

DEED OF CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this [ENTER DAY] day of [ENTER MONTH], [ENTER YEAR], by [ENTER GRANTOR NAMES AND ADDRESSES] (“Grantors”) in favor of [ENTER HOLDER’S FULL LEGAL NAME AND ADDRESS] (“Holder”).

RECITALS

WHEREAS, Grantors are the co-owners in fee simple of real property located in [ENTER COUNTY NAME] County, Virginia, as described in Deed Book [ENTER DEED BOOK NUMBER], Page [ENTER PAGE NUMBER], [IF MULTIPLE PROPERTIES ARE REQUIRED TO ACCOMMODATE ACCESS, INCLUDE ADDITIONAL LANGUAGE FOR EACH PROPERTY] in [ENTER COUNTY OFFICE NAME], [IF THE ACCESS PROPERTY SPANS MULTIPLE COUNTIES, INCLUDE THE PRIOR INFORMATION FOR EACH PROPERTY BY COUNTY] and as more particularly described in the legal description[(S)] attached hereto in Exhibit A and shown on the [REFERENCE A PLATTED SURVEY, APPROVED DRAWING, AND/OR SITE PLAN] attached hereto as Exhibit B, both of which are incorporated herein by reference (“Access Property”);

WHEREAS, Grantors are the co-owners in fee simple of the real property depicted on the [ENTER REFERENCE TO A PLATTED SURVEY, APPROVED DRAWING, AND/OR SITE PLAN] attached hereto as Exhibit C and incorporated herein by reference (“Mitigation Property”);

WHEREAS, Sections 401 and 404 of the Clean Water Act require compensatory mitigation when impacts from the discharge of dredged and/or fill material into jurisdictional waters of the United States are unavoidable;

WHEREAS, Holder is a [STATE WHETHER HOLDER IS EITHER (A) A GOVERNMENTAL BODY EMPOWERED TO HOLD AN INTEREST IN REAL PROPERTY UNDER THE LAWS OF VIRGINIA OR THE UNITED STATES, OR (B) A CHARITABLE CORPORATION, CHARITABLE ASSOCIATION, OR CHARITABLE TRUST, AND STATE THE HOLDER’S STATE OF ORGANIZATION OR FORMATION], the purposes and/or powers of which include [DESCRIBE HOLDER’S MISSION OR PURPOSE, I.E. RETAINING OR PROTECTING THE NATURAL, SCENIC, OR OPEN-SPACE VALUES OF REAL PROPERTY; PROTECTING NATURAL RESOURCES; MAINTAINING OR ENHANCING AIR OR WATER QUALITY; ETC.], that is authorized to hold this Conservation Easement pursuant to Virginia Code Section 55.1-339 and the laws of the United States and has agreed to accept this grant.

WHEREAS, Grantors have agreed to implement a mitigation plan dated [ENTER DATE] (“Mitigation Plan”), attached hereto as Exhibit D and incorporated into this Conservation Easement by reference, a copy of which shall be kept on file at the offices of the Corps, the State, Grantors, and Holder; and

WHEREAS, Grantors have agreed to make the Mitigation Property subject to the restrictions, prohibitions, and obligations described in this Conservation Easement as compensatory mitigation under Federal and State law for and in consideration of [ENTER “DEPARTMENT OF THE ARMY PERMIT NO. NAO-0000-00000” OR “VERIFICATION LETTER NO. NAO-0000-00000” OR OTHER AUTHORIZATION NO.] (“Authorization”) issued by the U.S. Army Corps of Engineers, [ENTER NAME OF DISTRICT OFFICE] District (“Corps”) pursuant to

Section 404 of the Clean Water Act (33 U.S.C. § 1344) and/or Section 10 of the Rivers and Harbors Act (33 U.S.C. § 403), and Water Quality Certification No. [ADD WATER QUALITY CERTIFICATION NUMBER ASSOCIATED WITH AUTHORIZATION (I.E. 00-00-0)] (“Certification”) issued by the Virginia Department of Environmental Quality (“VDEQ”), in accordance with Section 401 of the Clean Water Act (33 U.S.C. § 1341) and Section 260 of the Virginia Administrative Code and in recognition of the continuing benefit created by the Mitigation Property, and for the protection of waters of the United States and scenic, resource, environmental, and other conservation values;

