

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

AMENDED
DEED OF CONSERVATION AND OPEN-SPACE ¹EASEMENT

THIS AMENDED DEED OF CONSERVATION AND OPEN-SPACE ²EASEMENT, made this 13th day of December,³ **(the “Easement”), dated as of October _____, 2007, effective as of July 26,**⁴ 2006, by and between ELWOOD H. PERRY, Jr⁵ JR⁶, and SHARON W. PERRY, HUSBAND AND WIFE, whose address is 2875 Forge Road in James City County, Virginia, (jointly and severally, the “^{7,8}Grantors^{9,10}”) and the COUNTY OF JAMES CITY, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the “^{11,12}County^{13,14}” or the “^{15,16}Grantee^{17,18}”) whose address is 101-C Mounts Bay Road, Williamsburg, Virginia 23185.

WITNESSETH:

WHEREAS, ~~the Grantors conveyed¹⁹ a Deed of Conservation Easement to²⁰ among²¹ the Grantee²² parties²³ dated July 26, 2006, and²⁴ was previously executed, delivered, and duly²⁵ recorded on July 27, 2006,²⁶ in the Clerk’s²⁷ Office of the Clerk of the²⁸ Circuit Court for the City of Williamsburg and County²⁹ of James City County³⁰ as Documents No. 060018317³¹ Instrument Number 060018317 (the “July 26, 2006 Easement”), which Deed of Conservation Easement was subsequently amended by Amended Deed of Conservation Easement among the parties dated December 13, 2006, duly recorded on December 19, 2006, in the Clerk’s Office of the Circuit Court of James City County as Instrument Number 060030931 (the “December 13, 2006 Easement”) (collectively, the July 26, 2006 Easement and the December 10, 2006 Easement are referred to as the “Original Easement”)³²; and~~

WHEREAS, paragraph 10(Q) of the Deed of Conservation³³ the Original³⁴ Easement permits the said Conservation Easement to be amended with the written consent of the parties; and³⁵ Original Easement to be amended by virtue of Section 10.Q. of the Original Easement; and³⁶

WHEREAS, the Grantors and Grantee believed and intended that the Original

Easement complied with the requirements of Section 170(h) of the Internal Revenue Code of 1986, as amended (“Code”), and applicable Treasury Regulations issued thereunder (“Regulations”); and³⁷

WHEREAS, pursuant to Section 10.Q of the Original Easement the Grantors and Grantee desire to supplement the Original Easement to clarify its compliance with the requirements of Section 170(h) of the Code and Regulations and to reflect the actual intentions of the parties; and³⁸

WHEREAS, the parties have mutually agreed upon certain amendments to the Conservation Easement which are set forth herein,³⁹ to the execution, delivery and recording of this Easement, with⁴⁰ the consent of James City County being evidenced by Resolution adopted December 12, 2006⁴¹ [REDACTED], 2007⁴²; and

WHEREAS, Grantors are the owners in fee simple of the⁴³ certain⁴⁴ property located in James City County, Virginia, that is described on “Exhibit A”⁴⁵ attached hereto and made a part hereof^{46, 47}, together with and in addition to the property identified as⁴⁸ referred to as:⁴⁹

- (i)⁵⁰ JCC Real Estate Tax Map No. 1230100022A, also known as 2875 Forge Road (collectively, the “Property”⁵¹ (2875 Forge Road),⁵²
- (ii) JCC Real Estate Tax Map No. 1230100022 (2945 Forge Road), and⁵³
- (iii) JCC Real Estate Tax Map No. 1230100021 (2925 Forge Road).⁵⁴

each as shown among the land records of the County, comprising approximately 90.87 acres, more or less, all as more particularly described in Section 3 of this Easement and on “Exhibit A”⁵⁵ attached hereto and made a part hereof⁵⁶ (collectively, the “Property”⁵⁷); and

WHEREAS, Grantee is a governmental agency and a “qualified organization” and “eligible donee” under Section 170(h)(3) of the Internal Revenue Code of 1986, as amended (and corresponding provisions of any subsequent tax laws)(IRC) and Treasury Regulation §1.170A-14(c)(1), and is willing to accept a perpetual conservation and open-space easement over the Property as herein set forth; and⁵⁸

WHEREAS, under the County^{59,60}’s Purchase of Development Rights Program, codified in Chapter 16A of the James City County Code, as amended (the “County Code”^{61,62}) (the “PDR Program”^{63,64}), the County is authorized to acquire and accept open-space easements and^{65,66} conservation easements^{67,68} 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”^{70,71}); and^{72,73}

WHEREAS, this Easement meets the purposes of Section 16A of the County Code, to include, but not in any way be limited to;⁷⁴

- A.** ⁷⁵ **Establishing more and preserving open-space and the rural character of the County;**⁷⁶
- B.** ⁷⁷ **Preserving farm and forest land;**⁷⁸
- C.** ⁷⁹ **Conserving and protecting water resources and environmentally sensitive lands, waters and other natural resources;**⁸⁰
- D.** ⁸¹ **Assisting in shaping the character and direction of the development of the community;**⁸²
- E.** ⁸³ **Improving the quality of life for the inhabitants of the County; and**⁸⁴
- F.** ⁸⁵ **Promoting recreation and tourism through the preservation of scenic and historical resources; and**⁸⁶

WHEREAS, the Grantors have voluntarily agreed to have the Property be subject to the terms of this Amended Deed of Conservation **and Open-Space**⁸⁷ Easement (the "~~Conservation~~^{88,89} Easement"^{90,91}); and

WHEREAS, the ~~Conservation~~⁹² Easement **is granted pursuant to and in compliance with the County Code (including sections 16A-4, 16A-5, 16A-6, 16A-7, 16A-8 and 16A-9) and the Virginia Code, and**⁹³ is granted exclusively for conservation purposes; and

WHEREAS, the County^{94,95}'s acceptance of the ~~Conservation~~⁹⁶ Easement identified herein furthers the purposes of the PDR Program in that such acceptance, among other things, assures that James City County^{97,98}'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^{99,100}'s natural, scenic and historic resources, promotes **the continuation of a viable agricultural and forestal industry and resource base**¹⁰¹, and protects the quality of James City County^{102,103}'s surface water and groundwater resources; and¹⁰⁴

WHEREAS, the County acknowledges that the procedures set forth in the County's Code, in Section 16A-12, have been followed with respect to this Easement; and¹⁰⁵

WHEREAS, Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the "Open-Space Land Act"), declares that the preservation of open-space land serves a public purpose by curbing urban sprawl, preventing the spread of urban blight and deterioration and encouraging more economic and desirable urban development, helping provide or preserve necessary park, recreational, historic and scenic areas, and conserving land and other natural resources, and authorizes the acquisition of interests in real property, including easements in gross, as a

means of preserving open-space land; and¹⁰⁶

WHEREAS, pursuant to Sections 10.1-1700 and 10.1-1703 of the Open-Space Land Act, the purposes of this Easement 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 herein ensures that the Property will remain perpetually available for agriculture, livestock production, forest or open-space use, all as more particularly set forth below; and¹⁰⁷

WHEREAS, Chapter 525 of the Acts of 1966, Chapter 18, Title 10.1, §§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; and¹⁰⁸

WHEREAS, this Easement is granted “exclusively for conservation purposes” under IRC §170(h)(1)(C) because it effects “the preservation of open space (including farmland and forest land)” under IRC 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 and will yield a significant public benefit; and¹⁰⁹

WHEREAS, the easement granted herein is made in compliance with the applicable provisions of the Virginia Open Space Land Act, referenced above, in compliance with the Virginia Land Conservation Incentives Act of 1999 (as amended), Section 58.1-510, et seq., of the Virginia Code, and in compliance with Section 170(h) of the Internal Revenue Code of 1986, as amended (“IRC”), this said easement being;¹¹⁰

A. A qualified real property interest, to a qualified organization (the County), and given exclusively for conservation purposes (Section 170(h)(1)(A), (B), and (C) of the IRC, and¹¹¹

B. For a legally valid conservation purpose and to yield a significant public benefit as set forth in Section 170(h)(A)(4)(iii)(I) and (II); and¹¹²

WHEREAS, this open space easement in gross constitutes a restriction granted in perpetuity on the use which may be made of the Property, and is in furtherance of, consistent with and pursuant to the clearly delineated federal, regional, state and local governmental conservation policies, as set forth in;¹¹³

(i) Land conservation policies of the Commonwealth of Virginia as set forth in;¹¹⁴

