

19-948-1

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Harrisonburg, Virginia 22801

CLR190005860

Please Return to: Land Trust of Virginia  
10-31-19 P.O. Box 14  
Middleburg, Virginia 20118

Rappahannock County Tax Map Numbers:

43-44, 43-45, and 43-45A

and

Culpeper County Tax Map Number:

5-2A

Tax Exempt: § 58.1-811.D VA. CODE

**DEED OF GIFT OF CONSERVATION EASEMENT**

<sup>28<sup>th</sup></sup> THIS DEED OF GIFT OF CONSERVATION EASEMENT (the "Easement"), made this day of October, 2019, by and between HENSELSTONE ESTATES, L.L.C., a Virginia limited liability company (herein the "Grantor"), whose mailing address is P.O. Box 116, Amissville, Virginia 20106, and the LAND TRUST OF VIRGINIA, INC., a Virginia non-stock corporation (herein the "Grantee"), whose mailing address is P. O. Box 14, Middleburg, Virginia 20118 (the designations "Grantor" and "Grantee" herein shall include their respective successors and assigns), witnesseth:

**RECITALS**

**R-1** The Grantor is the owner in fee simple of certain real property, consisting of 222.94 acres, more or less, situated partially (212.94 acres, more or less) in the Jackson District of Rappahannock County, Virginia and partially (10 acres, more or less) in the Catalpa District of Culpeper County, Virginia (the "Property").

**R-2** The Virginia Conservation Easement Act, Chapter 10.1, Title 10.1 of the CODE OF VIRGINIA of 1950, as amended (the "Virginia Act"), provides for the conveyance of a conservation easement to a charitable corporation declared exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"), when the primary purposes or powers of such corporation include "(i) retaining or protecting the

natural or open-space values of real property; (ii) assuring the availability of real property for agricultural, forestal, recreational or open space use; (iii) protecting natural resources; (iv) maintaining or embracing air or water quality; or (v) preserving the historic architectural or archaeological aspects of real property.”

**R-3** Section 170(h)(4) of the Code defines a conservation purpose as “(i) the preservation of land areas for outdoor recreation by, or the education of, the general public, (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, (iii) the preservation of open space (including farmland and forest land) where such preservation is (I) for the scenic enjoyment of the general public, or (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or (iv) the preservation of a historically important land area or certified historic structure;.

**R-4** The Grantee is a charitable organization exempt from taxation pursuant to Section 501 (c)(3) of the Code, and a “qualified organization” and an “eligible donee” under Section 501 (c)(3) of the Code, and the Treasury Regulations adopted pursuant thereto (the “Treasury Regulations”), and specifically Section 1.170A-14(c)(1), with purposes including those specified in the Virginia Act; Grantee has maintained a principal office in the Commonwealth of Virginia for at least five years; and Grantee is willing to accept a perpetual open space conservation easement over the Property as set forth herein.

**R-5** This Easement is intended to constitute (i) a Conservation Easement under Chapter 10.1 of the Virginia Act; and (ii) a “qualified conservation contribution” as defined in Section 170(h)(1) of the Code and as more particularly explained below, and (iii) a qualifying “interest in land” under the Virginia Land Conservation Incentives Act of 1999 (§ 58.1-510 *et seq.* of the Virginia Act.

**R-6** This Easement is intended to be a grant “exclusively for conservation purposes” under Section 170(h)(1)(C) of the Code, because it effects “the preservation of open space (including farmland and forest land)” under Section 170(h)(4)(A)(iii) of the Code; specifically the preservation of open space on the Property is pursuant to clearly delineated state governmental conservation policies and for the scenic enjoyment of the general public and will yield a significant public benefit.

**R-7** The Property consists of approximately 222 acres of open fields and forested lands.

**R-8** The Property is situated 1.2 miles southwest of Amissville, Virginia in agricultural and rural areas of Rappahannock and Culpeper Counties (the “Counties”).

**R-9** The Property is located on, is highly visible from, and has 1,070 feet (0.2 miles) of frontage on State Route 611 (Waterford Road).

**R-10** The Restrictions contained in Article II of this Easement protect the scenic views and the scenic enjoyment of the public by restricting buildings and limiting further subdivision

and they further public purposes of Rappahannock and Culpeper Counties evidenced in each County's respective Comprehensive Plan.

**R-11** The Property is in the watershed of the Thornton, Hazel and Rappahannock Rivers. The Thornton, Hazel and Rappahannock Rivers are State-Designated Scenic Rivers. The Property is also in the watershed of the Chesapeake Bay.

**R-12** The Property contains 1.5 miles of streambeds and wetlands designated by the National Wetlands Inventory as being a "Riverine" habitat classified as "R4SBC", which is a "Riverine System" consisting of a seasonally-flooded intermittent streambed, which streambed and wetland areas, inclusive of a 1.6-acre pond, are referred to herein as "NWI Wetlands". Protection of water quality within these water resources on the Property benefits water quality in the aforementioned downstream rivers, with the Rappahannock being of particular significance given that it is a public water supply for the Counties of Spotsylvania and Stafford and the City of Fredericksburg, Virginia.

**R-13** The Property contains approximately 75 acres of soils (33.7% of the Property) that are defined by the Natural Resources Conservation Service of the United States Department of Agriculture as being either Prime Farmland or Farmland of Statewide Importance.

**R-14** The Property contains areas (approximately 46 acres total) that are classified as having "high" or "very high" potential economic value under the Forest Economics Model of the 2007 Virginia Natural Landscape Assessment of the Department of Conservation and Recreation's Virginia Natural Heritage Program.

**R-15** On November 10, 1862, the Property played an important role in Civil War fighting that occurred at Corbin's Crossroads (located a few hundred yards north of the Property), which was the temporary location of the Union Cavalry Division Headquarters. That morning, J.E.B. Stuart's cavalry, under orders from Confederate General Robert E. Lee, traveled north from Rixeyville to engage the Federal forces under the command of General Alfred Pleasonton. Starting around 10am, Stuart used the Property as a launching pad from which to attack the Union camp at Corbin's Crossroads with a mixture of cavalry, infantry and artillery. The description below (*in italics*) is from a "Civil War Trails" interpretive sign located in Amissville, Virginia. More thorough documentation, including mapping and contemporaneous reports from commanding officers, can be found in the Baseline Documentation Report.

*Corbin's Crossroads: Stuart's Close Shave - Confederate Gen. Robert E. Lee's Army of Northern Virginia crossed the Potomac River to Virginia and camped at Bunker Hill in the northern Shenandoah Valley after the September 17, 1862, Battle of Antietam. Union Gen. George B. McClellan and the Army of the Potomac slowly pursued, despite President Abraham Lincoln's demands for speed. At the end of October, Lee ordered Gen. J.E.B. Stuart's cavalry to screen the infantry's march south to Culpeper County. Stuart succeeded in a series of running fights with Union Gen. Alfred Pleasonton's cavalrymen. Lee's army escaped and Lincoln replaced McClellan with Gen. Ambrose E. Burnside.*

*The last cavalry fight occurred here. Stuart and his cavalry moved north from Rixeyville early in the morning of November 10, along with Maj. John Pelham's Stuart Horse Artillery and Gen. Carnot Posey's 16th Mississippi Infantry. They attacked part of Union Gen. Samuel D. Sturgis's infantry division at Corbin's Crossroads half a mile south of here and pushed the Federals north. About 4 P.M., Union Gen. James Nagle's infantry brigade flanked Stuart's forces here. Stuart ordered a withdrawal south to Culpeper County as more Union infantrymen approached but had his men fire on them to "punish their impudence." When the Federals returned fire, one bullet "punished" Stuart instead, clipping his famous moustache. Maj. Heros von Borcke, a Prussian who was an aide to Stuart, told the story that evening in Culpeper to Lee and his staff, who "were all greatly amused at the loss [of] a personal ornament upon which they knew our cavalry leader greatly prided himself."*

*"Looking at Stuart, I saw him pass his hand quickly across his face, and even at this serious moment I could not help laughing heartily when I discovered that one of the numberless bullets that had been whistling around him had cut off half his mustache as neatly as it could have been done by the hand of an experienced barber." — Maj. Heros von Borcke.*

**R-16** The conveyance of a conservation easement on the Property by this Easement is in furtherance of and will serve clearly delineated federal, regional, and state conservation policies, as set forth in:

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.

