

VCC Template Draft (Standard)

NOTE TO TITLE EXAMINERS: This conservation 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: _____

Return to: Valley Conservation Council, Inc.
P.O. Box 988
Staunton, Virginia 24402

TAX MAP NO. or PIN: _____

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

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made this ___ day of _____, 20___, [between *or* among] _____ ("Grantor"), VALLEY CONSERVATION COUNCIL, INC., a Virginia nonstock, nonprofit charitable corporation ("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" *or* "Trustees"), 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 approximately _____ 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 The Virginia Conservation Easement Act (Chapter 10.1 of Title 10.1, Sections 10.1-1009 through 10.1-1016 of the Code of Virginia (1950), as amended) (the "Conservation Easement Act") provides for the conveyance of a conservation easement to a charitable organization which has been declared exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), to retain or protect natural or open-space values of real property, assure its availability for agricultural, forestal, or open-space uses, protect natural resources, or maintain or enhance air or water quality.

R-3 Grantee is a qualified and permissible "holder" of a conservation easement under the Conservation Easement Act as a charitable corporation which has been declared exempt from

taxation under Section 501(c)(3) of the Internal Revenue Code and has had its principal office in the Commonwealth of Virginia for at least five (5) years. Grantee is also a “qualified organization” and “eligible donee” under Section 170(h)(3) of the Internal Revenue Code and Treasury Regulation Section 1.170A-14(c)(1) and is willing to accept a perpetual conservation easement over the Property as herein set forth.

R-4 As required under Section 10.1-1010.E of the Conservation Easement Act, the limitations and obligations imposed on the use of the Property by this Easement conform 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-5 This Easement is intended to constitute (i) a “qualified conservation contribution” as defined in Section 170(h)(1) of the Internal Revenue Code 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-6 This Easement is intended to be a grant “exclusively for conservation purposes” under Section 170(h)(1)(C) of the Internal Revenue Code, because it effects “the preservation of open space (including farmland and forest land)” under Section 170(h)(4)(A)(iii) of the Internal Revenue Code; specifically the preservation of open space on the Property is pursuant to clearly delineated state governmental conservation policies [*if applicable*] [and is for (i) the preservation of land areas for outdoor recreation by, or the education of, the general public under Section 170(h)(4)(A)(i) of the Internal Revenue Code, (ii) the protection of a relatively natural habitat of fish, wildlife, or plants or similar ecosystem, under Section 170(h)(4)(A)(ii) of the Internal Revenue Code *and/or* (iii) the preservation of an historically important land area or a certified historic structure under Section 170(h)(4)(A)(iv) of the Internal Revenue Code.]

R-7 This conservation 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 Conservation Easement Act cited above;

c. 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 (1950), as amended, which supplements existing land conservation programs and allows a credit against Virginia income tax

liability for a conservation easement conveyed for, among other purposes, agricultural and forestal use, or agricultural preservation;

d. 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 for agricultural and/or forestal use by this Easement will yield a significant public benefit and further farmland preservation and other conservation objectives of Grantee and the Commonwealth of Virginia;

[Add any other applicable state laws and policies]

(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.]*

(iii) Land conservation policies of the United States as set forth in the Agricultural Conservation Easement Program (16 U.S.C. Section 3865 *et seq.*) which was established to encourage the protection of land for agricultural use and future viability for agriculture by limiting nonagricultural uses.

R-____ *[Cite here any other studies or plans that will be supported by the Property's preservation, conservation awards, or other recognition that the Property has received.]*

R-___ [Recite 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 Conservation Easement Act.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and in consideration of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant, and convey to Grantee a conservation easement in gross (this “Easement”) over, and the right in perpetuity to restrict the use of, the Property, which is described below 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] _____ in the land records of the County of _____, Virginia. **Even if the Property consists of more than one parcel for real estate tax or any other purpose or if 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.**

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 as applicable*: preservation of land for agricultural use, forestal use, natural habitat and biological diversity, or watershed preservation.]

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 on 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 purposes 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 prior written notice prior to making the/a division of the Property. 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 other recorded instrument.]