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; and¹¹⁵

b. The Virginia Open Space Land Act of 1966, Chapter 461 of the 1966 Acts of the Assembly, (Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as amended), which declares that the preservation of open space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth by curbing urban sprawl and encouraging more desirable and economical development of natural resources, and authorizes the use of easements in gross to maintain the character of open space land; and¹¹⁶

c. Chapter 525 of the Acts of 1966, Chapter 18, Title 10.1, §§10.1--1800 through 10.1-1804 of the Code of Virginia, which declares it to be the public policy of the Commonwealth to encourage preservation of open space land; and¹¹⁷

d. The Virginia Conservation Easement Act referenced above, Chapter 10.1, Title 10.1, §§1009 through 1016 of the Code of Virginia, which provides for conveyances of perpetual "conservation easements" to private charitable conservation organizations qualifying as "holders", as defined therein, for purposes which include retaining or protecting natural or open space values of real property, assuring its availability for agricultural, forestal, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property; and¹¹⁸

e. The Virginia Land Conservation Incentives Act of 1999, Chapter 3 of Title 58.1, §§58.1-510 through 58.1-513 of the Code of Virginia, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth's unique natural resources, wildlife habitats, open spaces and forest resources by providing an income tax credit for donors of interests in land for conservation purposes to encourage the preservation and sustainability of Virginia's unique natural resources, wildlife habitats, open spaces, and forested resources; and¹¹⁹

f. Chapter 32, Article 4, of Title 58.1, §§58.1-3229 through 58.1-3244 of the Code of Virginia, which provides for and promotes special use-value tax assessments for real estate devoted to agricultural, forestal, horticultural and open space use; and¹²⁰

g. The Code of Virginia (§§10.1-1801.1 et seq.), which establishes an Open Space Land Preservation Trust Fund enabling the Virginia Outdoors Foundation to provide grants to assist persons conveying open-space and conservation easements;

and¹²¹

h. The Virginia¹²² Agricultural and Forestal¹²³ Districts Act, Chapter 43 of Title 15.2, §§15.2-4300 through 15.2-4314 of the Code of Virginia, which encourages the conservation, protection, development and improvement of agricultural and forestal lands for the production of food and other agricultural and forestal products and as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes and as an economic and environmental resource of major importance; and¹²⁴

i. The United States Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C.A. Sub Section 4201, the purpose of which is to “minimize the extent to which Federal Programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses and to assure that Federal Programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government and private programs and policies to protect farmland”; and¹²⁵

j. The Chesapeake Bay Preservation Act, Chapter 21 of Title 10.1, §§ 10.1-2100 through 2116 of the Code of Virginia, which promotes state and local measures to protect the public interest in the Chesapeake Bay and its tributaries. Subsequently, the Chesapeake Bay Local Assistance Board adopted regulations concerning the use and development of certain lands in Virginia called Chesapeake Bay Preservation Areas which, if improperly developed, may result in substantial damage to water quality of the Chesapeake bay and its tributaries, such as the Potomac and Rappahannock River and their tributaries; and¹²⁶

k. The draft 2007 Virginia Outdoors Plan (“VOP”), discussing the Hampton Roads Planning District, which includes all of James City County, notes for the district that “[g]eneral recommendations for land conservation include:¹²⁷

• All localities should continue to promote the conservation and preservation of open space through land acquisition, open-space and conservation easements, stewardship agreements, the development of agricultural and forestal districts, the outright purchase of land or any of the many open space protection strategies presented in Chapter 3, Land Conservation.¹²⁸

• As population growth accelerates development pressure, land conservation and sound land-use decision-making must become prominent considerations in all land-planning efforts. Localities, state agencies, and private organizations must make deliberate decisions about how to focus and prioritize their land conservation efforts. To do so, they must develop a method

of targeting conservation efforts, using green infrastructure land planning techniques, geographic information systems, local comprehensive plans, and decision support systems such as the Virginia Conservation Lands Needs Assessment. See VOP, Ch. X, PD 23, page 4; and¹²⁹

(ii) Land use policies of the County of James City as delineated in:¹³⁰

a. the James City County 2003 Comprehensive Plan (“Plan”), to which Plan the restrictions set forth in this deed conform and which contains the following statements of concern:¹³¹

• “The County continues to experience significant development pressures, mostly due to its location between two major metropolitan areas and its growing attraction as a retirement community and tourist destination. These circumstances result in considerable environmental concerns, including decreasing water supply and quality, increased soil erosion and stormwater runoff, loss of scenic vistas, destruction of wildlife habitats, deforestation, air pollution, and loss of agricultural lands.” See Plan, page 42.¹³²

• “The 2002 forest inventory of James City County reveals that 54,150 acres of land in the County (approximately 59% of total land area) are forested. Since 1992, this represents a decrease of 17 percent or 10,816 acres. At present growth rates, loss of forestland is a major concern to the County.” See Plan, page 45.¹³³

and which contains the following environmental goals, strategies and actions:¹³⁴

Goals:¹³⁵

1. Continue to maintain and improve the high level of environmental quality in James City County.¹³⁶

2. Continue to protect and conserve the County’s natural resources and environmentally sensitive lands for the use and enjoyment of future generations.¹³⁷

3. Promote¹³⁸ the continuation of a viable agricultural and forestal industry and resource base, and protects the quality of James City County^{139,140}’s surface water and groundwater resources; and^{141 142}

WHEREAS, the Grantors have offered to donate this Conservation Easement and the Grantee has agreed to hold said Conservation Easement in perpetuity.¹⁴³

4. Promote development and land use decisions that protect and improve the water quality of the Chesapeake Bay and the bodies of water that discharge into the Bay.¹⁴⁴

5. Protect the availability, quantity, and quality of all surface and groundwater resources.¹⁴⁵

6. Educate the public on County environmental programs and initiatives.¹⁴⁶

7. Continue to create a more sustainable community by linking environmental, social, and economic goals. A sustainable community seeks to balance economic development, environmental resources, and social benefits such as job training and community development.¹⁴⁷

Strategies:¹⁴⁸

1. Utilize existing techniques and develop new regulations and non-regulatory techniques to preserve the County's environmental quality.¹⁴⁹

2. Assure that new development minimizes adverse impacts on the natural and built environment.¹⁵⁰

3. Reduce shoreline and stream bank erosion and mitigate adverse impacts of waterfront access on water quality.¹⁵¹

4. Protect County shorelines from erosion through a coordinated, unified area approach that utilizes properly designed methods of vegetative or structural stabilization, bank regrading, beach nourishment, and/or relocation of activities to less sensitive areas using the Shoreline Stabilization Measures for Various Erosion Rates as a guide.¹⁵²

5. Protect natural (unaltered) shorelines from negative impacts of land use activities and development (see Plan, page 65); and¹⁵³

WHEREAS, the Property is located adjacent to the northern border of property owned by James City County containing the Little Creek Reservoir, which contains approximately 1,800 acres, is a water supply source for the City of Newport News and James City County, and is home to Little Creek Reservoir Park, a County park facility open to the public; and¹⁵⁴

WHEREAS, the Property is located within the James River watershed and the

Yarmouth Creek subwatershed, which flows and discharges into the Chickahominy River, which then subsequently discharges into the lower James River; and¹⁵⁵

WHEREAS, the Yarmouth Creek subwatershed contains extensive wetland complexes, forested areas, and the Little Creek Reservoir; and¹⁵⁶

WHEREAS, the Lower James River (James City and Surry Counties) has been designated as a Virginia Scenic River (see VOP, Ch. X, PD 23, page 12); and¹⁵⁷

WHEREAS, that portion of the Chickahominy River in James City County from Providence Forge to the James River (the segment between James City and the New Kent County line to its confluence with the James River) has been evaluated and found to qualify for designation as a Virginia Scenic River (see VOP, Ch. X, PD 23, page 12); and¹⁵⁸

WHEREAS, the public has views of substantially all of the Property from the Little Creek Reservoir and from State Route 610 (Forge Road); and¹⁵⁹

WHEREAS, James City County is a rapidly developing jurisdiction located on a peninsula midway between Norfolk and Richmond, Virginia and is part of the “Golden Crescent” of Virginia, the name given to the area that stretches from Washington, D.C. to Richmond and the Tidewater Region (see James City County Greenway Master Plan dated June 25, 2002 (“Greenway Plan”), page 5); and¹⁶⁰

WHEREAS, in 1990, the “Golden Crescent” accounted for 90% of Virginia’s overall population growth, and James City County experienced a 68% population growth rate during the 1980’s, a 36% growth rate during the 1990’s, and has a projected growth rate of 38% from 2000 to 2010 (see Greenway Plan, page 5); and¹⁶¹

WHEREAS, the Property possesses significant natural, scenic, open space, forestal, natural resource, air and water quality and recreational values the preservation of which will benefit the citizens of James City County and the Commonwealth, and the Property has not been subject to development and in its current condition contributes to the environmental and economic well being of James City County, Virginia; and¹⁶²

WHEREAS, the “Conservation Values” of the Property are its agricultural, forestal, scenic and natural values, and its value as open space land preserved for open space and rural uses, as referenced under IRC § 170(h)(4)(A)(iii) and Treas. Reg. § 1.170A-14(d)(4) and as more particularly described in the preceding WHEREAS paragraphs and Section 2 hereof, and as further documented in an inventory of relevant features of the Property, “ Baseline Documentation Report,” incorporated herein by reference, which Baseline Documentation Report is acknowledged as an accurate description of the Property as of the date of donation of this Easement and is signed by the Grantors and the Grantee, to be maintained on file in the offices of the Grantee, and intended to serve as an

objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Easement; and¹⁶³

WHEREAS, the Grantors and Grantee agree that this Easement will yield significant public benefit to the citizens of James City County and the Commonwealth as set forth herein; and¹⁶⁴

