

THIS DEED IS EXEMPT FROM TAXATION UNDER VIRGINIA CODE §§58.1-811 (A)(3)
AND 58.1-811(C)(4)

JCC TAX ID NOS.: 1230100022, 1230100021, and 1230100022A

CONSIDERATION: \$10.00

INDEX UNDER:

COUNTY OF JAMES CITY, and
ELWOOD H. PERRY, JR., and
SHARON W. PERRY

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT, made this _____ day of July, 2006, by and between ELWOOD H. PERRY, Jr. and SHARON W. PERRY, HUSBAND AND WIFE, whose address is 2875 Forge Road in James City County, Virginia, (jointly and severally, the “Grantors”) and the COUNTY OF JAMES CITY, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the “County” or the “Grantee”) whose address is 101-C Mounts Bay Road, Williamsburg, Virginia 23185.

WITNESSETH:

WHEREAS, Grantors are the owners in fee simple of the property located in James City County, Virginia, that is described on “Exhibit A” attached hereto and made a part hereof, together with and in addition to the property identified as JCC Real Estate Tax Map No. 1230100022A, also known as 2875 Forge Road (collectively, the “Property”); and

WHEREAS, under the County’s Purchase of Development Rights Program, codified in Chapter 16A of the James City County Code, as amended (the “County Code”) (the “PDR Program”), the County is authorized to acquire and accept conservation easements over qualifying properties in order to accomplish the purposes of the PDR Program and the Open-Space Land Act (Section 10.1-1700 et seq. of the Code of Virginia, 1950, as amended (the “Virginia Code”)); and

WHEREAS, the Grantors have voluntarily agreed to have the Property be subject to the terms of this Deed of Conservation Easement (the “Conservation Easement”); and

WHEREAS, the Conservation Easement is granted exclusively for conservation purposes; and

WHEREAS, the County's acceptance of the Conservation Easement identified herein furthers the purposes of the PDR Program in that such acceptance, among other things, assures that James City County's resources are protected and efficiently used, establishes and preserves open space, and furthers the goals of the James City County Comprehensive Plan to protect James City County's natural, scenic and historic resources, promotes the continuation of a viable agricultural and forestal industry and resource base, and protects the quality of James City County's surface water and groundwater resources; and

WHEREAS, the Grantors have offered to donate this Conservation Easement and the Grantee has agreed to hold said Conservation Easement in perpetuity.

NOW, THEREFORE, in consideration of the above recitals, and the mutual benefits, covenants and terms herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the Grantors hereby grant, convey, covenant, and agree as follows:

1. GRANT AND CONVEYANCE OF EASEMENT. The Grantors hereby grant and convey to the Grantee and its successors and assigns, with General Warranty and the English Covenants of Title, this Conservation Easement in gross over the Property, restricting in perpetuity the use of the Property in the manner set forth in this Conservation Easement.

2. DESCRIPTION. The Property is shown as all or part of 2945 Forge Road, comprising 80 acres, more or less, and identified as Tax Parcel ID No. 1230100022 (the "Branch Property"), 2925 Forge Road, comprising 8 acres, more or less, and identified as Tax Parcel ID No. 1230100021 (the "Branch Residence"), and 2875 Forge Road, comprising 10 acres, more or less, and identified as Tax Parcel ID No. 1230100022A (the "Perry Property") among the land records of the County. The Property shall be considered to be one parcel for the purposes of this Conservation Easement, and the restrictions and covenants of this Conservation Easement shall apply to the Property as a whole except as noted.

3. USES AND ACTIVITIES. In order to accomplish the purposes of the PDR Program and the Open-Space Land Act (the Code of Virginia, 1950, as amended, Section 10.1-1700, et seq.) the Property shall be subject to the following restrictions:

A. Construction, installation, location, placement of structures and improvements. There shall be no construction, placement, or maintenance of any structure or improvements on the Property unless the structure or improvements are either on the Property as of the date of this Conservation Easement or are authorized as follows:

1. *Existing dwellings.* The repair, expansion, removal, or relocation of the dwellings that exist as of the date of this Conservation Easement is permitted, except as noted in this instrument.

a. The removal of the existing dwelling on the Branch Residence shall extinguish all development rights on this parcel in perpetuity except as allowed by this deed. The Grantee shall have one (1) year from the date of execution of this Conservation Easement to

remove, at its cost, the existing dwelling from the Branch Residence. The parties may extend this date by mutual agreement in writing.

b. Any relocation of the existing or replacement dwelling on the Perry Property shall not be closer than 400 linear feet to the centerline of Forge Road, as it is currently located.