The Virginia Act (§§10.1-1009 *et seq.*), which provides for the conveyance of conservation easements in perpetuity to a private charitable organization such as the Land Trust of Virginia, Inc. for the purposes noted above.

The CODE OF VIRGINIA (§§10.1-1800 *et seq.*), which declares it to be the public policy of the Commonwealth to encourage the preservation of open space land and which establishes an Open Space Land Preservation Trust Fund enabling a foundation and regional advisory boards to provide grants to assist persons conveying conservation easements.

The Virginia Open-space Land Act (§§10.1-1700 *et seq.* VA. CODE), which declares that open space land serves a public purpose by 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.

The Virginia Land Conservation Incentives Act of 1999 (§§58.1-510 - 58.1-513 VA. CODE), which provides 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.

Legislation that designates the Thornton, Hazel and Rappahannock Rivers, public water supplies, as scenic rivers under the Scenic Rivers Act (§§10.1-400 et seq. VA. CODE), which provides for the administration of scenic rivers "to preserve and protect its nature, beauty ... and to encourage the continuance of existing agricultural, horticultural, forestry and open space land and water uses."

**R-17** Preservation of the Property promotes the public policies of Rappahannock County, as delineated in its Comprehensive Plan dated November 1, 2004 (herein the "Rappahannock County Comprehensive Plan"), by protecting open-space, scenic views, water resources, and agricultural and forestal land, and by implementing Rappahannock County's goals, principles, and policies to:

- Declare Rappahannock County "to be a 'scenic county' and all goals, principles, and policies will reflect and devolve from this fundamental recognition. ... A scenic county shall mean: One in which preservation and enhancement of the natural and historic beauty and cultural value of the countryside shall be respected as being of foremost importance; and, One in which conditions for a sustainable agricultural and tourism economy not be dependent upon traditionally defined growth patterns as have developed in jurisdictions to the east as a consequence of the growth of the Washington, D.C. metropolitan area." (page 74)
- "Preserve the overall viewshed of the county in its unspoiled, natural setting, which gives it special character and identity." (Page 74)"
- "Preserve and enhance rural and open spaces." (Page 74)
- "Protect the natural, scenic, and historic resources, thus ensuring a high quality of life for our citizens." (Page 74)
- "To encourage and maintain a viable rural agricultural and tourism-based economy compatible with the county's size and character." (Page 75)
- "Discourage the continuing conversion of land from agricultural uses to other uses that challenges our ability to stabilize and balance our local tax base." (Page 75)
- "To encourage agricultural operations and ensure the preservation of the productivity, availability, and use of agricultural lands for continued production of agricultural products." (Page 75)
- "Protect natural resources, including soil, water, air, viewsheds, scenery, and fragile ecosystems." (Page 77)
- "Promote the philosophy that land is a finite resource and not a commodity, that all citizens are stewards of the land, and that the use and quality of the land are of prime importance to each present and future citizen as well as to the Commonwealth, the

Country and indeed, the world.” (Page 84)

- “Open space easements help to preserve valuable agricultural, horticultural and scenic land in the County, and should be actively encouraged.” (Page 102)

**R-18** As required by Section 10.1-1010(E) of the Virginia Conservation Easement Act, the limitations or obligations created by this Easement conform in all respects to the Rappahannock County Comprehensive Plan, as confirmed by correspondence from Michelle Somers, Zoning Administrator for Rappahannock County, a copy of which is in the Grantee’s permanent files.

**R-19** Preservation of the Property promotes the public policies of Culpeper County delineated in its Comprehensive Plan dated September 1, 2015 (herein the “Culpeper County Comprehensive Plan”) by protecting open-space, scenic views, and forestal land. The Easement implements Culpeper County’s goals and objectives to:

- “Preserve and improve the quality of the County’s soil, water, air, forests and farmland.” (at page 4-16 of the Comprehensive Plan)
- “Encourage preservation of forested lands and waterways that provide long-term environmental benefits to water quality, recreation, tourism, general aesthetics, and which reduces air and noise pollution.” (at 4-16)
- “Identify prime farmland and promote public policies designed for its preservation and general conservation.” (at 4-16)
- “Maintain the rural character of Culpeper County”. (at 4-16)
- “Protect, promote and enhance agriculture and forestry as a land use” (at 5-7)

**R-20** As required by Section 10.1-1010(E) of the Virginia Conservation Easement Act, the limitations or obligations created by this Easement conform in all respects to the Culpeper County Comprehensive Plan, as confirmed by correspondence from Nick Tafelsky, Long Range Planner for Culpeper County, a copy of which is in the Grantee’s permanent files.

**R-21** The Property possesses significant conservation values, the preservation of which will benefit the citizens of the Commonwealth and the public. The conservation values of the Property (the “Conservation Values”), are its agricultural, forestal, scenic and natural values, and its value as open-space land preserved for open-space and rural uses, as referenced in Section 170(h)(4)(A)(iii) of the Code and Treasury Regulation §1.170A-14(d)(4), §10.1-1009 and §58.1-512 VA. CODE, as the same are more particularly described in these Recitals, and as further documented in the Grantee’s Baseline Documentation Report dated September 24, 2019 (herein the “Baseline Documentation Report”), which is further described in Article IV below. This Baseline Documentation Report, which is incorporated by reference herein, was signed by the Grantor and the Grantee, and is to be maintained on file in the offices of the Grantee. This Report is intended to serve as an accurate and objective, though nonexclusive, information baseline for monitoring compliance with the “Restrictions” (hereinafter defined) and the “Terms and

Conditions" (hereinafter defined) of this Easement.

**R-22** The retention, preservation and protection of the Conservation Values will be a significant and substantial benefit to the citizens of the Commonwealth of Virginia, Rappahannock County, Culpeper County and the public.

**R-23** The Grantor and Grantee intend that the Conservation Values of the Property be retained, preserved and protected in perpetuity by restricting the activities on, uses or development of the Property as set forth in Article II, herein, by permitting only those uses on or development of the Property that will not adversely affect, are not inconsistent with, and do not conflict with, diminish, impair or interfere with the perpetual protection of the Conservation Values.

**R-24** The Grantor further intends, as to all or any portion of or interest in the Property, as owner of the Property, to grant and convey in perpetuity to the Grantee, the right in perpetuity (1) to retain, preserve and protect in perpetuity the Conservation Values of the Property by granting this Easement to the Grantee that will restrict use of the Property by the Grantor because of the imposition of the restrictions set forth in Article II ("Restrictions"), and other duties, covenants, terms and conditions ("Terms and Conditions") hereinafter expressed; and (2) to enforce such Restrictions as well as the Terms and Conditions.