(iii) Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered separate conveyances of portions of the Property or divisions of the Property, provided that: (a) Grantee approves such adjustments and is made party to any deed creating a boundary line adjustment; (b) the entire adjacent parcel is subject to a recorded conservation or open-space easement that meets the requirements of the Virginia Open-Space Land Act (Chapter 17 of Title 10.1 Sections 10.1-1700 through 10.1-1705 of the Code of Virginia (1950), as amended) or the Conservation Easement Act and Section 170(h) of the Internal Revenue Code; (c) such open-space or conservation easement is held by Grantee or a qualified transferee as described in Paragraph 10 of Section V hereof; (d) any portion of the Property transferred and incorporated into the adjacent parcel remains

expressly subject in perpetuity to the restrictions set forth in this Easement; and (e) if applicable, the transfer complies with the requirements of Paragraph 10 of Section V hereof as a partial assignment of this Easement.

(iv) 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 on the project including all reasonable actions, such as landscaping or topographic improvements, to minimize the project's impact on the Property and prevent harm to its conservation values. Grantor reserves its separate rights 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). [*Optional addition: 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 de minimis paragraph is not applicable if the Property has no road frontage.*]

[*If applicable:* (v) If 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.]

2. BUILDINGS, STRUCTURES, ROADS, AND UTILITIES.

(i) No buildings, structures, roads or utilities, other than the following, are permitted on the Property, provided, however, that certain permitted buildings and structures are subject to the siting restrictions set forth in Section II, Paragraph 2(iii) below:

(a) **Dwellings and non-residential outbuildings and structures.** _____dwelling unit(s), 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 either:* The dwelling(s) currently existing on the Property 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(s) currently existing on the Property shall be counted as the permitted dwelling(s).]

(4) Grantor shall give Grantee thirty (30) days' prior written notice before beginning construction or enlargement of a/the dwelling(s) on the Property.

(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 another recorded instrument. If the 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, provided that such non-residential outbuildings and structures shall not, without the prior written approval of Grantee, exceed an aggregate of two-thousand (2,000) square feet in ground area for each permitted dwelling existing as of the date of this Easement and for each permitted dwelling constructed after the date of this Easement;

(b) **Farm buildings or structures.** Farm buildings and structures are permitted; provided, however, no farm building or farm structure constructed after the execution and recording of this Easement shall exceed _____ square feet in ground area without the prior written approval of 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 3(i)(a) below; and

(c) **Buildings for the processing and sale of farm or forest products, certain animal-related uses and small-scale commercial operations.** Buildings not exceeding four thousand five hundred (4,500) square feet of enclosed area in the aggregate and not individually exceeding two thousand five hundred (2,500) square feet of enclosed area for the activities specified in Section II, Paragraphs 3(i)(b) and 3(i)(c) below. *[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 rights to buildings described in this paragraph (c) unless the right to construct such

building or buildings is allocated [between *or* among] the parcels in the instrument creating the division or another recorded instrument.]

(d) Roads, driveways and trails.

(1) Private roads and driveways to serve permitted buildings or structures; [*If applicable*: private roads and access easements to parcels created by (the) permitted division(s) of the Property; and] roads with permeable surfaces for permitted uses and activities, such as farming or forestry.

(2) Private roads or driveways and access easements over the Property to serve adjacent properties, provided that such roads or driveways have the prior 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 in conjunction with (the) permitted division(s) of the Property, provided that Grantee determines that the construction and maintenance of such public roads will not impair the conservation values of the Property and gives prior written approval for such construction. Any such dedication of required road(s) for such division(s) shall not be considered (an additional division/additional divisions) of the Property, and this Easement shall remain in effect with respect to the portion of the Property so dedicated;]

(4) Trails with pervious surfaces, including, but not limited to, hiking, biking, and equestrian trails, shall remain in effect with respect to the portion of the Property so dedicated, provided that any such trail shall not exceed ten (10) feet in width without Grantee's prior written approval; and

(e) Utilities and alternative energy structures.

(1) Public or private utilities within existing rights-of-way therefor, consistent with any recorded instrument granting such rights-of-way, or current customary use of the right-of-way if it is not documented by a recorded instrument.

(2) Public or private utilities to serve permitted buildings, structures, or activities on the Property. In addition, public or private utilities to be constructed in whole or in part to serve other properties, provided Grantee determines that the construction and maintenance of such utilities will cause no impairment of the conservation values of the Property and gives its prior written approval for such construction and maintenance. Approval of such construction and maintenance shall take into consideration the visibility and any other possible adverse impact of such utilities on the conservation values of the Property. Grantor reserves its separate rights to approve any public or private utilities.