WHEREAS, Grantors and Grantee desire to protect in perpetuity the conservation values of the Property as specified in Section 2 hereof by restricting the use of the Property as set forth herein; and¹⁶⁵

WHEREAS, Grantee has determined that the restrictions on the use of the Property set forth herein (the Restrictions) will preserve and protect in perpetuity the conservation values of the Property, which values are reflected in Section 2 hereof; and¹⁶⁶

WHEREAS, Grantee has determined that the Restrictions will limit use of the Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by the Easement, and that the rights, uses or improvements permitted or retained by the Grantor hereunder do not materially impair or destroy the Property's scenic, conservation and open-space values, and believes this Easement is valuable to the County and provides a substantial public benefit and purpose; and¹⁶⁷

WHEREAS, there is no building located on the Property that, in whole or in part, has served as the basis for any federal or state historic rehabilitation tax credit as part of a rehabilitation project completed within five years of the date of recordation of the Easement; and¹⁶⁸

WHEREAS, the Property has not been dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development, or dedicated as open space in, or as part of, any real estate development plan, or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits, and this Easement is not being granted as part of or in connection with any residential or commercial development of the Property or any other real property; and¹⁶⁹

WHEREAS, the Property is not part of a parcel of land that has been the subject of a conservation easement within the preceding eleven (11) years; and¹⁷⁰

WHEREAS, the Grantors and Grantee have the common purpose of conserving the above described conservation and open space values of the Property in perpetuity and the Commonwealth of Virginia has authorized the creation of open-space easements pursuant to the Open Space Land Act to retain or protect natural or open-space values of real property,

assuring its availability for agricultural, forestry, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property, and Grantors and Grantee wish to avail themselves of that law as well as the provisions of IRC § 170(h) concerning qualified conservation contributions and IRC § 2031(c) allowing an election for special treatment of qualifying open-space and conservation easements for estate tax purposes; and¹⁷¹

WHEREAS, 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;¹⁷²

NOW, THEREFORE, in consideration of the above recitals, and of¹⁷³ the mutual benefits,¹⁷⁴ covenants and terms herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties,¹⁷⁵ herein and their acceptance by Grantee, the parties do hereby amend and restate the Original Easement and¹⁷⁶ the Grantors hereby grant, convey, covenant, and agree as follows:¹⁷⁷ do hereby give, grant and convey to Grantee a conservation and open-space easement in gross (Easement) over, and the right in perpetuity to restrict the use of, the Property, which is described in "Exhibit A" attached hereto and made a part hereof¹⁷⁸ and consists of approximately 90.87 acres, more or less, located in Stonehouse Magisterial District, James City County, Virginia, near Toano, fronting on Forge Road (State Route 610). Even if the Property consists of more than one parcel for real estate tax or any other purpose, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement¹⁸⁰ shall apply to the Property¹⁸¹ as a whole.¹⁸²

1.¹⁸³ 1.¹⁸⁴ 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~~¹⁸⁵ Easement in gross over the Property, restricting in perpetuity the use of the Property in the manner set forth in this ~~Conservation~~¹⁸⁶ Easement.

2. PURPOSE. The conservation purpose of this Easement is to preserve land for agricultural use, forestal use, watershed preservation, preservation of scenic open space, and preservation of open space designated by local government and to protect the conservation values of the Property in perpetuity by imposing the restrictions on the use of the Property set forth herein and providing for their enforcement as provided herein. The conservation values of the Property are its open-space and scenic values and its values as land preserved for open-space and rural uses including agriculture, livestock production and forestry. Grantors covenant that no acts or uses that are inconsistent with the purpose and intent of this Easement or the Conservation Values herein protected shall be conducted on the Property.¹⁸⁷

2.¹⁸⁸ 3.¹⁸⁹ DESCRIPTION. The Property is shown as all or part of ;¹⁹⁰

(i) 191 2945 Forge Road, ~~comprising 80 acres, more or less, and~~¹⁹² identified as Tax Parcel ID No. 1230100022 (the "193" "194 Branch Property"195,196),

(ii) 197 2925 Forge Road, ~~comprising 8 acres, more or less, and~~¹⁹⁸ identified as Tax Parcel ID No. 1230100021 (the "199" "200 Branch Residence"201,202), and

(iii) 203 2875 Forge Road, ~~comprising 10 acres, more or less, and~~²⁰⁴ identified as Tax Parcel ID No. 1230100022A (the "205" "206 Perry Property"207,208),²⁰⁹

each as shown²¹⁰ among the land records of the County:²¹¹ **all as more particularly described on "Exhibit A" attached hereto and made a part hereof.**²¹² The Property shall be considered to be one parcel for the purposes of this Conservation²¹³ Easement, and the restrictions and covenants of this Conservation²¹⁴ Easement shall apply to the Property as a whole except as noted. **The entire Perry Property was not previously subject to any conservation easement, but is hereafter subject to this Easement.**²¹⁵

~~3.~~²¹⁶ **4.**²¹⁷ 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.)²¹⁸ **and this Easement,**²¹⁹ 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 Conservation²²⁰ Easement or are authorized as follows:

1. Existing dwellings. The repair, expansion,²²¹ **maintenance, remodeling, rebuilding or**²²² removal, or relocation²²³ of the dwellings that exist on the Property²²⁴ as of the date of this Conservation²²⁵ Easement is permitted, except as noted in this instrument²²⁶ **Easement. Any expansion of any dwellings that exist on the Property as of the date of this Easement may be permitted only upon the prior written approval of the Grantee and, except for the existing main house that has a structural footprint of approximately 5,000 square feet, shall not expand the total structural footprint of any such dwelling in excess of 4,500 square feet without Grantee's prior review and written approval**²²⁷.

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 deed²²⁸ **Easement**²²⁹. The Grantee shall have one (1) year from July 26, 2006,²³⁰ **the date of execution of this Easement**²³¹ 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. ²³²a. ²³³Placement of dwellings, if any, ²³⁴ on the parcels identified as ~~Lot~~ ²³⁵numbers 4, 5 ²³⁶ and ~~Lot~~ ²³⁷5 ²³⁸ 6 on ²³⁹“Exhibit B”²⁴¹, ²⁴² attached hereto and made a part hereof, shall be situated in substantially the same location as identified on ²⁴³“Exhibit B”²⁴⁵, ²⁴⁶ as determined by the Grantee. ~~Dwellings located~~ ²⁴⁷To protect the scenic values of the Property, no dwelling or other building shall be constructed ²⁴⁸ on the parcels identified as ~~Lot~~ ²⁴⁹numbers ²⁵⁰ 1, 2, ²⁵¹2 ²⁵² and 3 on ²⁵³“Exhibit B” shall be ²⁵⁵“unless such dwelling or building is ²⁵⁶ situated within 400 linear feet of the southern property line: ²⁵⁷of such parcel and situated in substantially the same location as identified on “Exhibit B”. ²⁵⁸ Placement of any dwelling not currently shown on ²⁵⁹“Exhibit B”²⁶⁰ shall be approved in advance by the Grantee.

b. ²⁶¹b. ²⁶²The ~~Grantor~~ ²⁶³Grantors ²⁶⁴ shall be permitted to construct one ²⁶⁵“caretaker”²⁶⁶ ²⁶⁷dwelling (the ²⁶⁹“Caretaker Dwelling”²⁷¹, ²⁷²) upon the Property, subject to the following restrictions:

1. The Caretaker Dwelling shall be wholly situated within a barn or similar agricultural structure (the ²⁷³“Agricultural Structure”²⁷⁵, ²⁷⁶). 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 1000 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.~~ ²⁷⁷5. ²⁷⁸The Agricultural Structure shall access Forge Road only via the existing driveway serving the Perry Residence or the common drive serving Lot 4 and Lot ~~5.~~ ²⁷⁹5 shown on “Exhibit B”. ²⁸⁰ All other accesses to the Agricultural Structure shall be via an unpaved road.

~~6.~~ ²⁸¹6. ²⁸²The Agricultural Structure shall not be subdivided from the Property.

c. The Grantor shall be permitted to construct one guest cottage (“Guest Cottage”) upon the Property, subject to the following restrictions:

1. The Guest Cottage shall be wholly situated within a barn or

similar Agricultural Structure. The Guest Cottage shall be oriented at the rear of the Agricultural Structure and shall not be visible from Forge Road.

2. The size of the Guest Cottage shall be limited to not more than 1000 square feet.

3. The location, color, and architectural design of the Guest Cottage 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.

4. The Guest Cottage shall access Forge Road only via the existing driveway serving the Perry Residence or the common drive serving Lots 1, 2 and 3 shown on "Exhibit ²⁸³B". All other accesses to the Guest Cottage shall be via an unpaved road.