2. *Future dwellings.*

a. Placement of dwellings on the parcels identified as numbers 1 and 2 on "Exhibit B," attached hereto and made a part hereof, shall be situated in substantially the same location as identified on "Exhibit B," as determined by the Grantee. Dwellings located on the parcels identified as numbers 3, 4, 5, and 6 on "Exhibit B" shall be situated within 400 linear feet of the southern property line. Placement of any dwelling not currently shown on Exhibit B shall be approved in advance by the Grantee.

b. The Grantor shall be permitted to construct one "caretaker" dwelling (the "Caretaker Dwelling") upon the Property, subject to the following restrictions:

1. The Caretaker Dwelling shall be wholly situated within a barn or similar agricultural structure (the "Agricultural Structure"). The Caretaker Dwelling shall be oriented at the rear of the Agricultural Structure and shall not be visible from Forge Road.

2. The Caretaker Dwelling shall be only used by a bona fide caretaker of the Property.

3. The size of the Caretaker Dwelling shall be limited to not more than 800 square feet.

4. The location, color, and architectural design of the Agricultural Structure shall be designed to complement the agricultural and rural nature of the Forge Road corridor and shall be approved in advance in writing by the Grantee.

5. The Agricultural Structure shall access Forge Road only via the existing driveway serving the Perry Residence and from the Perry Residence via an unpaved road.

6. The Agricultural Structure shall not be subdivided from the Property.

B. Types of structures. The following structures may be established on the Property without the prior written consent of the Grantee:

1. Accessory structures incidental to the existing structures and allowed additional dwellings such as outbuildings, swimming pools, garages, and tool sheds.

2. Farm buildings and structures.

3. There shall be no more than a total of seven (7) dwelling units situated on the Properties, each of which shall be a single family detached dwelling unit; provided, however, that a Caretaker Dwelling may be situated upon the Property as limited by section 3(A)(2)(b) of this Conservation Easement.

C. Size of structures. Excluding the Caretaker Dwelling, each altered, relocated, or new structure, including dwellings, farm buildings and farm structures shall have a structural footprint of not more than four thousand five hundred (4,500) square feet and total dwellings, buildings, structures, and impervious surfaces shall not exceed ten (10) percent of the surface area of the Property, unless prior written approval for a greater footprint or surface area is obtained from the Grantee.

D. Improvements. The following may be constructed, placed, or maintained, provided they are consistent with this Deed of Easement and the PDR Program with prior written approval to be obtained by the Grantee: private roads, utilities and other improvements customary and related to the use of the existing dwelling or permitted buildings and structures.

1. *Miscellaneous:* The Grantor may enclose any portion of the Property with wooden, split-rail, or similar fencing with the prior written approval of the Grantee. Those portions of the Property not adjacent to Forge Road may be enclosed with wire fencing. Said fencing shall not unduly obstruct views of the Property from Forge Road. The Grantor shall not plant trees or other landscaping in such a manner as to block views of Parcel 2 depicted on "Exhibit B" from Forge Road.

2. *Commercial and industrial uses prohibited; description of uses not deemed to be commercial and industrial uses.* There shall be no industrial or commercial uses or activities conducted on the Property as defined by the County Code, provided, however, the following uses are NOT deemed to be commercial or industrial uses for the purposes of this Conservation Easement:

a. Single-family residential uses.

b. Agricultural uses, consisting of establishing, reestablishing, maintaining or using cultivated fields, orchards or pastures in accordance with generally accepted agricultural practices for the purpose of producing or maintaining crops, including horticultural specialties; livestock, including all domestic and domesticated animals; and livestock products. The processing of agricultural products is not an agricultural use, except as an accessory use with prior written approval by the Grantee.

c. The Grantors, and their successors and assigns, shall be allowed to have and board large animals (e.g., horses and cattle) on the Property; provided, however, that the total number of large animals boarded or otherwise held by the Grantors and their successors and assigns on the Property shall not exceed a ratio of 1 large animal per 2 acres of pastureland on the Property or 3 large animals per lot, whichever is greater.