(3) Alternative energy structures used to harness natural renewable energy sources, such as sunlight, wind, water, or biomass, to serve permitted buildings,

structures, or 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.

(4) Alternative energy structures constructed in whole or in part to serve other properties, provided Grantee determines that the construction and maintenance of such structures will cause no impairment of the conservation values of the Property and gives its prior written approval for such construction and maintenance. Approval of such construction and maintenance shall take into consideration the visibility and any other possible adverse impact of such structures on the conservation values of the Property.

(f) **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, structures for crossing streams or wetlands.

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

(ii) **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 2(i) 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.

(iii) **Siting of buildings and structures.** To protect [Select one or more or *add whatever other features are being protected*: the scenic values of the Property, the agricultural soils on the Property *and/or* the historic _____ on the Property]; all new buildings or structures shall be constructed within [the *or* a] Building [Envelope *or* Envelopes] described or shown on Exhibit __, [*If there is a riparian protection zone below, add this*: (See Section II, Paragraph 5(i) for further restrictions on improvements in the riparian protection zones(s).)]

(iv) **Collective footprint limitation.** The collective footprint of all buildings and structures on the Property, excluding linear surfaces, such as roads, driveways, walls, fences, and boardwalks, shall not exceed one percent (1%) of the total area of the Property. 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 2(i)(a) through (c), (e), and (f), excluding linear surfaces, such as roads, driveways, walls, fences, and boardwalks. [*Addition when 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 and driveways, shall not exceed one percent (1%) of the total area of such parcel unless otherwise allocated in the instrument of transfer or other recorded instrument.]

3. INDUSTRIAL AND COMMERCIAL ACTIVITIES ON THE PROPERTY.

(i) Industrial or commercial activities on the Property 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 with Grantee's prior written approval, approved animal-related uses, including but not limited to kennels, wildlife rehabilitation centers, or veterinary clinics. Grantee's prior written approval of such aforementioned animal-related uses shall be contingent upon Grantee's determination that any such proposed animal-related use is consistent with the conservation purposes of this Easement;

(c) small-scale commercial or industrial operations compatible with the activities set forth in (a) and/or (b) above, including but not limited to agritourism, cafes, shops, and studios for arts and crafts, provided that Grantee approves any such proposed operation in writing as being consistent with the conservation purposes of this Easement;

(d) activities, other than those already permitted in (a), (b), and (c) above, that can be, and in fact are, conducted within permitted buildings without material alteration to their external appearance, provided that any such use which will require construction of parking or installation of signage shall require the prior written approval of the Grantee, and provided further 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 excess power generated in the operation of alternative energy structures and associated equipment to serve permitted buildings, structures, and activities on the Property as provided in Section II, Paragraph 2(i)(e)(3) above and the sale of power generated in the operation of alternative energy structures to serve other properties as permitted with approval in Section II, Paragraph 2(i)(e)(4);

(f) activities to restore or enhance wetlands or streams or to 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 purposes 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 impair the conservation values of the Property;

(h) agriculture-based and/or 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 of the Property; and

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

[*Optional:* (This may enable Grantor to obtain an estate tax benefit under IRC §2031(c); if this subparagraph (ii) is not added, delete the “(i)” above) (ii) 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. MANAGEMENT OF FOREST.** 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 or land-clearing activity is undertaken. A pre-harvest plan shall be submitted to Grantee for approval no later than fourteen (14) days before beginning any material timber harvest, which approval shall take into consideration whether or not the pre-harvest plan is consistent with the terms of this Easement and its conservation purposes. The pre-harvest plan shall describe the BMPs to be used in sufficient detail to ensure that water quality will be protected.

The following activities do not constitute material timber harvesting or land clearing and do not require the use of BMPs or a pre-harvest plan: the cutting, clearing, or removal of trees on less than _____ (_____) acres of the Property at any one time (i) for the construction or maintenance of permitted roads, trails, utilities, buildings, structures, or ponds, (ii) for firewood for Grantor’s domestic use, (iii) which are invasive species, (iv) which pose a threat to the health or safety of persons, property, or livestock, (v) which are dead, diseased, or dying, or (vi) for other permitted activities on the Property, except timber harvesting or land clearing.