5. The Guest Cottage shall not be subdivided from the Property.

3. *Roads and Utilities.* Private roads and utilities to serve permitted buildings or structures, private roads and utilities to parcels created by permitted divisions of the Property, and roads with permeable surfaces for other permitted uses, such as farming or forestry, may be constructed and maintained. Other public or private utilities whose construction and maintenance Grantee determines will not impair the Property's conservation values may be constructed and maintained if Grantee gives its prior written approval. Farm trails and paths that are not paved or otherwise improved shall be permitted without limitation hereunder. The location of new roads or access ways, other than farm trails, unpaved paths, or forest roads, shall require review and written approval of Grantee prior to construction.²⁸⁴

4. *Additional Restrictions.* To further protect the scenic and open-space values of the Property, no dwelling or other building shall be constructed within 130 feet of the centerline of State Route 610 (Forge Road). Any permitted dwellings, buildings or structures visible from State Route 610 (Forge Road) or the Little Creek Reservoir shall be designed and sited to minimize their visibility from said location(s) in any season of the year, provided that the Grantee acknowledges and agrees that any structure or dwelling situated in substantially the same location as identified on "Exhibit B" shall be deemed to be sited to minimize its visibility from said location(s) in satisfaction of the requirements of this paragraph. The building height of any permitted dwelling or non-dwelling structure shall not be more than thirty-five (35) feet, as measured from final grade to ridge of roof.²⁸⁵

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

1. Accessory structures **typical and**²⁸⁶ incidental to the existing structures and ~~allowed additional~~²⁸⁷ **permitted**²⁸⁸ dwellings such as outbuildings, swimming

pools, garages, and tool sheds.

2. Farm buildings and structures (a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in Section 4(D)(2)(b)-(e) hereof)²⁸⁹.

3. There shall be no more than a total of six (6) dwelling units situated on the Properties, each of which shall be a single family detached dwelling unit; provided, however, that a Caretaker Dwelling and a Guest Cottage may be situated upon the Property as limited by section ~~3~~²⁹⁰ ~~4~~²⁹¹ (A)(2)(b) and Section ~~3~~²⁹² ~~4~~²⁹³ (A)(2)(c) of this ~~Conservation~~²⁹⁴ Easement.

~~C.~~²⁹⁵ C.²⁹⁶ Size of structures. Excluding the Caretaker Dwelling and its attached or adjacent barn and²⁹⁷ Guest Cottage and its attached or adjacent barn²⁹⁸, each altered, relocated, or new principal residence dwelling, farm building and farm²⁹⁹ structure; including dwellings, farm buildings and farm structures³⁰⁰ shall have a structural footprint of not more than four thousand five hundred (4,500) square feet and total³⁰¹ without prior written approval of the Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the Conservation Values of the Property. Excluding the Caretaker Dwelling and its attached or adjacent barn and Guest Cottage and its attached or adjacent barn, each altered, relocated, or new accessory structure shall have a structural footprint of not more than two thousand (2,000) square feet without prior written approval of the Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the conservation values of the Property. Total³⁰² dwellings, buildings, structures, and impervious surfaces (excluding roads and driveways)³⁰³ shall not exceed ~~ten (10)~~³⁰⁴ two³⁰⁵ percent (2%)³⁰⁶ of the surface area of the Property, ~~unless prior written approval for a greater footprint or surface area is obtained from the Grantee~~³⁰⁷ provided that if Grantors can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values protected herein, Grantee may approve such increase. For the purpose of this Section the collective footprint is the ground area measured in square feet of the permitted dwellings, buildings and structures identified herein and all other impervious surfaces, excluding roads and driveways. In the event of division of the Property, the collective footprint of all dwellings, buildings and above-ground structures and all other impervious surfaces on each parcel, excluding roads, shall not exceed 2% of the total area of such parcel unless otherwise allocated in the instrument of transfer or other recorded instrument³⁰⁸.

~~D.~~³⁰⁹ D.³¹⁰ Improvements. The following may be constructed, placed, or maintained, provided they are consistent with this ~~Deed of~~³¹¹ 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.

~~L.~~³¹² L.³¹³ Miscellaneous:³¹⁴ ~~The Grantor~~³¹⁵ Grantors³¹⁶ 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 wire³¹⁸ fencing shall not unduly obstruct views of any part of³¹⁹ the Property from Forge Road or Little Creek Reservoir³²⁰. The ~~Grantor~~³²¹ Grantors³²² shall not plant trees or other landscaping in such a manner as to block views of Lot 4 depicted on "Exhibit B" from Forge Road³²³ any part of the Property from Forge Road or Little Creek Reservoir (provided that trees and landscaping existing as of the date of this Easement, tress and landscaping along any drive on the Property planted at the request or approval of the Grantee, and trees naturally growing on the Property need not be removed to afford views of the Property from Forge Road or Little Creek Reservoir)³²⁴.

~~2.~~³²⁵ 2.³²⁶ *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~~³²⁷, provided, however, the following uses are NOT deemed to be commercial or industrial uses for the purposes of this Conservation³²⁸ Easement:

~~a.~~³²⁹ a.³³⁰ Single-family residential uses.

~~b.~~³³¹ b.³³² 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 related processing and sale of products produced on the Property, as long as no additional buildings are required³³³ as an accessory use, and³³⁴ with prior written approval by the Grantee. Grantors, their heirs, successors, or assigns, shall conduct all agricultural operations on the Property in a manner consistent with a conservation plan, which includes best management practices, prepared in consultation with the local Soil and Water District or the Natural Resources Conservation Service representative.³³⁵

~~e.~~³³⁶ e.³³⁷ 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 lot³³⁸ Lot as shown on "Exhibit B"³³⁹, whichever is greater.

~~d.~~³⁴⁰ d.³⁴¹ 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 woodland³⁴² are permitted. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any timber harvest or land-clearing activity is undertaken. All material timber harvest activities on the Property shall be guided by a Forest Stewardship Management Plan approved by Grantee or the Virginia Department of Forestry. A pre-

harvest plan consistent with the Forest Stewardship Management Plan shall be submitted to Grantee for approval 45 days before beginning any material timber harvest. The objectives of the Forest Stewardship Management Plan may include, but are not limited to, forest health, biodiversity, timber management, wildlife habitat, scenic forest, aesthetics, recreation, water and air quality, carbon or other mitigation banking programs, natural area preservation, or any combination thereof. Grantee shall be notified 30 days prior to the clearing of over 10 acres of forestland for grassland, crop land, or in association with the construction of permitted buildings. Non-commercial de minimis harvest of trees for trail clearing, firewood or Grantor's domestic use, trees that pose an imminent hazard to human health or safety, or removal of invasive species, shall not require a Forest Stewardship Management Plan. Grantors, their heirs, successors, or assigns, shall conduct all forestal operations on the Property in a manner consistent with a conservation plan, which includes best management practices, prepared in consultation with the local Soil and Water District or the Natural Resources Conservation Service representative.³⁴³

The processing of wood products is not a forestal use, except as an accessory use with prior written approval by ³⁴⁴ of³⁴⁵ the Grantee.

e.³⁴⁶ e.³⁴⁷ 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 ³⁴⁸ and do³⁴⁹ not limited to ³⁵⁰ diminish³⁵¹ the sale of agricultural products grown or raised on ³⁵² Conservation Values of³⁵³ the Property, and ³⁵⁴ herein protected, including³⁵⁵ the granting of licenses to enter and use the Property for ~~hunting or fishing.~~³⁵⁶ non-commercial recreational hunting or fishing, trapping, hiking, horse riding and similar rights for private use consistent with the Conservation Values protected herein, in accordance with local, state and federal regulations. Temporary outdoor activities involving 100 or more people shall not exceed 7 consecutive days in any 90-day period without prior written approval of the Grantee.³⁵⁷

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~~³⁵⁸ Easement and are otherwise consistent with IRC § 170(h) and its Regulations,³⁵⁹ the purposes of this ~~Conservation~~³⁶⁰ 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.~~³⁶¹

~~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.~~³⁶²

g. Notwithstanding any other provision of this Easement, any use

of the Property is prohibited that will destroy or significantly alter the Conservation Values of the Property protected by this Easement. The Grantee shall approve, in writing, any alterations, demolition, or ground-disturbing activity on or to the Property that may impact cultural or natural heritage resources contained on the Property.³⁶³

3. *Repairs.* Grantors shall have the right to maintain, remodel, rebuild and repair permitted dwellings, structures, fences, utilities, and other improvements, and in the event of their destruction, to reconstruct any such existing improvement with another of similar size, function, capacity, location and material. Any new, replaced or enlarged permitted building or structure must not be inconsistent with and must not conflict with, diminish, impair or interfere with the purpose and intent of this Easement or with its Conservation Values.³⁶⁴