NOW THEREFORE, in consideration of the benefits to be derived and as required compensatory mitigation by the Authorization and Certification, and pursuant to Virginia Code Section 55.1-339, Grantors for themselves and on behalf of their successors, heirs, assigns, executors, administrators, legal representatives, lessees and transferees, including, without limitation, any owners, occupiers, and/or users, firms, associations, corporations and/or governmental entities having or hereafter acquiring any right, title, or interest in the Access Property and/or Mitigation Property or any part thereof (hereafter “Grantors”) hereby grant and convey to Holder a Conservation Easement in perpetuity over the Mitigation Property consisting of the following:

1. Purpose. The Purpose of this Conservation Easement is to restrict the current and future use of the Mitigation Property in perpetuity and as contemplated by the Mitigation Plan, and to impose affirmative obligations in order to retain and protect aquatic resource functions and values, scenic, resource, environmental, and other conservation values, and conservation functions and ecological services.

2. Covenants Running with the Land. The Mitigation Property is hereby bound by and held, and shall be transferred, sold, conveyed, leased, improved, hypothecated, occupied or otherwise disposed of and used, subject to all the restrictive covenants, rights of access and entry provisions, property transfer provisions, and all other provisions set out in this Conservation Easement and any amendments thereto, which shall be perpetual and run with the land and be binding on Grantors. The terms and conditions of this Conservation Easement shall be both explicitly and implicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or part of the Mitigation Property. Any such transfer, conveyance or encumbrance shall set forth the terms and conditions of this Conservation Easement by reference to this document and its recorded location in accordance with section 12.

3. Restrictions/Prohibitions. Any activity on, or use of, the Mitigation Property, which is or may become inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities are expressly prohibited except in accordance with the Mitigation Plan or as provided for in the Reserved Rights:

3.1 General/Topography. There shall be no filling, flooding, cultivating, excavating, earthmoving, grading, quarrying, mining, or drilling; no removal of natural materials; no dumping of materials; and no alteration of topography in any manner.

3.2 Waters and Wetlands. There shall be no draining, ditching, diking, dredging, channelizing, damming, pumping, or impounding; changing the grade, elevation, or cross-sectional topography; impairing or diverting the flow or circulation of waters; altering the duration,

frequency, volume, velocity, or discharge of flow; or reducing the reach without the prior approval by the Holder, Corps, and State.

3.3 Trees/Vegetation. There shall be no clearing, burning, cutting, pruning, mowing, or destroying of trees shrubs, herbaceous, or other vegetation without prior approval by the Holder, Corps, and State.

3.4 Non-Native/Exotic Species. There shall be no introduction of non-native, exotic, or invasive species

3.5 Uses. There shall be no agricultural, silviculture, commercial, residential, or industrial activity undertaken or allowed, including but not limited to grazing and mining. There shall be no use of horseback riding, off road vehicles, 4-wheel drive vehicles, all-terrain vehicles, snowmobiles, or other types of motorized or non-motorized vehicles except on existing roads.

3.6 Structures. There shall be no construction, erection, or placement of buildings, billboards, signs, or any other temporary or permanent structure, nor any additions to existing structures without prior approval by the Holder, Corps, and State. [IF THERE ARE EXISTING STRUCTURES, INCLUDE THE FOLLOWING SENTENCE: The foregoing shall not preclude maintenance of the existing [IDENTIFY STRUCTURE(S)] depicted in **Exhibit** [ENTER EXHIBIT LETTER]. For purposes of this section, maintenance shall mean the repair, rehabilitation, or replacement of a previously identified, authorized, and currently serviceable structure provided that the structure is not put to any use differing from the use previously identified, authorized, and currently serviceable.].