5. RIPARIAN PROTECTION ZONE. [*Make everything in this Paragraph plural if there are two or more riparian protection zones on the Property, e.g., creek traversing 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 construction of buildings or other structures without Grantee's prior written approval;
- (b) no new paved roads or paving of existing roads without Grantee's prior written 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, and
 - (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, 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) during times of drought or other emergencies, (b) for stream crossings, or (c) for watering at limited access points. Before the construction of any stream crossing within the RPZ, plans shall be submitted to Grantee for Grantee's prior written approval, which approval shall take into consideration whether best management practices and other measures will be utilized to minimize, to the extent practicable, damage to the RPZ, and minimize obstruction of water flow. Plans for the installation of limited access points for watering of livestock shall likewise be submitted to Grantee for Grantee's prior written approval of the proposed location of each limited access point, which approval shall take into consideration whether the location minimizes, to the extent practicable, damage to the RPZ and whether an alternative location, which will provide adequate access to water for livestock, may be more desirable for protection of the RPZ.

(ii) Permitted within the RPZ are the following, subject to compliance with Best Management Practices:

- (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 and shall be subject to Grantee's prior written approval;
 - (d) creation and maintenance of natural habitat and small wildlife plots; and
 - (e) planting of trees, shrubs, grasses, or other native vegetation.
- [Optional to include depending on easement]* (f) creation and maintenance of new trails and roads without hard surfaces, provided that any such trail shall not exceed ten (10) feet in width and the location thereof shall be subject to Grantee's prior written approval, and maintenance of existing and new permitted trails and roads;

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

[Use only for Option 1] (iii) Subsequent to the recordation of this Easement 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 3(i)(e) above. In such event, the RPZ shall remain the same width, but move relative to the movement of the _____ *[whatever watercourse]*. In such event, 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.

6. 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 outside of the RPZ (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 3(i)(e) 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, and utilities. Grantee may require appropriate sediment and erosion control practices to be undertaken for buildings, structures, roads, or utilities that require Grantee's approval in Section II Paragraph 2(i) or in Section II Paragraph 2(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 thirty (30) days' prior notice to

Grantee. Surface mining on the Property and subsurface mining from the surface of the Property are prohibited. Drilling for oil or gas or other minerals on the Property is prohibited. Dredging on or from the Property is prohibited, except for maintenance of any ponds on the Property.

7. **ACCUMULATION OF TRASH.** Accumulation or dumping of trash, refuse, junk or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the 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 at least 48 hours' 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.** 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 (i) to require restoration of the Property to its condition at the time of the conveyance 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 restrictions of and consistent with the purpose of this Easement; (ii) to recover any damages arising from non-compliance; (iii) to compel Grantor to disgorge to Grantee any proceeds received in activities undertaken in violation of the restrictions set forth herein; (iv) 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 Section II Paragraph 4 or 5 above; (v) to enjoin non-compliance by temporary or permanent injunction; and (vi) 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. 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 (i) caused by fire, flood, storm, Act of God, governmental act, or other cause outside of Grantor's control or (ii) 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. 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 describes the condition and character of the Property at the time of the conveyance. The Baseline Documentation Report 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 Baseline Documentation Report 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, 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. 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: (a) Grantor has good fee simple title to the Property (including the mineral rights located under the surface of the Property), (b) Grantor has all right and authority to give, grant, and convey this Easement, (c) 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 (d) no consent of any third party is required for Grantor to enter into this Easement. [*Add if applicable:* (e) each person and/or entity signing on behalf of Grantor is authorized to do so, (f) Grantor is and shall be duly organized and legally existing under the laws of the Commonwealth of Virginia *and/or* (g) all beneficiaries' consents have been obtained to enter into this Easement. *If language is added, delete "and" before subparagraph (d).*]

4. **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.
5. **CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Grantee 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 Regulation Section 1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.
6. **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 limit its enforceability in any way.
7. **NOTICE TO GRANTEE AND GRANTOR.** For the purpose of giving notices hereunder the current address of Grantee is P.O. Box 988, Staunton, Virginia, 24402, 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 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.)