**R-25** The Grantee intends and has hereby agreed to accept such conveyance and to protect in perpetuity the Conservation Values on the Property.

**R-26** The Grantor and Grantee hereby agree that the Restrictions as well as the Terms and Conditions will retain, preserve and protect in perpetuity the Conservation Values of the Property by limiting use of the Property to those uses that do not adversely affect, are not inconsistent with, do not conflict with, diminish, impair, or interfere with the Conservation Values.

**R-27** Grantee's Board of Directors adopted a resolution at a meeting accepting this Easement.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants set forth herein and the acceptance of this conveyance by the Grantee, and for no monetary consideration from Grantee to Grantor, the Grantor does hereby give, grant and convey to the Grantee a Deed of Gift of Conservation Easement in gross over, and the right in perpetuity to restrict the use or development of, the Property, which consists of 222.94 acres, more or less, situated partially in Rappahannock County, Virginia and partially in Culpeper County, Virginia, 1.2 miles southwest of Culpeper, Virginia, and which is more particularly described in Schedule "A" attached hereto and made a part hereof (the "Property"). The Property tract is identified as Tax Map Numbers 43-44, 43-45, and 43-45A among the tax records of Rappahannock County and identified as Tax Map Number 5-2A among the tax records of Culpeper County. Even if the Property consists of more than one parcel for real estate tax or for any other legal purpose, it shall be considered to be one parcel for the purpose of this Easement, and the terms and conditions of this Easement shall apply to the Property as a whole.

**ARTICLE I**  
**PURPOSE AND DEFINITIONS**

**1.1 PURPOSE.** The purpose of this Easement is to retain, preserve, and protect the Conservation Values of the Property in the public interest, in perpetuity, by imposing the Restrictions on the activities on, and uses and development of the Property set forth in Article II, and by providing for their enforcement in Article III, while allowing the Property to be used by the owner to the extent that such uses do not conflict with, interfere with or significantly impair the Conservation Values of the Property (herein the "Conservation Purpose"). By doing so, the Grantor and Grantee have the common purpose of preventing, through the enforcement powers granted to the Grantee, any activities on, uses or development of the Property that will adversely affect, be inconsistent with, conflict with, diminish, impair, or interfere with the Conservation Values of the Property.

**1.2 DEFINITIONS.**

**1.2.1 Agricultural:** Pertaining to Agriculture.

**1.2.2 Agriculture:** The following uses: agronomy, aquaculture, forestry, honey production, silviculture (including the harvesting of timber), horticulture, floriculture, animal husbandry, equine and equestrian activities. The term "Agriculture" as used herein does not include activities that are expressly restricted herein.

**1.2.3 Building:** An assembly of materials having one or more stories and roof, designed primarily for the shelter, support or closure of persons, animals or property of any kind.

**1.2.3.1 Primary Dwelling:** A Building intended to be used for living that contains cooking, sleeping and bathing facilities, which is the largest such Building on the Property.

**1.2.3.2 Secondary Dwelling:** A Building intended to be used for living that contains cooking, sleeping and bathing facilities, which is subordinate to the Primary Dwelling.

**1.2.3.3 Accessory Building:** A Building commonly and appropriately incidental to a Dwelling, and sized appropriately to serve as an amenity to a Dwelling, including but not limited to a garage and storage shed.

**1.2.3.4 Farm Building:** A Building used for Agriculture.

**1.2.4 Building Envelopes:** The areas shown on the attached exhibit ("Exhibit A") in which new Buildings and Structures permitted by this Easement must be constructed, unless otherwise provided for in this Easement.

**1.2.5 Commercial:** Any use or activity undertaken for profit, including Industrial uses, but excluding the leasing of Dwellings approved herein so long as such leases are permitted by the appropriate governmental jurisdiction.

**1.2.6 Grantee:** Land Trust of Virginia, Inc. and any and all Successor holders of this Easement.

**1.2.7 Grantor:** The original grantor herein and any and all Successors in title to the Property.

**1.2.8 Ground Area:** The square footage of a Building, inclusive of all roofed decks,



porches, stoops, and other attached roofed Structures, as measured at the exterior of the foundation (perimeter load-bearing) walls and/or piers, but excluding fencing, mailboxes, gate posts, permitted signs, and non-roofed decks, patios, terraces and walkways.

**1.2.9 Industrial:** Commercial uses including but not limited to mining, milling and manufacturing.

**1.2.10 Road:** A private way specifically designated and/or built on the Property for the movement of vehicles.

**1.2.11 Structure:** An assembly of materials forming a construction for use (other than Buildings, Roads and Utilities), including, among others, platforms, stagings, observation towers, water tanks, trestles, piers, coal bins, pipelines, energy generators, and railroad tracks, but excluding fencing, mailboxes, gate posts, permitted signs, and uncovered decks, terraces, patios, and swimming pools.

**1.2.12 Utility:** A facility for the provision of infrastructure services including wells; water storage tanks; septic systems; electricity and telephone transmission lines; antennas for the transmission and reception of electro-magnetic energy; equipment used to harness natural renewable energy sources, such as sunlight, wind, water, or biomass.

**1.3 INCORPORATION OF RECITALS.** The Recitals in this Easement are incorporated herein and by agreement, each one is made an integral part of this Easement.

## **ARTICLE II** **RESTRICTIONS**

Restrictions are hereby imposed on uses of the Property pursuant to the public policies described in the Recitals to protect the Conservation Values of the Property. Any use of the Property inconsistent with the Conservation Purpose, is prohibited. Any use permitted by the following provisions shall be undertaken only in a manner that is consistent with the Conservation Purposes. Without limiting the generality of the foregoing, the acts which Grantor covenants to do and not to do upon the Property, and the Restrictions that Grantee is hereby entitled to enforce (herein "the Restrictions") are and shall be as follows:

**2.1. NO SUBDIVISION.** Separate conveyance of a portion of the Property or division or subdivision of the Property is prohibited. The Property may not be sold, mortgaged or conveyed except as a whole.

**2.2 BOUNDARY LINE ADJUSTMENTS.** Boundary line adjustments of the Property with adjoining parcels of land are permitted, upon the Prior Written Approval of Grantee, and shall not be considered a prohibited division, subdivision or separate conveyance of the Property or a portion thereof, provided that the entire adjacent parcel is, or becomes prior to the proposed boundary line adjustment conveyance, subject to a recorded conservation or open space easement held by Grantee or, with Grantee's Prior Written Approval, another qualified holder under either the Virginia Conservation Easement Act or the Virginia Open-space Land Act. Boundary line

adjustments which meet these conditions shall also fulfill all of the requirements of the following subsections.

**2.2.1 Deed of BLA:** Grantee shall be made a party to the deed of boundary line adjustment.

**2.2.2 Amendment of Easement:** This Easement shall be amended to subject any newly acquired land by boundary adjustment, not already subject to a recorded conservation or open space easement held by a qualified holder under either the Virginia Conservation Easement Act or the Virginia Open-space Land Act, to the terms and conditions of this Easement at transfer. Any land transfer by Grantor by boundary adjustment shall, at transfer, remain subject to this Easement.

**2.2.3 No Reduction in Restrictions:** The boundary line adjustment shall not result in the granting of any rights or the release of any Restrictions on any parcels of land whose boundaries are adjusted.

**2.2.4 Protection of Conservation Values:** The boundary line adjustment shall not adversely affect, be inconsistent with or conflict with, diminish, impair or interfere with the Conservation Values protected by this Easement, or protected by any easement encumbering the other parcel(s) which are party to such boundary line adjustment.