E. *Riparian Buffer.* The Grantors and Grantee acknowledge that the Property lies adjacent to James City County property containing the Little Creek Reservoir, but that no perennial streams, rivers or creeks are currently located on the Property. To protect water quality, to the extent any portion of the Property lies within 100 feet of the edge of the Little Creek Reservoir, or within 35 feet of any perennial creek or stream on the Property, each as measured from the top of the bank, such portion of the Property shall be maintained in forest or be permitted to revegetate naturally (the "Buffer Strip"). Other than any beaches, docks or similar facilities already existing on the Property within any such Buffer Strip, if any, as of the date of this Easement and any maintenance or repair thereof, and any dams, fencing, gate posts, or permitted signs and any maintenance or repair thereof, within this Buffer Strip, if any, there shall be (a) no buildings or other substantial structures constructed, (b) no storage of compost, manure, fertilizers, chemicals, machinery or equipment, (c) no removal of trees except removal of invasive species or removal of dead, diseased or dying trees or trees posing an imminent human health or safety hazard, and (d) no plowing, cultivation or other earth-disturbing activity, except as may be reasonably necessary for (i) wetland or stream bank restoration, or erosion control, pursuant to a government permit, (ii) fencing along or within the buffer area; (iii) construction and maintenance of stream crossings that do not obstruct water flow, (iv) creation and maintenance of foot or horse trails with unimproved surfaces, (v) tree planting and forest management in accordance with Virginia's Forestry Best Management Practices for Water Quality Guide, and (vi) dam construction to create ponds. Within such Buffer Strip, if any, limited mowing to control non-native species or protect trees and other plants planted in forested buffers, and limited access points to the Little Creek Reservoir, are permitted. Within such Buffer Strip, if any, there shall be no grazing of livestock, however, limited designated points for livestock crossings within such Buffer Strip, if any, are permissible. There shall be no damaging or filling of wetlands or any existing perennial creek or stream located on the Property. Nothing contained herein shall prohibit or prevent the Grantors from undertaking efforts to create additional wetlands upon the Property.³⁶⁵

F. *Grantee Approvals.* Grantors shall give Grantee written notice at least 60 days before beginning construction, replacement, or enlargement of any dwelling on the

Property or of any other building, structure, road or utility for which prior review by Grantee and/or prior written approval of Grantee is required. The Grantee shall act promptly upon the receipt of a request for approval to review such request and grant or deny approval.³⁶⁶

~~4.~~ ³⁶⁷5.³⁶⁸ CONFIGURATION/SUBDIVISION OF THE PROPERTY. ~~Within~~³⁶⁹ In the event the Property is hereafter subdivided, or lot lines are placed on the Property, then within³⁷⁰ one (1) year from the date of execution of this ~~Conservation~~³⁷¹ 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 six (6) lots as depicted on "~~372~~³⁷³ Exhibit B"~~374~~³⁷⁵. The lots shall be configured in substantial conformance with "~~376~~³⁷⁷ Exhibit B"~~378~~³⁷⁹, provided, however, that any of the lots may be combined to result in fewer than six (6) lots. All driveways shall be situated in substantially the same location as shown on "~~380~~³⁸¹ Exhibit B"~~382~~³⁸³, as determined by the Grantee. In the event of division of the Property as provided in this Section, permitted dwellings shall be allocated between or among the parcels in the instrument creating the division or other recorded instrument. Grantors shall give Grantee written notice prior to making any division of the Property. In the event of a division of the Property as provided in this Section, the grantor making the conveyance retains the right to make any further permitted division(s) of the Property unless permitted divisions are allocated by that grantor in the instrument creating the division or other recorded instrument. Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered divisions of the Property, provided that Grantee is made party to the deed creating the boundary line adjustment and at least one of the following conditions is met.³⁸⁴

(i) The entire adjacent parcel is subject to a recorded open-space easement owned by Grantee; or³⁸⁵

(ii) The proposed boundary line adjustment shall have been reviewed and approved in advance by the Grantee.³⁸⁶

~~5.~~³⁸⁷ 6.³⁸⁸ BILLBOARDS AND SIGNS. There shall be no display of billboards, signs or other advertisements on or over³⁸⁹ 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~~³⁹⁰ (5) recognize historic status or participation in a conservation program; (6)³⁹¹ provide warnings pertaining to trespassing, hunting, dangerous conditions, notices necessary for the protection of the Property³⁹² and other similar such warnings;³⁹³ or (7) temporary political signs.³⁹⁴ No such sign shall exceed ~~twenty four~~³⁹⁵ sixteen (16)³⁹⁶ square feet in size³⁹⁷.

~~6.~~³⁹⁸ 7.³⁹⁹ GRADING, EXCAVATION, EARTH REMOVAL, BLASTING, AND MINING. Earth removal, ~~except for activities allowed within Section 3(D)~~⁴⁰⁰ on the Property, except in connection with (i) wetlands or stream bank restoration pursuant to a government permit,

(ii) erosion and sediment control pursuant to a government-required erosion and sediment control plan, or (iii) as required in⁴⁰¹ the construction of permitted⁴⁰² **buildings, structures, roads and driveways, and utilities allowed pursuant to Section 4**⁴⁰³ of this Conservation Easement, and blasting are prohibited.⁴⁰⁴ ~~The exploration for, or development and extraction of minerals and hydrocarbons~~⁴⁰⁵ ~~by mining or any other method is prohibited. Grading and excavation is allowed but~~⁴⁰⁶ **Easement, is prohibited. Grading, blasting or earth removal in excess of one acre for the purposes set forth in subparagraphs (i) through (iii) above require 30 days prior notice to Grantee. Grading and excavation as required in the construction of permitted buildings, structures, roads and driveways, and utilities**⁴⁰⁷ shall not materially alter the topography of the Property. ~~Best Management Practices~~⁴⁰⁸ **, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion**⁴⁰⁹ and protect water quality⁴¹⁰ **in permitted construction.**⁴¹¹ 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~~⁴¹² ~~the construction of permitted~~⁴¹³ structures or associated improvements.⁴¹⁴ **Any blasting on the Property is prohibited.**⁴¹⁵ ~~The exploration for, or development and extraction of minerals and hydrocarbons~~⁴¹⁶ **, or drilling for oil or gas, on the Property, whether by surface mining, subsurface mining, dredging or any other method on or from the Property, is prohibited.**⁴¹⁷ Common agricultural activities such as plowing, erosion control, and restoration are permitted activities **not subject to this Section**⁴¹⁸ provided that they do not materially alter the topography of the Property.

~~7. — MANAGEMENT OF AGRICULTURAL AND FORESTAL RESOURCES. The application of~~⁴¹⁹ ~~Agricultural and Forestal~~⁴²⁰ ~~Best Management Practices~~⁴²¹ 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 animals) allowed by this deed to protect the soil, control erosion, manage nutrients and manure⁴²² and protect water quality⁴²³. 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.⁴²⁴

~~8.~~⁴²⁵ **8.**⁴²⁶ 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~~⁴²⁷ piles, or ~~or~~⁴²⁸ **composting,**⁴²⁹ the routine and customary short-term accumulation of household trash, **or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the Property**⁴³⁰.

9.⁴³¹9.⁴³² NOTICE AND PERMISSION. Whenever notice is to be given pursuant to any of the provisions of this ~~Conservation~~⁴³³ 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.~~⁴³⁴ **A.**⁴³⁵ No public right-of-access to Property. This Conservation⁴³⁶ **Although this Easement will benefit the public as described herein, this**⁴³⁷ 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~~⁴³⁸ Easement and the PDR Program. **Grantors retain the exclusive right to access and use of the Property, subject to the terms hereof. The public has views of substantially all of the Property from State Route 610 (Forge Road) and Little Creek Reservoir.**⁴³⁹

B. Continuation; Notice to Grantee.⁴⁴⁰

~~B.~~⁴⁴¹ **1.**⁴⁴² *Continuation.*⁴⁴³ The covenants, terms, conditions, and restrictions of this ~~Conservation~~⁴⁴⁴ **Easement are perpetual.**⁴⁴⁵ 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. **This Easement is an easement in gross that runs with the land as an incorporeal interest in the Property. A landowner's rights and obligations under this Easement terminate upon proper transfer of Landowner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.**⁴⁴⁶

2. Notice to Grantee. The Grantors shall notify the Grantee in writing prior to undertaking any activity or exercising any reserved right that the Grantors believe may be inconsistent with or that may conflict with, diminish, impair or interfere with the Conservation Values or terms and conditions of this Easement. The Grantee shall act promptly upon the receipt of a request for approval to review such request and grant or deny approval.⁴⁴⁷

~~C.~~⁴⁴⁸ **C.**⁴⁴⁹ *Enforcement.* In addition to any remedy provided by law or equity to enforce the terms of this ~~Conservation~~⁴⁵⁰ Easement, the parties shall have the following rights and obligations:

~~1.~~⁴⁵¹ **1.**⁴⁵² *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~~⁴⁵³ Easement. The Grantee shall give reasonable prior notice before entering the Property, when practicable, **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 Grantors or Grantors' representative being given at the earliest practicable time**⁴⁵⁴.