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

8. **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. 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.
9. **NO MERGER.** If 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.
10. **ASSIGNMENT BY GRANTEE.** Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the following requirements: (i) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity, and (ii) the transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the Internal Revenue Code and the applicable Treasury Regulations.
11. **GRANTEE'S PROPERTY RIGHT.** 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 the perpetual conservation restriction at the time of the conveyance bears to the value of the Property as a whole at that time. The values applicable for purposes of the calculations required by this Paragraph 11 shall be the values finally determined for purposes of any federal income tax deduction allowed with respect to the conveyance of this Easement, provided an income tax deduction is sought.
12. **CONVEYANCE TO THE COMMONWEALTH.** If Grantee, or the successor or assignee thereof, shall cease to exist, or not qualify as a qualified holder under the Conservation Easement Act or as a "qualified organization" under Section 170(h) of the Internal Revenue Code, this Easement and any and all rights of enforcement shall vest in the Virginia Outdoors Foundation.
13. **EXTINGUISHMENT.** Grantor and Grantee intend that this Easement be perpetual. Should an attempt be made to terminate or extinguish this Easement in whole or in part, such termination or extinguishment shall be carried out only by judicial proceedings in compliance with Section 170 (h) of the Internal Revenue Code and applicable Treasury Regulations. In a sale or exchange of the Property subsequent to and resulting from such a termination or 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 11 above. 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 Conservation Easement Act.

14. **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 purpose 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.
15. **REVIEW FEES.** Grantee reserves the right to charge Grantor, and Grantor agrees to pay to Grantee, a fee to reimburse Grantee for its actual and reasonable expenses (including those of its staff) incurred for Grantee to review and approve any right that is reserved by Grantor in this Easement, and which is required by this Easement to be reviewed and approved by Grantee before being exercised, in accordance with the policies of the Grantee at the time the review is made. Grantee also 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, and access or utility easements over the Property.
16. **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.
17. **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.
18. **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.
19. **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.
20. **RECODIFICATION AND AMENDMENT OF STATUTES AND REGULATIONS.** This Easement cites various federal and state statutes and regulations applicable to open-space easements. If 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.

21. **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.
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.
23. **HAZARDOUS SUBSTANCES: WARRANTY AND INDEMNITY.** Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or management control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) or any corresponding Commonwealth of Virginia statute or regulation or _____ County ordinance. Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, without regard to its merit, liability, or expense, including reasonable attorneys' fees, arising from or with respect to any release of hazardous substance or waste or violation of environmental laws.
24. **INDEMNIFICATION.** Grantor hereby agrees to indemnify and hold harmless Grantee and its directors, officers, agents, volunteers, and employees (collectively, Grantee's Indemnified Parties) from and against any and all liabilities, penalties, causes of action, claims, demands, orders, judgments, or administrative actions against Grantee's Indemnified Parties, including, without limitation, reasonable attorney's fees arising from Grantee's interest in the Property as Grantee under this Easement and in connection with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of Grantee's Indemnified Parties or arising out of Grantee's Indemnified Parties' physical presence on the Property; Grantee's Indemnified Parties acknowledge that the Property is an active farming property and that there are inherent dangers in connection with same; or (ii) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, ordinance or requirement, by any person other than any of the Grantee's Indemnified Parties, in any way affecting, involving, or relating to the Property which directly lead to a loss suffered by Grantee's Indemnified Parties.

Grantee hereby agrees to indemnify and hold harmless Grantor from and against any and all liabilities, penalties, causes of action, claims, demands, orders, judgments, or

administrative actions against Grantor, including, without limitation, reasonable attorney's fees arising from injury to or death of any person, or physical damage to any property (including, but not limited to the Property), proximately caused by the negligent omission of Grantee or its directors, employees or agents relating to this Easement. Notwithstanding the foregoing indemnification obligation of Grantee, if this Easement and any and all rights of enforcement shall vest in the Virginia Outdoors Foundation (or other agency of the Commonwealth of Virginia or political subdivision thereof) as provided in Section V, Paragraph 12 hereof, then for purposes of the foregoing indemnification obligation of Grantee, such agency of the Commonwealth or political subdivision thereof will be responsible for its agents' and employees' acts and omissions within the scope of their duties which cause injury to persons or property.

[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 *or* her] consent to the gift of easement herein made and its exclusion from the augmented estate of Grantor pursuant to Virginia Code §64.2-305 as now written or hereafter amended.

[Subordination, if applicable]

_____, (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 joins [*or* Trustees join] 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.

WITNESS the following signatures and seals:

[Counterpart signature pages follow]

[Counterpart signature page 1 of 4 of deed of conservation 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 conservation easement]

Accepted:
VALLEY CONSERVATION COUNCIL, INC.

By: _____

Title: _____

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

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

Notary Public

(SEAL)

My commission expires: _____
Registration No. _____

[Counterpart signature page 3 of 4 of deed of conservation 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 conservation 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. _____