**2.3 BUILDINGS AND STRUCTURES.** No Buildings or Structures, whether permanent or temporary, shall be built or maintained on the Property other than as follows:

**2.3.1 Primary Dwelling:** One (1) Primary Dwelling is permitted, which exists on the Effective Date. The Primary Dwelling shall not exceed four thousand five hundred (4,500) square feet in Ground Area unless Prior Written Approval shall have been obtained from the Grantee.

**2.3.2 Secondary Dwelling:** One (1) Secondary Dwelling is permitted, which exists on the Effective Date. The Secondary Dwelling shall not exceed two thousand five hundred (2,500) square feet in Ground Area unless Prior Written Approval shall have been obtained from the Grantee.

**2.3.3 Accessory Buildings:** Accessory Buildings are permitted, but the aggregate Ground Area of all Accessory Buildings combined on the Property shall not exceed two thousand five hundred (2,500) square feet, unless Prior Written Approval shall have been obtained from Grantee.

**2.3.4 Farm Buildings:** Farm Buildings are permitted, but the aggregate Ground Area of all Farm Buildings combined on the Property shall not exceed thirty-one thousand (31,000) square feet, unless Prior Written Approval shall have been obtained from Grantee.

**2.3.5 Structures:** Other Structures associated with the permitted activities under this Easement may be built or maintained only when Prior Written Approval shall have been given by the Grantee.

**2.4 ADDITIONAL BUILDING AND STRUCTURE RESTRICTIONS.** The following Restrictions apply to all Buildings and Structures.

**2.4.1 Building Envelopes:** All new Buildings and Structures must be located within the areas marked on the attached exhibit ("Exhibit A") as the "Building Envelopes" unless otherwise provided for in this Easement. Prior to construction of any new Buildings or Structures, Grantor shall survey the area to ensure said Building or Structure is located within a permitted Building Envelope. A copy of each survey shall be provided to Grantee prior to such construction.

**2.4.2 Prior Notice:** Grantor must give Grantee written notice pursuant to Section 5.6 before beginning construction, replacement, relocation, or enlargement of any Building, Structure, Road or Utility on the Property.

**2.4.3 Exemptions:** The Restriction of Section 2.4.1 shall not apply to fencing, stone walls, permitted signs, mailboxes, feeding and watering troughs, or small run-in sheds for horses or other animals that are consistent with generally accepted agricultural, animal husbandry or equine practices; provided, no more than three (3) run-in sheds, each of which shall not be larger than 288 square feet in size each, may be constructed outside of the Building Envelope without Prior Written Approval. Such run-in sheds shall not be constructed within three hundred (300) feet of the centerline of State Route 611 (Waterford Road), unless Prior Written Approval shall have been obtained from the Grantee, and such run-in sheds shall not be constructed within the "CL Area", as shown on the map titled "CL Area Map" included in Appendix I of the Baseline Documentation Report.

**2.4.4 Building Height:** The height of any Building or Structure shall not be more than thirty-five (35) feet, as measured from final grade to ridge of roof, unless Prior Written Approval shall have been obtained from Grantee.

**2.4.5 Downlighting:** Use of exterior lighting in all areas shall be limited to fully horizontally shielded lighting fixtures. The light element (lamp or globe) of a fixture shall not extend below the cut off shield.

**2.4.6 No Demolition:** The cemetery that exists on the property, the location of which is shown on the aforementioned CL Area Map, shall not be demolished or removed without the Prior Written Approval of the Grantee.

**2.5 AGGREGATE GROUND AREA.** The Aggregate Ground Area of all Buildings and Structures on the Property, shall not exceed forty thousand (40,000) square feet without Prior Written Approval of the Grantee. For purposes of calculating Aggregate Ground Area, all Buildings and Structures, including those existing on the Effective Date and those added after that time, shall be included.

**2.6 CONSISTENCY WITH CONSERVATION VALUES.** New, replaced, relocated, repaired, renovated, or enlarged Buildings or Structures must not adversely affect, be inconsistent or conflict with, diminish, impair nor interfere with the Conservation Values of the Property.

**2.7 RIGHT TO CONSTRUCT, REPAIR, MAINTAIN, RENOVATE, AND REPLACE.** Except for restrictions herein regarding Aggregate Ground Area, the Restrictions above shall not preclude the repair or replacement of any Buildings, Structures, fencing, mailboxes, gate posts, and permitted signs existing as of the date of this Easement, including specifically, relocation of existing Dwellings to other locations within the Building Envelope in the event either such Dwelling is destroyed due to causes, including, but not limited to, fire, flood, storm, insect infestation or earth movement.

## **2.8 ROADS AND UTILITIES.**

**2.8.1 Roads:** No Roads are permitted on the Property other than Roads to serve permitted Buildings or Structures, and Roads with permeable surfaces for permitted uses and activities, including Agriculture and forestry. Roads are not permitted in the aforementioned CL Area.

**2.8.2 Utilities:** No Utilities are permitted on the Property other than Public or private Utilities to serve permitted Buildings, Structures or activities on the Property, or Public or private Utilities to be constructed in whole or in part to serve other properties, which shall not be constructed on, under or over the Property unless Grantee gives Prior Written Approval for the construction, which approval shall take into consideration the factors set forth in Section 5.7.1 and the visibility of such Utilities.

## **2.9 INDUSTRIAL AND COMMERCIAL ACTIVITIES.**

**2.9.1 Permitted Activities:** Commercial activities are prohibited, with the exception of the following:

(a) Agriculture, including the processing and sale of Agricultural products (but excluding on site sale of alcoholic beverages) produced primarily from crops grown or livestock raised on the Property; and

(b) temporary or seasonal outdoor activities which do not permanently alter the physical appearance of the Property.

**2.9.2 Restrictions on Permitted Activities:** With respect to the permitted activities listed in 2.9.1 involving the participation of the public (which shall include non-profit entities and any person or group asserting that they are non-public due to some form of private membership, dues or club status) the following restrictions apply, unless Prior Written Approval is obtained: (a) no amplified sound is permitted outdoors; (b) such activities shall not be held more than twelve (12) days per calendar year; (c) no more than one hundred (100) members of the public may visit the Property per day; and (d) such activities shall be concluded by 9:00 p.m.

**2.9.3 Commercial Recreational Uses:** Notwithstanding any other provision of this Easement, no Commercial recreational use except for *de minimis* commercial recreational uses which are permissible from time to time under the Code and the Treasury Regulations, shall be allowed on the Property.

**2.10 WETLANDS.** Water features on the property include the NWI Wetlands described in Recital # 12 herein (also referred to herein as the "Wetlands"), which Wetlands are also shown on the attached exhibit ("Exhibit A") and also shown on the map titled "Farmland Soils and Wetlands" included in Appendix E of the Baseline Documentation Report. The following Restrictions apply.

**2.10.1 Wetlands Restrictions:** Within the Wetlands there shall be no construction of Buildings, Structures, Roads, or other impervious surfaces, no storage of compost, manure, fertilizers, chemicals, machinery or equipment, and no cultivation, dumping, filling or damaging of Wetlands, plowing, or other earth disturbing activity conducted, except as may be reasonably necessary for:



(a) Wetland or stream bank restoration and erosion control pursuant to a government permit,

(b) fencing along or within the Wetlands,

(c) removal of individual trees presenting a danger to persons or property,

(d) removal of diseased, dead, non-native trees, shrubs or plants, or invasive trees, shrubs or plants (as defined in the Virginia Department of Conservation and Recreation's publication: "Invasive Alien Plant Species of Virginia" or other, independent authoritative source),

(e) creation and maintenance of foot or horse trails with unimproved surfaces, and

(f) maintenance and/ or construction of Wetlands crossings for vehicles, farm machinery, pedestrians or livestock (including horses), which crossings shall not obstruct water flow and shall conform to the standards for such crossings as developed by the Natural Resources Conservation Service. The total number of such Wetlands crossings on the Property shall not exceed four (4) without the Prior Written Approval of the Grantee.