~~2.~~⁴⁵⁵ *Action at law inadequate remedy.*⁴⁵⁶ The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and⁴⁵⁷

2.⁴⁵⁸ *Action at law inadequate remedy.*⁴⁵⁹ **Grantee has the right to bring an action at law or in equity to enforce the Restrictions contained herein.**⁴⁶⁰ The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and⁴⁶¹ 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 and⁴⁶² **This right specifically includes the right**⁴⁶³ to require the restoration of the Property to its prior condition.⁴⁶⁴ **a condition of compliance with the terms of this Easement as existed on the date of the gift of the Easement, except to the**

extent such condition thereafter changed in a manner consistent with the Restrictions; and to recover any damages arising from non-compliance. Notwithstanding any other provision of this Easement, Grantors shall not be responsible or liable for any damage or change to the condition of the Property caused by fire, flood, storm, Act of God, governmental act or other cause outside of Grantors' control or any prudent action taken by Grantors to avoid, abate, prevent or mitigate damage or changes to the Property from such causes.⁴⁶⁵

~~3.~~⁴⁶⁶ **3.**⁴⁶⁷ *Restoration.* Upon any breach of the terms of this Conservation⁴⁶⁸ Easement by Grantors, Grantee may require by written demand to the Grantors that the Property be restored promptly to the⁴⁶⁹ **a**⁴⁷⁰ condition required by⁴⁷¹ **of compliance with the terms of**⁴⁷² this Conservation Easement.⁴⁷³ **Easement as existed on the date of the gift of the Easement, except to the extent such condition thereafter changed in a manner consistent with the Restrictions.**

⁴⁷⁴ Furthermore, the Grantee retains the right to restore the Property to a condition consistent with the terms of this Conservation⁴⁷⁵ Easement and assess the cost of such restoration against the owner of the parcel in violation of this Conservation⁴⁷⁶ Easement and as a lien against the Property in violation of this Conservation⁴⁷⁷ 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.~~⁴⁷⁸ **4.**⁴⁷⁹ *Failure to enforce or perform*⁴⁸⁰ *does not waive right to enforce.* The **delay or**⁴⁸¹ failure of Grantee to enforce any term of this Conservation⁴⁸² 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. **The failure of the Grantors to perform any act required by this Easement shall not impair the validity of this Easement or limit its enforceability in any way.**⁴⁸³

~~5.~~⁴⁸⁴ **5.**⁴⁸⁵ *Costs of enforcement.* Any reasonable and ordinary costs incurred by the Grantee in enforcing the terms of this Conservation⁴⁸⁶ Easement against the Grantors, including, without limitation, costs of suit and reasonable attorneys'^{487,488} fees shall be borne by the Grantors, provided, however, if the Grantor prevails⁴⁸⁹ **Grantors prevail**⁴⁹⁰ 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.~~⁴⁹¹ **6.**⁴⁹² *No right of enforcement by the public.* This Conservation⁴⁹³ 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 Conservation⁴⁹⁴ Easement.

D. **Property Right; Extinguishment or Conversion**⁴⁹⁵. Grantors agree that the grant⁴⁹⁶ **donation**⁴⁹⁷ of the perpetual conservation restriction contained in this Conservation

⁴⁹⁸Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the **proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time (determined as the** ⁴⁹⁹ value of the Property without the Conservation ⁵⁰⁰Easement minus the value of the Property with the Conservation Easement or the value determined pursuant to section 10(R), whichever is greater. If ⁵⁰¹ **Easement at the time of gift of this Easement), and that the proportionate value of the Grantee's rights, thereby established, shall remain constant. Grantors and Grantee intend that this Easement be perpetual. Nevertheless, if** ⁵⁰² 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 ⁵⁰³Easement in exchange for the conveyance to the Grantee of a Conservation ⁵⁰⁴Easement 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 ⁵⁰⁵Easement. The Grantee, upon a ⁵⁰⁶ **In any** ⁵⁰⁷ sale, ⁵⁰⁸ **or** ⁵⁰⁹ exchange or conversion due ⁵¹⁰ **of the Property subsequent** ⁵¹¹ to an extinguishment, ⁵¹² **of this Easement, Grantee** ⁵¹³ shall be entitled to a portion of the proceeds ~~determined by multiplying all the proceeds by~~ ⁵¹⁴ **at least equal to** ⁵¹⁵ the proportionate value established above. ⁵¹⁶ **of this Easement computed as set forth above, but not to be less than the proportion that the value of this Easement at the time of extinguishment bears to the then value of the Property as a whole.** ⁵¹⁷ 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 ⁵¹⁸Easement **and the Open-Space Land Act** ⁵¹⁹.

~~E.~~ ⁵²⁰ **E.** ⁵²¹ Notice of proposed transfer or sale. The Grantors shall notify the Grantee in writing **(i) before exercising any reserved right that Grantors believe may have an adverse effect on the conservation or open-space values or interests associated with the Property, and (ii) prior to or** ⁵²² at the time of closing on any transfer or ⁵²³ ~~sale of all~~ ⁵²⁴ **gift** ⁵²⁵ or ⁵²⁶ **conveyance of** ⁵²⁷ any portion of ⁵²⁸ **interest in** ⁵²⁹ the Property. ⁵³⁰ **other than a deed of trust or mortgage.** ⁵³¹ In any deed **or other legal instrument** ⁵³² conveying all or ⁵³³ any part of ⁵³⁴ **interest in** ⁵³⁵ the Property, this Conservation ⁵³⁶Easement shall be referenced by deed book and page number in the deed of conveyance and shall state that this Conservation ⁵³⁷Easement is binding upon all successors in interest in the Property in perpetuity. **This Easement will be binding on the Grantors and Grantee (and their successors in interest) even if the Grantors fail to notify any successor in interest or to insert the Deed Book and Page Number reference for this Deed of Gift of Easement in any subsequent deed or other legal instrument.** ⁵³⁸

F. Assignment by Grantee. Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity and (2) the transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the IRC as amended and the applicable Treasury Regulations. ⁵³⁹

~~F.~~ ⁵⁴⁰ **G.** ⁵⁴¹ Relation to applicable laws. This Conservation ⁵⁴²Easement shall not be

construed to violate any applicable federal, state, or local law. ~~Notwithstanding any other provision of this Conservation Easement, the County Code~~⁵⁴³ shall apply to the Property⁵⁴⁴.⁵⁴⁵ In the event of a conflict between any applicable law and this ~~Conservation~~⁵⁴⁶ Easement, the more restrictive provision shall apply. **This Easement does not permit any use of the Property which is otherwise prohibited by federal, state, or local law or regulation.**⁵⁴⁷

H. No Quid Pro Quo. This Easement is not given in respect to any law or code requiring density or residential development standards and, further, is not given by the Grantors expecting any quid pro quo, from the County or otherwise. Neither the Property, nor any portion of it, shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage or open-space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise. 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 Grantors in consideration of the grant of the Easement.⁵⁴⁸

~~G.~~⁵⁴⁹ **L. Severability.** If any provision of this ~~Conservation~~⁵⁵¹ Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this ~~Conservation~~⁵⁵² Easement shall not be affected thereby. The ~~Grantor~~⁵⁵³ **Grantors**⁵⁵⁴ shall remunerate Grantee for the proportionate loss of value in the ~~Conservation~~⁵⁵⁵ Easement as determined by the Board of Supervisors due to any invalidated provision.

~~H.~~⁵⁵⁶ **J. Recordation.** Upon execution by the parties, this ~~Conservation~~⁵⁵⁸ Easement shall be recorded with the record of land titles in the Clerk^{559,560}'s Office of the Circuit Court of ~~Williamsburg~~⁵⁶¹ James City County, Virginia⁵⁶², **and Grantee may re-record it any time as may be required to preserve its rights under this Easement.**⁵⁶³ The Grantee shall provide the ~~Grantor~~⁵⁶⁴ **Grantors**⁵⁶⁵ with one (1) certified copy of the Deed of ~~Conservation~~⁵⁶⁶ Easement.

~~I.~~⁵⁶⁷ **K. Authority to convey easement.** The Grantors covenant that they are vested with good title to the Property and may convey this ~~Conservation~~⁵⁶⁹ Easement.

~~J.~~⁵⁷⁰ **L. Authority to accept easement.** The Grantee is authorized to accept this ~~Conservation~~⁵⁷² Easement pursuant to the Virginia Code, 1950, as amended, Section 10.1-1701.

~~K.~~⁵⁷³ **M. 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~~⁵⁷⁵ 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^{576,577}'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~~⁵⁷⁸ **Easement**⁵⁷⁹ as determined in section⁵⁸⁰ **Section**⁵⁸¹ 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.~~⁵⁸²

N. Construction. This Easement shall be construed to promote the purposes of this Easement and the PDR Program. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of the 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 not expressly prohibited by this Easement are permitted on the Property. Grantors and Grantee intend that the grant of this Easement qualify as a “qualified conservation contribution” as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations §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.⁵⁸³

~~M.~~⁵⁸⁴ **O. Liability and indemnification**⁵⁸⁵ **Indemnification**⁵⁸⁶ ⁵⁸⁷. 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^{588,589} 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^{590,591} 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.~~⁵⁹² **P. Taxes and assessments**⁵⁹³ **Assessments**⁵⁹⁴ ⁵⁹⁵. Grantors shall be responsible for paying all taxes, levies, assessments and other governmental charges which may become a lien on the Property.