d. Forestal uses, consisting of reforestation, timber harvesting and forest management activities undertaken to produce wood products and/or improve the health and productivity of the woodland. The processing of wood products is not a forestal use, except as an accessory use with prior written approval by the Grantee.

e. Seasonal activities that do not permanently alter the physical appearance of the Property that are related to and consistent with an authorized use of the Property delineated herein, including but not limited to the sale of agricultural products grown or raised on the Property, and the granting of licenses to enter and use the Property for hunting or fishing.

f. Uses that are subordinate and customarily accessory to a principal use of the Property (such as, for example, a shed for a residence, a garage, a patio, a deck, etc.) that are not expressly prohibited by this Conservation Easement and are otherwise consistent with the purposes of this Conservation Easement, the PDR Program and the County Code.

g. Uses or activities not expressly excepted herein, but which are determined by the Grantee in writing not to be a commercial or industrial use or activity, and to be consistent with the purposes of this Conservation Easement, the PDR Program, and the County Code.

3. *Unlisted uses.* The Grantor may petition the Board of Supervisors for permission to establish a use which is not otherwise listed herein and which is otherwise permitted by the County Code on the Property. Said petition shall be in writing and shall be considered by the Board of Supervisors at a public meeting within ninety (90) days of the date of submission of the petition.

4. CONFIGURATION/SUBDIVISION OF THE PROPERTY. Within one (1) year from the date of execution of this Conservation Easement, the Grantors shall vacate the property lines on the Perry Property and the Branch Residence. The maximum number of lots on the Property shall be limited to no more than seven (7) lots as depicted on "Exhibit B" The lots shall be configured in substantial conformance with "Exhibit B," provided, however, that any of the lots may be combined to result in fewer than seven (7) lots. All driveways shall be situated in substantially the same location as shown on "Exhibit B," as determined by the Grantee.

5. BILLBOARDS AND SIGNS. There shall be no display of billboards, signs or other advertisements on the Property, except signs that: (1) state solely the name of the owners, the name of the farm, and/or the address of the Property; (2) advertise the sale or lease of the Property; (3) advertise the sale of goods or services produced pursuant to a permitted use of the Property; (4) give directions to visitors; or (5) provide warnings pertaining to trespassing, hunting, dangerous conditions and other similar such warnings. No such sign shall exceed twenty-four (24) square feet.

6. GRADING, EXCAVATION, EARTH REMOVAL, BLASTING, AND MINING. Earth removal, except for activities allowed within Section 3(D) of this Conservation Easement, and blasting are prohibited. The exploration for, or development and extraction of minerals and hydrocarbons by mining or any other method is prohibited. Grading and excavation is allowed but shall not materially alter the topography of the Property. Grading and excavation shall be allowed for dam construction to create private conservation ponds with prior written approval by the Grantee, and grading and excavation shall be allowed during the construction of permitted structures or associated improvements. Common agricultural activities such as plowing, erosion control, and restoration are permitted activities provided that they do not materially alter the topography of the Property.

7. MANAGEMENT OF AGRICULTURAL AND FORESTAL RESOURCES. The application of Agricultural and Forestal Best Management Practices approved by the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Forestry, the Virginia Department of Conservation and Recreation, the Virginia Department of Environmental Quality, a local Soil and Water Conservation District, the USDA Natural Resources Conservation Service, or other USDA agency, or other applicable agency of the state or federal government, shall be undertaken in all agricultural and forestal activities, including all activities involving equine, other livestock or domesticated animal(s) allowed by this deed to protect the soil, control erosion, manage nutrients and manure and protect water quality. The Grantors shall give the Grantee, its successors or assigns, written notice not less than forty-five (45) days prior to the anticipated commencement of any commercial timber harvest. If an aspect of the harvest activities is inconsistent with one or more purposes of this conservation easement, the Grantee reserves the right to require reasonable modifications to the harvest activities that will minimize such impacts.

8. ACCUMULATION OF WASTE MATERIAL. There shall be no accumulation or dumping of trash, refuse, or junk on the Property. This restriction shall not prohibit customary agricultural, horticultural or wildlife management practices including, but not limited to, establishing brush, compost piles, or the routine and customary short-term accumulation of household trash.