**2.10.2 Required Vegetation:** Portions of the Wetland areas that are vegetated (e.g. not "ponded") shall be composed of vegetative cover that includes, but is not limited to, forest, shrubs, or warm-season grasses. Lawns or grazed pastures shall not constitute vegetative cover for the purposes of satisfying this requirement. The Wetlands shall not be mowed.

**2.10.3 Livestock Prohibited:** Livestock, including horses, are prohibited from grazing in, and shall be fenced out of, the Wetlands. Any relocation of existing fencing or installation of new fencing, which may be a hotwire fence, required to comply with this Section, shall be constructed in advance of introduction of livestock to the areas of the Property where such Wetlands are located, or if livestock already have access to such areas, within two years of the Effective Date. Such fencing to protect Wetlands shall be placed no less than ten (10) feet from the edge of any mapped Wetlands, as shown on Exhibit A.

**2.10.4 Reserved Rights.** The prohibitions in 2.10.1 through 3 above shall not preclude the repair or replacement of any Building or Structures existing as of the Effective Date or the construction or maintenance of reasonably sized fencing, mailboxes, gate posts, or permitted signs, provided said activities do not adversely affect, are not inconsistent with, and do not conflict with, diminish, impair, or interfere with the Conservation Purpose or Conservation Values. Nothing contained herein shall prohibit or prevent the Grantor from undertaking efforts to restore or create additional wetlands upon the Property.

## **2.11 MANAGEMENT OF FOREST.**

**2.11.1 Stewardship Plan Requirement:** Grantor shall have in place a current, written Virginia Forest Stewardship Plan prior to the commencement of timber harvesting or other significant forest management activities. The forest stewardship plan shall include a provision that all forest management and harvesting activities be developed by, or in consultation with, the



Virginia Department of Forestry, or be consistent with Virginia's Forestry Best Management Practices for Water Quality Guide. The primary purposes of the forest stewardship plan may include, but need not be limited to, maintenance of the health and biological diversity of the forest, as well as management of woodlands to improve wildlife habitat, forest stand management to maintain the health of the forest, protection of uncommon, rare or unique biological communities or natural areas, management of timber for income, and soil and water conservation.

**2.11.2 Forest Management-Commercial:** Clear-cutting is prohibited. Best Management Practices, as defined in by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any forest management, timber harvesting, or land clearing activity is undertaken. The Grantor shall notify the Grantee, in writing, no later than thirty (30) days prior to the start of any such activity, and again within seven (7) days of its completion. All forestry activities shall comply with the forest stewardship plan and shall be carried out so as to preserve the Conservation Values of the property. To the extent that a Property falls under this paragraph solely because its forest is used for Commercial purposes, the term "Commercial purposes" and the provisions of Section 2.11.1 above shall not be construed so as to prohibit the harvest of forest products for personal use by Grantor on the Property, such as lumber, firewood, and raw material for small-scale home industry, nor of the incidental sale of forest products harvested in the exercise of Grantor's non-Commercial cutting rights.

**2.11.3 Forest Management-Non-Commercial:** Grantor reserves the right to manage forested land by selective cutting, pruning, and planting for non-Commercial purposes, which may include forest management for the creation of trails and recreational areas, for safety of users of the Property, for control of active fire, and prevention of fire and disease, for prevention or removal of invasive species (as defined in the Virginia Department of Conservation and Recreation's publication: "Invasive Alien Plant Species of Virginia," or other, independent, authoritative source), for restoration or enhancement of wildlife habitat and riparian areas (as to riparian areas, subject to the Restrictions applicable to Wetlands addressed in Section 2.10 of this Easement), for household gardening and landscaping in the Building Envelope or the general maintenance of the high scenic character and healthy wildlife habitat of the Property. The prohibition against Commercial purposes should not be construed to prohibit the harvest of forest products for personal use by Grantor on the Property, such as lumber, firewood, and raw material for small-scale home industry, nor the incidental sale of forest products harvested in the exercise of Grantor's non-Commercial cutting rights. No more than one (1) new opening or clearing in the forest, which opening or clearing shall not be greater than one thousand (1,000) square feet, is permitted for non-Commercial purposes, without the Grantee's Prior Written Approval. Additional opening or clearing shall be permitted by Grantee only as necessary to safeguard the health of forested acreage, to prevent or mitigate greater harm to the Conservation Values of the Property or to enhance wildlife habitat.

**2.12 LANDS IN AGRICULTURAL USE.** As long as the Property is used for Agricultural purposes, it shall have, and shall be managed in accord with, a written Farm Conservation Plan, which shall be prepared for the Property by, or in consultation with, the Culpeper Soil and Water Conservation District or Natural Resources Conservation Service representative, within six (6) months of the date hereof. The Farm Conservation Plan shall stipulate the use of Best Management

Practices for water quality protection, be approved in advance by the Grantee, and may, from time to time, be modified or amended by mutual agreement of the Grantor and Grantee, provided that said Farm Conservation Plan (or any modification of amendment thereof) shall not adversely affect, be inconsistent with, conflict with, diminish, impair, or interfere with the Conservation Purpose or Conservation Values protected by this Conservation Easement.

**2.13 TRASH.** Accumulation or dumping of trash, refuse, junk, or toxic materials is not permitted on the Property. This Restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts incidental to operation of the farm on the Property, or use of other such practices that do not adversely affect, are not inconsistent with, and do not conflict with, diminish, impair or interfere with the Conservation Values.

**2.14 SIGNS.** No billboards, signs, or other advertisements that are visible from outside the Property are permitted on or over the Property except to: (i) state the name and/or address of the owners, including property name, (ii) advertise the sale or lease of the Property, (iii) advertise the sale of goods or services produced incidentally to a permitted use of the Property, (iv) advertise the conduct of permitted activities, (v) provide notice necessary for the protection of the Property, (vi) give directions to visitors, (vii) recognize historic status or participation in a conservation program, or (viii) advertise political candidates or parties. No such sign shall exceed nine square feet in size or the applicable restriction under either of the Counties' zoning ordinances, whichever is less.

**2.15 CHANGES IN TOPOGRAPHY; MINING, GRADING, BLASTING, FILLING, EARTH REMOVAL.** Mining by surface mining or any other method, dredging on or from the Property, or drilling for oil and gas on or under the Property is prohibited. Grading, blasting, filling or earth moving or removal shall not alter the topography of the Property except for wetlands or stream bank restoration, both of which require Prior Written Approval from Grantee, and all requisite government permits and approvals, or for erosion and sediment control pursuant to a government-required erosion and sediment control plan, or as required in the construction of permitted Buildings, Structures, Roads, and Utilities or for farm ponds. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in such construction. Generally accepted Agricultural activities shall not constitute any such activities. Notwithstanding the foregoing, no grading, blasting, filling or earth moving or removal is permitted on the Property if it will adversely affect, be inconsistent with, conflict with, diminish, impair or interfere with the Conservation Values protected by this Easement, or if it may impact historic, cultural, or natural heritage resources. No grading or any other earth disturbance (other than tilling for raising crops) is permitted in the aforementioned CL Area.