~~O.~~⁵⁹⁶ **Q. Controlling law**⁵⁹⁷ **Law**⁵⁹⁸ ⁵⁹⁹. The interpretation and performance of this ~~Conservation~~⁶⁰⁰ Easement shall be governed by the laws of the Commonwealth of Virginia. The venue for any cause of action brought under this ~~Conservation~~⁶⁰¹ Easement shall be the Circuit Court for the City of Williamsburg and the County of ~~James City~~⁶⁰² **County, Virginia**⁶⁰³.

~~P.~~⁶⁰⁴ ~~R.~~⁶⁰⁵ Entire agreement⁶⁰⁶ Agreement⁶⁰⁷. This instrument sets forth the entire agreement of the Parties with respect to this ~~Conservation~~⁶⁰⁸ Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this ~~Conservation~~⁶⁰⁹ Easement, all of which are merged herein.

~~Q.~~⁶¹⁰ ~~S.~~⁶¹¹ Amendments. This ~~Conservation~~⁶¹² Easement may be amended to enhance the Property's conservation values or add to the restricted property, provided that no amendment shall affect this Easement's perpetual duration or reduce the Property's conservation values, and⁶¹³ only with the written consent of the Grantee and Grantors, and such⁶¹⁴ No⁶¹⁵ amendment shall be duly recorded. Any amendment shall be at the sole discretion of the Grantee, and⁶¹⁶ effective unless documented in a notarized writing executed by the Grantee and Grantor and recorded among the land records of the James City County, Virginia. Any amendment⁶¹⁷ shall be consistent with the Open-Space Land Act and Chapter 16A of the County Code:⁶¹⁸ and Grantee shall determine whether to execute any amendment in its sole discretion.⁶¹⁹ Any such amendment shall also be consistent with the overall purposes and intent of this ~~Conservation~~⁶²⁰ 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.~~⁶²¹

~~T.~~ Merger. Grantors 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.⁶²²

~~U.~~ Counterparts. This Easement may be executed in counterparts by the parties. It is not necessary that the signatures of the parties appear on the same counterpart or counterparts. All counterparts shall collectively constitute a single instrument.⁶²³

~~V.~~ Additional Rights Retained by Grantor. The Grantors retain any and all rights related to the Property not expressly conveyed to Grantee herein, including:⁶²⁴

(i) The Grantors retain the right to undertake or continue any activity or use of the Property not expressly prohibited by this Easement. Prior to making any change in use of the Property, Grantors shall notify Grantee in writing to allow Grantee a reasonable opportunity to determine whether such change would violate the terms of this Easement.⁶²⁵

(ii) The Grantors retain the right to sell, give, mortgage, lease, or otherwise convey the Property subject to the terms of this Easement.⁶²⁶

(iii) No provisions of this Easement shall be construed as impairing the ability of the Grantors to use the Property as collateral for prior or subsequent borrowing.

provided that any deed of trust, mortgage or lien arising from such a borrowing would be subordinate to this Easement.⁶²⁷

W. Baseline Report. Documentation retained in the office of Grantee including, but not limited to, the Baseline Documentation Report dated as of [REDACTED] (“Documentation Report”), describes the condition, use, character and state of improvement of the Property at the time of the gift of the Original Easement and this Easement. The Documentation Report may be used to determine compliance with and enforcement of the terms of this Easement, including specifically to establish that a change in the condition, use, character or state of improvement of the Property has occurred; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. Grantors have made available to Grantee, prior to donating the Original Easement and this Easement, documentation sufficient to establish the condition, use and character of the Property at the time of such gift. Such documentation is designed to protect the Conservation Values associated with the Property and protected in perpetuity by this Easement. The parties hereby acknowledge that the Documentation Report contained in the files of Grantee is an accurate representation of the Property as of the date of the Original Easement and this Easement. The documents contained within the Documentation Report shall be fully incorporated into this Easement as though attached hereto and made a part hereof, and such documents shall be archived at the Grantee’s office.⁶²⁸

X. Subordination. Hazelwood-Waverly, L.L.C., herein the “HW Creditor”, is the Note holder under a certain Deed of Trust dated July 26, 2006, and recorded July 27, 2006, in the Clerk’s Office of the Circuit Court of James City County, Virginia as Instrument No. 060018318 (the “HW Creditor Deed of Trust”), which subjects all or a portion of the Property to the HW Creditor’s lien. The HW Creditor hereby consents to the terms and intent of this Easement, and agrees that the lien represented by the HW Creditor Deed of Trust shall be held subject to this Easement and joins in this Deed to reflect its direction to the Trustee to execute this Easement to give effect to the subordination of the HW Creditor Deed of Trust to this Easement.⁶²⁹

Y. Subordination. RBC Centura Bank, N.A., a national banking association, herein the “RBC Bank”, is the Note holder under a certain Credit Line Deed of Trust dated June 28, 2007 and recorded July 26, 2007, in the Clerk’s Office of the Circuit Court of James City County, Virginia as Instrument No. 070021673 (the “RBC Deed of Trust”), which subjects all or a portion of the Property to RBC Bank’s lien. RBC Bank hereby consents to the terms and intent of this Easement, and agrees that the lien represented by the RBC Deed of Trust shall be held subject to this Easement and joins in this Deed to reflect its direction to the Trustee to execute this Easement to give effect to the subordination of the RBC Deed of Trust to this Easement.⁶³⁰

[Z. Subordination. National City Mortgage Corporation, herein “NCM”, is the

successor by assignment to the Note holder under a certain Deed of Trust in favor of Gateway First Mortgage, LLC dated March 31, 2003, and recorded April 4, 2003, in the Clerk's Office of the Circuit Court of James City County, Virginia as Instrument No. 0300101186, corrected and re-recorded on March 17, 2004, as Instrument No. 04007992 (the "NCM Deed of Trust"), which subjects all or a portion of the Property to NCM's lien. The NCM Deed of Trust was assigned to National City Mortgage Corporation by Assignment of Deed of Trust dated October 15, 2004, and recorded November 2, 2004, as Instrument No. 040027917. NCM hereby consents to the terms and intent of this Easement, and agrees that the lien represented by the NCM Deed of Trust shall be held subject to this Easement and joins in this Deed to reflect its direction to the Trustee to execute this Easement to give effect to the subordination of the NCM Deed of Trust to this Easement.]⁶³¹

REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY⁶³²

WITNESS the following signatures and seals:

GRANTORS:

Elwood H. Perry, Jr.

Sharon W. Perry

COMMONWEALTH OF VIRGINIA
City/County of James City, to-wit:⁶³³

The foregoing Amended Deed of Conservation and Open-Space
Easement was signed, sworn to and acknowledged before me this _____ day of September,
2007, by Elwood H. Perry, Jr., and Sharon W. Perry, Grantors.⁶³⁴

WITNESS my signature and notarial seal.⁶³⁵

[SEAL] _____⁶³⁶

Notary Public⁶³⁷

My Commission Expires: _____⁶³⁸

My Notary Commission Number: _____⁶³⁹

640

GRANTEE:

THE⁶⁴¹ COUNTY OF JAMES CITY, VIRGINIA

BY: _____
⁶⁴²

By: _____ 644
Its: _____ 645

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

The foregoing Amended Deed of Conservation **and Open-Space**
⁶⁴⁶Easement was signed, sworn to and acknowledged before me this _____ day of _____, 2006, by
Elwood H. Perry, Jr., Grantor: ⁶⁴⁷**day of September, 2007, by**
on behalf of the County of James City, Virginia, Grantee. ⁶⁴⁸

WITNESS my signature and notarial seal.

[SEAL]

Notary Public

My Commission Expires: _____

My Notary Commission Number: _____ 649

HW CREDITOR:⁶⁵⁰

Hazelwood-Waverly, L.L.C.⁶⁵¹

By: _____⁶⁵²

Its: _____⁶⁵³

Trustee⁶⁵⁴

COMMONWEALTH OF VIRGINIA⁶⁵⁵ ~~City/County of James City, to-wit:~~⁶⁵⁶

City/County of James City, to-wit:⁶⁵⁷

The foregoing Amended Deed of Conservation⁶⁵⁸ **and Open-Space**⁶⁵⁹ Easement was signed, sworn to and acknowledged before me this _____⁶⁶⁰ day of _____, 2006, by Sharon W. Perry, Grantor.⁶⁶¹

day of September, 2007, by _____ as _____ of Hazelwood-Waverly, L.L.C. and on behalf of Hazelwood-Waverly, L.L.C.⁶⁶²

WITNESS my signature and notarial seal.⁶⁶³

[SEAL]⁶⁶⁴

Notary Public⁶⁶⁵

My Commission Expires: _____⁶⁶⁶

My Notary Commission Number: _____⁶⁶⁷

COMMONWEALTH OF VIRGINIA⁶⁶⁸

City/County of James City, to-wit:⁶⁶⁹

The foregoing Amended Deed of Conservation and Open-Space Easement was signed, sworn to and acknowledged before me this _____ day of September, 2007, by _____ as

Trustee under the HW Creditor Deed of Trust and on behalf of Hazelwood-Waverly, L.L.C. ⁶⁷⁰

