraph, when only one spouse owns the Property or portions thereof.]

_____, Additional Grantor, husband/wife of Grantor, joins in the execution of this Easement to evidence his/her consent to the gift of easement herein made and its exclusion from the augmented estate of Grantor pursuant to Virginia Code §64.2-308.9 A.2. as now written or hereafter amended.

[Subordination, if applicable

_____, herein the Lender, is the note holder under a certain deed of trust dated _____ and recorded in the Clerk's Office of the Circuit Court of _____ County, Virginia in Deed Book _____ at Page _____, which subjects the Property [*or a portion of the Property*] to the Lender's lien. The Lender hereby consents to the terms, conditions, and restrictions of this Easement, agrees that the lien represented by said deed of trust shall be held subject to this Easement, and joins in this Easement to reflect its direction to the Trustee(s) to execute this Easement to give effect to the subordination of such deed of trust to this Easement. The Trustee(s) join(s) in the execution of this Easement to confirm that in the event of foreclosure under the deed of trust or other sale of the property described in the deed of trust under judicial or non-judicial proceedings, the property will be sold subject to this Easement. [*If applicable: It is*

understood by the parties hereto that the granting of the deed of trust/deed on a portion/portions of the Property constitutes a division of the Property unless and until such deed of trust has been released of record.]

WITNESS the following signatures and seals: [Counterpart signature pages follow.]

[Counterpart signature page 1 of 4 of deed of open-space easement]

Grantor

Grantor

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

The foregoing instrument was acknowledged before me this ___ day of _____,
20___ by _____.

Notary Public

(SEAL) My commission expires: _____
Registration No. _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

The foregoing instrument was acknowledged before me this ___ day of _____, 20___ by
_____.

Notary Public

(SEAL) My commission expires: _____
Registration No. _____

[Counterpart signature page 2 of 4 of deed of open-space easement]

Accepted:
VIRGINIA OUTDOORS FOUNDATION,

By: _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____, a Deputy Director/Staff Attorney of the Virginia Outdoors Foundation.

Notary Public

(SEAL)

My commission expires: _____
Registration No. _____

[Counterpart signature page 3 of 4 of deed of open-space easement]

Lender:

By: _____

Its: _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____ [*name of officer*], _____ [*title of officer*] of _____ [*name of corporation*], a _____ [*state of incorporation*] corporation, on behalf of the corporation.

Notary Public

(SEAL)

My commission expires: _____
Registration No. _____

[Counterpart signature page 4 of 4 of deed of open-space easement]

_____, Trustee

_____, Trustee

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____, Trustee.

Notary Public

(SEAL) My commission expires: _____
Registration No. _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____, Trustee.

Notary Public

(SEAL) My commission expires: _____
Registration No. _____