**ARTICLE III**  
**ENFORCEMENT**

**3.1 ENTRY/RIGHT OF INSPECTION.** Representatives of the Grantee may enter the Property at reasonable times for purposes of inspection (including the taking of photographs) and enforcement of the Restrictions and the Terms and Conditions of this Easement after reasonable notice to the Grantor or the Grantor's representative, provided however, that in the event of an emergency, as defined solely by the Grantee, Grantor consents to allow entrance onto the Property to inspect, evaluate, prevent, terminate or mitigate a potential violation of these Restrictions or Terms and Conditions with notice to the Grantor or Grantor's representative being given at the earliest practicable time. Reasonable notice for non-emergencies shall be considered as not exceeding fifteen (15) days.

**3.2 ACTION TO ENFORCE.** Grantee has the right to bring an action at law or in equity in a court of competent jurisdiction to prevent or stop any violation of the Restrictions and the Terms and Conditions of this Easement or any use that adversely affects, is inconsistent with, conflicts with, diminishes, impairs, or interferes with the Conservation Purpose or Conservation Values. This right specifically includes: (i) the right of entry onto the Property for the purposes of evaluating the extent and nature of any potential violation; (ii) the right to require restoration of the Property to its condition on the Effective Date (except for any change in such condition that is consistent with the provisions of this Easement), including the removal of any offending Buildings or Structures; (iii) the right to require restoration of the Property to a condition of compliance with the Restrictions and the Terms and Conditions of this Easement; (iv) the right to recover any damages, including monetary damages, arising from non-compliance, the loss of Conservation Values, or the inability to return the Property to its condition on the Effective Date; and (v) the right to enjoin non-compliance by *ex parte* temporary or permanent injunction. These remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. If the court determines that the Grantor failed to comply with this Easement, the Grantor shall pay to the Grantee for any costs of enforcement, including costs of investigating, preventing, stopping and correcting the non-compliance, restoration costs, court costs and attorney's fees, in addition to any other payments ordered by such court. The Grantee shall not, by any failure to discover non-compliance or any delay to act, or by any prior forbearance to exercise rights under this Easement, waive any Restrictions or Terms and Conditions or forfeit the right to take action as may be necessary to ensure compliance with this Easement and the Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure or forbearance by the Grantee.

**ARTICLE IV**  
**DOCUMENTATION**

The Conservation Values of the Property and its condition, use, character and state of improvement are described in a Baseline Documentation Report, incorporated herein by reference. The Baseline Documentation Report was signed by the Grantor, and made available to and signed by the Grantee, prior to the execution of this Easement, and will be maintained on file in the offices of the Grantee. Grantor and Grantee have copies of the Baseline Documentation Report, and



acknowledge that the Baseline Documentation Report is an accurate representation of the condition of the Property as of the date of this Easement. The Baseline Documentation Report may be used by Grantee to determine compliance with and enforcement of the Restrictions and Terms and Conditions of this Easement, including specifically to establish that a change in the condition, use, character or state of improvement of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition, use, character or state of improvement of the Property as of the date of this Easement.

## **ARTICLE V** **GENERAL PROVISIONS**

**5.1 DURATION.** This Easement shall be perpetual. It is an easement in gross which runs with the land as an incorporeal interest in the Property. The Restrictions and the Terms and Conditions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors in interest, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

**5.2. NO PUBLIC ACCESS.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Grantor retains the exclusive right to such access and use, subject to the terms hereof.

**5.3 TITLE WARRANTY.** Grantor covenants and warrants that Grantor has good and marketable title to the Property, free and clear of all encumbrances (except utility and access easements of record), including, but not limited to, any mortgages, judgments or other liens not subordinated to this Easement, and hereby covenants to defend same and hold Grantee harmless against any and all claims that may be made against it. The holders of all liens or other encumbrances arising from borrowing have subordinated their interests in the Property to the operation and effect of this Easement, by their execution hereof.

**5.4 INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property which is otherwise prohibited by federal, state, or local law or regulation. 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. Specifically, neither the Property, nor any portion thereof, has been or shall be dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; dedicated as open space in, or as part of, any real estate development plan; or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits. No development rights that have been encumbered or extinguished by this Easement shall be transferred to or counted towards development of any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.

**5.5 CONSTRUCTION.** Notwithstanding any general rule of construction to the contrary, this Easement shall be liberally construed in favor of the Grantee to effect the purpose of this Easement— to retain, preserve and protect in the public interest in perpetuity the Conservation Values of the Property— by restricting the use of the Property as set forth, herein, and by permitting only those activities on, uses or development of the Property that will not adversely affect, are not inconsistent with, and do not conflict with, diminish, impair or interfere with the Conservation Values.

If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement and in favor of the Restrictions and the Terms and Conditions protecting its Conservation Values shall be favored over the free use of the Property. Grantor intends that the grant of this Easement qualify as a “qualified conservation contribution” as that term is defined in Section 170(h)(1) of the Code, and the Restrictions and other provisions of this Easement shall be, where possible, construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.

**5.6 NOTICES TO GRANTEE.**

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

**5.6.2 Exercise of Retained Rights.** The Grantor shall notify the Grantee in writing prior to exercising any reserved right or undertaking any activity that may have an adverse impact on the Conservation Values protected by this Easement or that may adversely affect, be inconsistent with, conflict with, diminish, impair or interfere with the Conservation Purpose or Conservation Values.

**5.6.3 Time Frame of Notice.** In any case where the terms of this Easement require notice to the Grantee, Grantor shall provide written notice to the Grantee at least 60 days prior to commencing the activity or exercising the right requiring the notice.

**5.6.4 Content of Notice.** Notices and requests for Grantee’s approval must describe the situation or activity in question in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Conservation Values, Conservation Purpose, and this Easement. Any notices or requests for approval required by this Easement shall be in writing and shall be personally delivered or sent by certified mail, to Grantor or Grantee respectively, to the Grantor at the address of the Property and to the Grantee at the address of its principal office as registered with the Commonwealth of Virginia, or to such addresses as the parties may designate by written notice.

**5.6.5 Validity.** The failure of the Grantor or Grantee to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

**5.7 PRIOR WRITTEN APPROVAL.**

**5.7.1 Prior Written Approvals.** In any case where the terms of this Easement require approval of the Grantee, Grantor shall make a written request for such approval to the Grantee, herein “Prior Written Approval”. Unless otherwise provided for in the Easement, the Grantee shall



have sixty (60) days from the receipt of a request for Prior Written Approval, or such longer period as the parties may agree in writing, within which to review such request and grant approval. Failure by Grantee to respond within sixty (60) days shall constitute denial. In considering whether or not to grant any Prior Written Approval to the Grantor, the Grantee shall determine in each instance whether the proposed activity on, use or development of the Property (including the size, setting or height of the proposed Building or Structure) will not adversely affect, is not inconsistent with, and does not conflict with, diminish, impair or interfere with the Conservation Values. Should the Grantee determine that the granting of Prior Written Approval would authorize an activity, use or development that would adversely affect, be inconsistent with, conflict with, diminish, impair or interfere with the Conservation Values, the Grantee may, in its discretion, refuse to grant such approval.

**5.7.2 Impermissible Private Benefit.** Any Prior Written Approval shall not result in impermissible private benefit to the Grantor.