WITNESS my signature and notarial seal. ⁶⁷¹

ISEAL _____ ⁶⁷² Notary Public ⁶⁷³

My Commission Expires: _____ ⁶⁷⁴

My Notary Commission Number: _____ ⁶⁷⁵

676

RBC CENTURA BANK, N.A.:⁶⁷⁷

By: _____⁶⁷⁸

Its: _____⁶⁷⁹

Trustee:⁶⁸⁰

CB Services Corp.⁶⁸¹

By: _____⁶⁸²

Its: _____⁶⁸³

COMMONWEALTH OF VIRGINIA⁶⁸⁴

City/County of James City, to-wit:⁶⁸⁵

The foregoing Amended Deed of Conservation and Open-Space Easement was signed, sworn to and acknowledged before me this _____ day of September, 2007, by _____ as _____ of RBC Centura Bank, N.A. and on behalf of RBC Centura Bank, N.A.⁶⁸⁶

WITNESS my signature and notarial seal.⁶⁸⁷

ISEAL] _____⁶⁸⁸ **Notary Public**⁶⁸⁹

My Commission Expires: _____⁶⁹⁰

My Notary Commission Number: _____⁶⁹¹

COMMONWEALTH OF VIRGINIA⁶⁹²

City/County of James City, to-wit:⁶⁹³

The foregoing Amended Deed of Conservation and Open-Space Easement was signed, sworn to and acknowledged before me this _____ day of September, 2007, by _____ as _____ of CB Services Corp. as Trustee under the RBC Deed of Trust and on behalf of RBC Centura Bank, N.A.⁶⁹⁴

WITNESS my signature and notarial seal.⁶⁹⁵

ISEAL] _____⁶⁹⁶ **Notary Public**⁶⁹⁷

My Commission Expires: _____⁶⁹⁸

My Notary Commission Number: 699

700

NATIONAL CITY CORPORATION:⁷⁰¹

By: _____⁷⁰²

Its: _____⁷⁰³

Trustee⁷⁰⁴

COMMONWEALTH OF VIRGINIA⁷⁰⁵

City/County of James City, to-wit:⁷⁰⁶

The foregoing Amended Deed of Conservation and Open-Space Easement was signed, sworn to and acknowledged before me this _____ day of September, 2007, by _____ as _____ of National City Corporation and on behalf of National City Corporation.⁷⁰⁷

WITNESS my signature and notarial seal.⁷⁰⁸

[SEAL] _____⁷⁰⁹ **Notary Public**⁷¹⁰

My Commission Expires: _____⁷¹¹

My Notary Commission Number: _____⁷¹²

COMMONWEALTH OF VIRGINIA⁷¹³

City/County of James City, to-wit:⁷¹⁴

The foregoing Amended Deed of Conservation and Open-Space Easement was signed, sworn to and acknowledged before me this _____ day of September, 2007, by _____ as _____ Trustee under the NCM Deed of Trust and on behalf of National City Corporation.⁷¹⁵

WITNESS my signature and notarial seal.⁷¹⁶

[SEAL] _____⁷¹⁷ **Notary Public**⁷¹⁸

My Commission Expires: _____⁷¹⁹

My Commission Expires: _____⁷²⁰

~~COMMONWEALTH OF VIRGINIA~~
~~City/County of James City, to-wit:~~⁷²¹

The foregoing Amended Deed of Conservation Easement was signed,
sworn to and acknowledged before me this _____ day of _____, 2006,
by _____ on behalf of the County of James City, Virginia,
Grantee.⁷²²

~~WITNESS my signature and notarial seal.~~⁷²³

~~[SEAL]~~⁷²⁴

~~Notary Public~~⁷²⁵

~~My Notary Commission Number:~~ _____⁷²⁶

~~My Commission Expires:~~ _____⁷²⁷

⁷²⁸EXHIBIT A

Parcel One: 1230100021 (2925 Forge Road)⁷²⁹

All that certain piece or parcel of land situate, lying and being in Powhatan District, James City County, Virginia, containing 7.04 acres, more or less, and more particularly shown and described on a certain plat entitled, "C. H. & AUDREY M. BRANCH, PLAT OF SURVEY, 7.04 ACRES, BEING A PORTION OF THE BRANCH PROPERTY NEAR TOANO, POWHATAN DIST., JAMES CITY CO., VA." Dated March 7, 1996, made by R. B. Cartwright, Certified Land Surveyor, recorded in Deed Book 105, Page 490.

LESS AND EXCEPT the property described in the Certificate of Take dated November 21, 1996, and recorded January 10, 1997, as Instrument Number 97000484 and Plat recorded in Deed Book 8, Pages 185-92 and Order recorded as Instrument Number 970006348.

It being the same property conveyed to C. H. Branch and Audrey H. Branch, by Deed of Gift from C. H. Branch, Mary M. Branch, Margaret B. Branch and Catherine Branch Hall, recorded March 23, 1966, in Deed Book 105, page 488 and the same property devised to Patricia Branch Coltrane under the Will of Christopher Hammond Branch who departed this life on December 19, 2004, and said Will being recorded in Will Book 6198.

Parcel Two: 1230100022 (2945 Forge Road)⁷³⁰

All that certain piece or parcel of land situate in the Stonehouse District (Formerly Powhatan District) of James City County, Virginia, known as SUNNYSIDE, formerly estimated to contain 185.1 acres, more or less, but conveyed in grow and not by the acre, and bounded and described as follows: On the north by Forge Road, on the West by the land formerly belonging to D. W. Marston's estate, on the South by the land formerly belonging to R. H. Slater's estate and to D. W. Marston's estate, and on the East by the Lands formerly of the Chesapeake and Ohio Railway, R. H. Slater's estate, and William R. Branch and including the old right-of-way of Chesapeake and Ohio Railway, and being the same property conveyed to C. C. Branch from Charles Braband and wife by deed dated March 11, 1947, and recorded in James City County Deed Book 36A, page 429.

LESS AND EXCEPT Deed of Easement to the Commonwealth of Virginia, dated September 9, 1968, recorded in Deed Book 119, Page 399.

LESS AND EXCEPT that part of "Sunnyside" taken by the City of Newport News, Virginia, in condemnation proceedings by Certificate dated January 14, 1972, recorded January 20, 1972, in Deed Book 134, page 794.

LESS AND EXCEPT 7.04 acres conveyed to C. H. and Audrey H. Branch by deed dated March 18, 1966, recorded in James City County Deed Book 105, page 488.

LESS AND EXCEPT 10.03 acres conveyed by deed of gift to Richard Brooks Coltrane, III and Karen Susan Brooks, dated May 16, 1990 and recorded in James City County Deed Book 474, page 693.

LESS AND EXCEPT the property described in the Certificate of Take dated November 21, 1996, and recorded January 10, 1997, as Instrument Number 97000484 and Plat recorded in Deed Book 8, Pages 185-192 and Order recorded as Instrument Number 970006348.

It being the same property formerly conveyed to Christopher H. Branch by deed dated March 14, 1977, recorded in Deed Book 175, Page 786; and the same property conveyed to C.H. Branch and Audrey H. Branch, husband and wife, by Deed of Partition, dated February 6, 1990, recorded in Deed Book 465, page 700; and the same property conveyed to C.H. Branch and Audrey H. Branch, by deed dated January 4, 1995, and recorded in Deed Book 725, Page 191; and the same property devised to Patricia Branch Coltrane under the Will of Christopher Hammond Branch who departed this life on December 19, 2004, and said Will being recorded in Will Book 6198.

Parcel Three: 1230100022A (2875 Forge Road)⁷³¹

All that parcel of land in the Stonehouse District (formerly Powhatan District) of James City County, Virginia, containing by survey 10.03 acres, as shown and described on a plat of survey entitled, "A SUBDIVISION OF THE PROPERTY OF C.H. & AUDREY H. BRANCH, JAMES CITY COUNTY, VIRGINIA", which plat is dated March 8, 1990, was made by Lynn D. Evans, C.L.S., and a copy of which is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in Plat Book 52, page 29.⁷³²

LESS and EXCEPT the portion thereof taken for highway improvement by the Virginia Department of Transportation by Certificate of Take recorded in James City County Deed Book 814, page 257, confirmed by Order recorded as James City County Instrument No. 970016908.⁷³³

Being the remaining property formerly conveyed unto Richard Brooks Coltrane, III and Karen Susan Coltrane, husband and wife, by deed of C.H. Branch and Audrey H. Branch, dated May 16, 1990, and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in Deed Book 474, page 693.⁷³⁴

Further being the property conveyed unto the Grantors by deed of Richard Brooks Coltrane, III and Karen Susan Coltrane, husband and wife, dated May 19, 1998, and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City as James City County Instrument No. 980010293.⁷³⁵

Subject to all restrictions and easement of record or apparent on the ground.⁷³⁶

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EXHIBIT B⁷³⁸

#1541063⁷³⁹ **1463534**⁷⁴⁰ v+ 3^{741, 742} 077777.00047

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Deletion	
Moved from	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	270
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Moved to	13
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Format changed	7
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