9. NOTICE AND PERMISSION. Whenever notice is to be given pursuant to any of the provisions of this Conservation Easement, or where a request for permission is required of the Grantee, or for a change of address, such notice or request for permission shall be in writing and shall be deemed to have been given upon (i) delivery by hand, (ii) three days after deposit in the U.S. mail with postage prepaid, for delivery by certified mail, return receipt requested, or (iii) one day after delivery to a recognized national courier service for overnight delivery to:

If to Grantor: Mr. Elwood H. Perry, Jr.
2875 Forge Road
Toano, VA 23168

With Copy To:

David W. Otey, Jr., Esquire
Jones, Blechman, Woltz & Kelly, P. C.
485 McLaws Circle
Williamsburg, VA 23185

If to County:

County Administrator
101-C Mounts Bay Road
P.O. Box 8784
Williamsburg, VA 23185

With Copy To:

County Attorney
101-C Mounts Bay Road
P.O. Box 8784
Williamsburg, VA 23185

10. MISCELLANEOUS PROVISIONS.

A. No public right-of-access to Property. This Conservation Easement does not create, and shall not be construed to create, any right of the public to enter upon or to use the Property or any portion thereof, except as Grantors may otherwise allow in a manner consistent with the terms of this Conservation Easement and the PDR Program.

B. Continuation. The covenants, terms, conditions, and restrictions of this Conservation Easement shall apply to the Property as a whole and shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs, and be considered a servitude running with the land in perpetuity.

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

1. *Monitoring.* Employees or agents of Grantee may enter the Property from time to time, at reasonable times, for the purpose of monitoring compliance with the terms of this Conservation Easement. The Grantee shall give reasonable prior notice before entering the Property, when practicable.

2. *Action at law inadequate remedy.* The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and

restrictions herein contained, and therefore, in the event that the Grantors, their successors or assigns, violate or breach any of the terms, conditions and restrictions herein contained, the Grantee, its successors, or assigns, may institute a suit, and shall be entitled, to enjoin by *ex parte* temporary and/or permanent injunction such violation and to require the restoration of the Property to its prior condition.

3. *Restoration.* Upon any breach of the terms of this Conservation Easement by Grantors, Grantee may require by written demand to the Grantors that the Property be restored promptly to the condition required by this Conservation Easement. Furthermore, the Grantee retains the right to restore the Property to a condition consistent with the terms of this Conservation Easement and assess the cost of such restoration against the owner of the parcel in violation of this Conservation Easement and as a lien against the Property in violation of this Conservation Easement, provided however, that no such lien shall affect the rights of a subsequent bona fide purchaser for value, unless an accurate, legally sufficient, and enforceable memorandum of such lien was recorded among the land records prior to such purchase, and such lien shall be subordinate to any deed of trust recorded prior to the recordation of a memorandum of such lien.

4. *Failure to enforce does not waive right to enforce.* The failure of Grantee to enforce any term of this Conservation Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantors from thereby complying with any such term.

5. *Costs of enforcement.* Any reasonable and ordinary costs incurred by the Grantee in enforcing the terms of this Conservation Easement against the Grantors, including, without limitation, costs of suit and reasonable attorneys' fees shall be borne by the Grantors, provided, however, if the Grantor prevails in any claim, litigation, or administrative order or ruling, the Grantee shall not be entitled to any of the costs or fees described herein.

6. *No right of enforcement by the public.* This Conservation Easement does not create, and shall not be construed to create, any right of the public to maintain a suit for any damages against the Grantors for any violation of this Conservation Easement.

D. Property Right. Grantors agree that the grant of the perpetual conservation restriction contained in this Conservation Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the value of the Property without the Conservation Easement minus the value of the Property with the Conservation Easement or the value determined pursuant to section 10(R), whichever is greater. If a subsequent unexpected change in the conditions surrounding the Property makes impossible or impractical the continued use of the Property for the conservation purposes specified herein, the Grantee may petition the Board of Supervisors to grant extinguishment of the Conservation Easement in exchange for the conveyance to the Grantee of a Conservation Easement on a different parcel located in James City County and in accordance with the PDR Ordinance in place at the time of the recording of this Conservation Easement. The Grantee, upon a sale,

exchange or conversion due to an extinguishment, shall be entitled to a portion of the proceeds determined by multiplying all the proceeds by the proportionate value established above. All proceeds to which Grantee is entitled from such sale, exchange or involuntary conversion shall be used by the Grantee in a manner consistent with the original conservation purposes of this Conservation Easement.