## **5.8 PROPERTY RIGHT OF GRANTEE; EXTINGUISHMENT.**

**5.8.1 Property Right.** The Grantor agrees that the donation of this Easement gives rise to a property right, immediately vested in the Grantee, with fair market value that is at least equal to the proportionate value that the Easement on the Effective Date bears to the value of the Property as a whole at that time, and that proportionate value of the Grantee's property rights shall remain constant.

**5.8.2 Extinguishment.** If, notwithstanding subparagraph 5.1, an attempt is made to terminate or extinguish this Easement, it can be terminated or extinguished only through a judicial proceeding, and only if in compliance with Section 170(h) of the Code and applicable Treasury Regulations. In such case, on a subsequent sale, exchange, or involuntary conversion of the Property, Grantee shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Easement as determined in Section 5.8.1. The Grantee must use any such proceeds in a manner consistent with the Conservation Purposes of this Easement donation.

**5.9 HAZARDOUS SUBSTANCES OR WASTES - NO CONTROL; WARRANTY; INDEMNITY.** Nothing in this Easement shall be construed as giving rise to any right or ability in the Grantee to exercise physical or management control over the day-to-day operations of the Property, or any of the Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) or any corresponding Commonwealth of Virginia statute or regulation or Rappahannock County or Culpeper County ordinance. Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, without regard to its merit, liability or expense, including reasonable attorneys' fees, arising from or with respect to any release of hazardous substance or waste or violation of environmental laws.

**5.10 TAXATION.** The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an



appraisal from a qualified appraiser as defined in Treasury Regulations (see §1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Land Trust of Virginia, Inc. makes no express or implied warranties regarding availability of tax benefits to the Grantor from donation of this Easement, nor whether any such tax benefits might be transferable, nor whether there will be any market for any tax benefits which might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.

**5.11 SUCCESSORS IN INTEREST.** This Easement, its grant, and its Restrictions and its Terms and Conditions, shall be binding upon, and inure to the benefit of, the Grantee and its successors and assigns in interest to this Easement, and the Grantor and its successors and assigns in interest to the Property and any portion thereof or interest therein (including leasehold interests), and shall continue as a servitude running in perpetuity with the Property.

**5.12 INCLUSION OF TERMS IN SUBSEQUENT DEEDS.** The Grantor agrees that this Easement will be referenced by deed book and page number, or instrument number, in any subsequent deed or other legal instrument by which the Grantor conveys any interest in the Property.

**5.13 MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.

**5.14 ASSIGNMENT BY GRANTEE.** Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (1) the Conservation Values are to be protected, and all Restrictions and Terms and Conditions 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 Code and the applicable Treasury Regulations, or any successor provisions to either then applicable.

**5.15 AMENDMENT.** Grantee and Grantor may amend this Easement to enhance or increase protection of the Property's Conservation Values, or add additional land to the Property by an amended deed of easement, provided that no amendment shall: (i) affect this Easement's perpetual duration or remove from the Easement any land made subject to this Easement on the Effective Date; (ii) adversely affect, be inconsistent with, or conflict, diminish, impair or interfere with the Conservation Values; (iii) reduce the protection of the Conservation Values; (iv) affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land"; (v) affect the status of Grantee as a "qualified organization" or "eligible donee"; or (vi) create an impermissible private benefit or private inurement in violation of federal tax law. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded in the Clerk's Office of the Circuit Court of each of the Counties where the Property is located. Grantee reserves the sole and absolute discretion to approve or deny requests for amendments.



**5.16 VESTING OF CONSERVATION EASEMENT.** Should the Grantee cease to exist, or not qualify as a “qualified organization” under Section 170(h) of the Code, or any successor provision then applicable, or otherwise cease to be eligible to hold this Easement directly under the laws of the Commonwealth of Virginia, this Easement and all rights of enforcement shall vest in the Virginia Outdoors Foundation, unless the Easement has been assigned prior to cessation to another holder qualified according to the provisions of the laws of the Commonwealth of Virginia. If the qualifying holding entity or the Virginia Outdoors Foundation, or the successors or assigns thereof, should cease to exist, or should not qualify as a “qualified organization” under Section 170(h) of the Code or any successor provision then applicable, or should otherwise cease to be eligible to receive this Easement directly under the laws of the Commonwealth of Virginia, a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed upon the Grantee by this Easement.

**5.17 LIMITATION ON EFFECT OF INVALIDITY OR UNENFORCEABILITY.** The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any other provision of this Easement, or of any ancillary or supplementary agreement relating to this Easement.

**5.18 APPLICABLE LAW.** This Easement shall be interpreted under the laws of the Commonwealth of Virginia and the United States, except as limited or changed by Subsection 5.5 and the Restrictions and Terms and Conditions of this Easement.

**5.19 ENTIRE AGREEMENT.** This Easement sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement.

**5.20 ACCEPTANCE.** Acceptance by the Grantee of this conveyance is authorized by § 10.1-1010 of the CODE OF VIRGINIA of 1950 as amended and is evidenced by the signature of its authorized representative below.

**5.21 EFFECTIVE DATE/RECORDING.** This Easement shall be effective upon execution by both the Grantor and Grantee and when it has been recorded in both the Clerk’s Office of the Circuit Court of Rappahannock County, Virginia and recorded in the Clerk’s Office of the Circuit Court of Culpeper County (herein the “Effective Date”). The Grantee may re-record this Easement at any time as may be required to preserve its rights hereunder.

**5.22 COST RECOVERY.** Grantee reserves the right to recover its costs incurred in responding to requests initiated by Grantor involving matters such as consideration of the granting of Prior Written Approval, interpretation of the Restrictions or Terms and Conditions of this Easement, boundary line adjustments, easement amendments, project reviews for ecosystem services, preparation of reports to facilitate sales, and access or utility easements over the Property. Such cost recovery charges shall be determined and periodically adjusted by Grantee, as set forth in a published fee schedule. In the event that the Grantee is joined in litigation as a necessary

party, the Grantee may employ an attorney to protect its interests, and a reasonable fee to such attorney and any costs and expenses of such litigation shall be paid by the Grantor.

WITNESS the following signatures and seals.

[Counterpart signature pages follow]



[Counterpart signature page 1 of 2 of deed of conservation easement]

IN WITNESS WHEREOF, Grantor has caused this Deed of Gift of Conservation Easement to be executed in its name and on its behalf by its duly authorized Manager.

HENSELSTONE ESTATES, L.L.C.,  
a Virginia limited liability company

By: Berkley Von Feilitzsch, Manager (SEAL)  
Berkley Von Feilitzsch, Manager

COMMONWEALTH OF STATE of NC  
CITY/COUNTY OF FORSYTH, to-wit:

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of October, 2019, by Berkley Von Feilitzsch, Manager of Henselstone Estates, L.L.C., a Virginia limited liability company, on behalf of the LLC.

L. Matthew Lee  
Notary Public

My Commission expires: OCTOBER 14, 2024  
Registration Number: 201929000078

L. Matthew Lee  
Notary Public - North Carolina  
Gulford County  
My Commission Expires October 14, 2024

[Counterpart signature page 2 of 2 of deed of conservation easement]

Accepted:

LAND TRUST OF VIRGINIA, INC.  
a Virginia nonstock corporation

By: Christopher C. Dematatis (SEAL)

Title: Chairman

COMMONWEALTH OF Virginia  
CITY/COUNTY OF London, to-wit:

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of  
October, 2019, by Christopher C. Dematatis, Chairman of Land  
Trust of Virginia, Inc., a Virginia nonstock corporation, on behalf of the corporation.

[Signature]  
Notary Public

My Commission expires: 12/31/21  
Registration Number: 7143052



## SCHEDULE A

### Real Estate Description

All those certain tracts or parcels of land, together with all improvements thereon, and all rights, privileges, easements, appurtenances and rights of way thereunto belonging or in anywise appertaining, containing in the aggregate approximately 222.940 acres, said property being situate and lying mostly in Jackson Magisterial District, Rappahannock County, Virginia, and partly in Culpeper County, Virginia, and being described by metes and bounds and more particularly shown on a plat thereof according to a survey by James G. Butler, Jr., & Associates, P.C., dated October 1, 1979, attached to and recorded with that deed of record in the Clerk's Office of the Circuit Court of Rappahannock County, Virginia, in Deed Book 1797-1, at page 467, and in the Clerk's Office of the Circuit Court of Culpeper County, Virginia, in Deed Book 291, page 670.

The real estate herein described is the identical real estate acquired by Henselstone Estates, L.L.C., a Virginia limited liability company, by deed dated December 30, 1998, from Bettina Freifrau von Feilitzsch, said deed being of record in the Clerk's Office of the Circuit Court of Rappahannock County, Virginia, as Instrument Number 99-250. The aforesaid deed from Bettina Freifrau von Feilitzsch was not recorded in the Clerk's Office of the Circuit Court of Culpeper County, Virginia, contemporaneously with its recordation in the Clerk's Office of the Circuit Court of Rappahannock County, Virginia, as the original of the deed was lost or mislaid prior to its recordation in the Clerk's Office of the Circuit Court of Culpeper County, Virginia. Pursuant to Section 55-109 of the Code of Virginia, 1950, as amended, a copy of such deed certified by the Clerk's Office of the Circuit Court of Rappahannock County, Virginia, along with the affidavit of Heribert von Feilitzsch was recorded in the Clerk's Office of the Circuit Court of Culpeper County, Virginia, as Instrument Number CLR190004966.

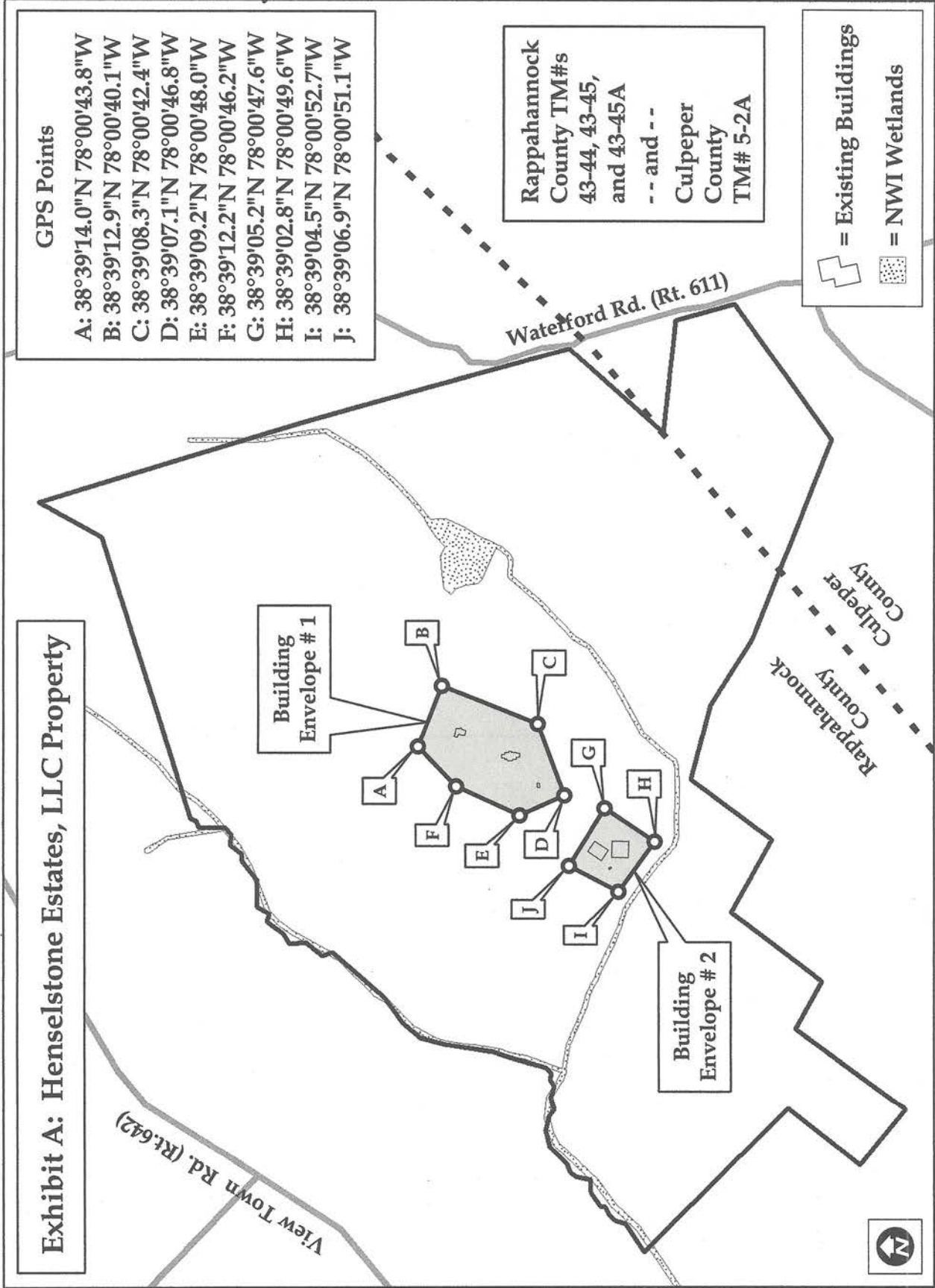
**Exhibit A: Henselstone Estates, LLC Property**

**GPS Points**

- A: 38°39'14.0"N 78°00'43.8"W
- B: 38°39'12.9"N 78°00'40.1"W
- C: 38°39'08.3"N 78°00'42.4"W
- D: 38°39'07.1"N 78°00'46.8"W
- E: 38°39'09.2"N 78°00'48.0"W
- F: 38°39'12.2"N 78°00'46.2"W
- G: 38°39'05.2"N 78°00'47.6"W
- H: 38°39'02.8"N 78°00'49.6"W
- I: 38°39'04.5"N 78°00'52.7"W
- J: 38°39'06.9"N 78°00'51.1"W

Rappahannock  
County TM#s  
43-44, 43-45,  
and 43-45A  
-- and --  
Culpeper  
County  
TM# 5-2A

 = Existing Buildings  
 = NWI Wetlands



Building Envelope # 1

Building Envelope # 2

View Town Rd. (Rt.642)

Waterford Rd. (Rt. 611)

Rappahannock County  
Culpeper County



19-948-27

Henselstone Estates LLC | Land Trust of Virginia Inc

INSTRUMENT 190000948  
RECORDED IN THE CLERK'S OFFICE OF  
RAPPAHANNOCK CIRCUIT COURT ON  
OCTOBER 31, 2019 AT 09:27 AM  
MARGARET R. RALPH, CLERK  
RECORDED BY: DWV *dwv*

INSTRUMENT 190005860  
RECORDED IN THE CLERK'S OFFICE OF  
CULPEPER CIRCUIT COURT ON  
OCTOBER 31, 2019 AT 10:19 AM  
JANICE J. CORBIN, CLERK  
RECORDED BY: SLR