E. Notice of proposed transfer or sale. The Grantors shall notify the Grantee in writing at the time of closing on any transfer or sale of all or any portion of the Property. In any deed conveying all or any part of the Property, this Conservation Easement shall be referenced by deed book and page number in the deed of conveyance and shall state that this Conservation Easement is binding upon all successors in interest in the Property in perpetuity.

F. Relation to applicable laws. This Conservation Easement shall not be construed to violate any applicable federal, state, or local law. Notwithstanding any other provision of this Conservation Easement, the County Code shall apply to the Property. In the event of a conflict between any applicable law and this Conservation Easement, the more restrictive provision shall apply.

G. Severability. If any provision of this Conservation Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this Conservation Easement shall not be affected thereby. The Grantor shall remunerate Grantee for the proportionate loss of value in the Conservation Easement as determined by the Board of Supervisors due to any invalidated provision.

H. Recordation. Upon execution by the parties, this Conservation Easement shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of Williamsburg/James City County, Virginia. The Grantee shall provide the Grantor with one (1) certified copy of the Deed of Conservation Easement.

I. Authority to convey easement. The Grantors covenant that they are vested with good title to the Property and may convey this Conservation Easement.

J. Authority to accept easement. The Grantee is authorized to accept this Conservation Easement pursuant to the Virginia Code, 1950, as amended, Section 10.1-1701.

K. Proceeds from eminent domain. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Conservation Easement, in whole or part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received. Grantee's share of the balance of the amount recovered shall be determined by multiplying the proceeds by a fraction, the numerator of which shall be the value of the conservation easement as determined in section 10(D) and the

denominator of which shall be the value of the Property. Grantee shall have the right to appear as a party in any eminent domain proceeding concerning the Property.

L. Construction. This Conservation Easement shall be construed to promote the purposes of this Conservation Easement and the PDR Program.

M. Liability and indemnification. Grantors agree that Grantee has no obligations, express or implied, relating to the maintenance or operation of the Property. Grantors agree to indemnify and hold Grantee harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, accidents, negligence, damage, or any claim relating to the Property. Grantors warrant that they have no actual knowledge of a prior release or threatened release of hazardous substances or wastes on the Property and agrees to hold harmless, indemnify, and defend Grantee from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees arising from or out of the existence, actual or alleged, of any and all environmentally hazardous or toxic substances or materials on or under the Property.

N. Taxes and assessments. Grantors shall be responsible for paying all taxes, levies, assessments and other governmental charges which may become a lien on the Property.

O. Controlling law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the Commonwealth of Virginia. The venue for any cause of action brought under this Conservation Easement shall be the Circuit Court for the City of Williamsburg and the County of James City.

P. Entire agreement. This instrument sets forth the entire agreement of the Parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Conservation Easement, all of which are merged herein.

Q. Amendments. This Conservation Easement may be amended only with the written consent of the Grantee and Grantors, and such amendment shall be duly recorded. Any amendment shall be at the sole discretion of the Grantee, and shall be consistent with the Open-Space Land Act and Chapter 16A of the County Code. Any such amendment shall also be consistent with the overall purposes and intent of this Conservation Easement. Further, such amendment shall not be of a kind or nature that would disqualify any income tax benefits that have or may have been applicable to the Grantors.

R. Valuation By Grantors. Grantors reserve the right to calculate the value of this Conservation Easement.

WITNESS the following signatures and seals:

GRANTORS:

Elwood H. Perry, Jr.

Sharon W. Perry

COMMONWEALTH OF VIRGINIA

City/County of James City, to-wit:

The foregoing Deed of Conservation Easement was signed, sworn to and acknowledged before me this _____ day of July, 2006, by Elwood H. Perry, Jr. , Grantor.

WITNESS my signature and notarial seal.

[SEAL]

Notary Public

My Commission Expires: _____

COMMONWEALTH OF VIRGINIA
City/County of JAMES CITY, to-wit:

The foregoing Deed of Conservation Easement was signed, sworn to and
acknowledged before me this _____ day of July , 2006, by Sharon W. Perry, Grantor.

WITNESS my signature and notarial seal.

[SEAL]

Notary Public

My Commission Expires _____