3.7 Roads. There shall be no construction or building of new roads, trails, paths, or other rights of way without prior approval by the Holder, Corps, and State. There shall be no expansion, modification, realignment, or improvement of existing roads, trails, paths, or other rights of way that alters the footprint of said existing roads, trails, paths, or other rights of way without prior approval by the Holder, Corps, and State.

3.8 Utilities. There shall be no construction or placement of utility lines or facilities without prior approval of the Corps and State. There shall be no grants or conveyances of new permanent or temporary easements, licenses, or other rights to use or control the Mitigation Property in any way without prior approval of the Corps and State. [IF THERE ARE EXISTING UTILITIES, INCLUDE THE FOLLOWING SENTENCE: For existing utilities [IDENTIFY UTILITIES] depicted in **Exhibit** [enter exhibit letter], maintenance may occur after providing sixty (60) calendar day prior notice to the Holder, Corps, and State of the activity and any necessary rehabilitation work. For purposes of this section, maintenance shall mean the repair, rehabilitation, or replacement of a previously identified, authorized, and currently serviceable utility provided that the utility is not put to any use differing from the use previously identified, authorized, and currently serviceable.]

3.9 Waste. There shall be no placement of refuse, wastes, sewage, dredged spoil, solid waste, incinerator residue, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, salt, sand, cellar dirt, or industrial, municipal, or agricultural waste, or any other pollutant.

3.10 Pest Control. There shall be no application of pesticides or biological controls, including but not limited to insecticides, fungicides, rodenticides and herbicides, without prior approval from the Corps and State.

3.11 Oil, Gas, Mineral, and Timber Interests. There shall be no severance of any rights or interests in the Mitigation Property, whether by conveyance, grant, lease, encumbrance, adverse possession, or other method of severance, including but not limited to coal, mineral, oil, gas, quarry, mining, and timber rights or interests. Any purported severance of rights or interests in the Mitigation Property or the Access Property shall be null and void and have no effect.

3.12 Oil, Gas, and Mineral Extraction. There shall be no exploration or searching for, nor development, production, or transportation of coal, oil, gas, or other mineral substances, whether part of the mineral estate or the surface estate, on, from, under, within, or across the Mitigation Property.

4. Grantors' and Holder's Reserved Rights. Notwithstanding the foregoing Restrictions/Prohibitions, Grantors and Holder may engage in all other activities on, or use of, the Mitigation Property consistent with the Mitigation Plan and this Conservation Easement, provided that written notice is given to the Corps and the State at least sixty (60) calendar days prior to engaging in such activities or uses.

4.1 Wildlife and Forestry Management. Grantors and Holder may naturally manage, preserve, and improve wildlife resources. Grantors may remove or trim vegetation hazardous to persons or property, including the removal of invasive or non-native species, and harvest and manage timber downed or damaged due to natural forces, such as fire, storms, insects, or infectious organisms, to the extent necessary to protect the Mitigation Property and the environment. Such activities shall be carried out only after approval by the Corps and State.

4.2 Landscape Management. Grantors and Holder may undertake landscaping necessary to prevent severe erosion or damage, or significant detriment to reserved rights, to the extent such landscaping is consistent with the Mitigation Plan. Such management activities may be carried out on condition that the Corps and State are notified at least thirty (30) calendar days before such activity.

4.3 Recreation. Grantors may engage in outdoor, non-commercial recreational activities, including hunting, fishing, and similar recreational or educational activities, excluding planting and burning. Such activities are only authorized to the extent that, singularly or cumulatively, they have no more than a nominal negative impact. No prior notice to the Holder, Corps, or State is required.

4.4 Road Maintenance. Grantors may maintain existing roads, trails, or other rights of way, provided said activities are performed pursuant to the terms of an existing permanent easement. Maintenance shall be limited to: removal or pruning of dead or hazardous vegetation; application of permeable materials (e.g., sand, gravel) necessary to correct or impede erosion; grading; replacement of culverts, water control structures, or bridges; and maintenance of roadside ditches.

4.5 Signs. Grantors and Holder may post signs that convey information about the Mitigation Property, including “no trespassing” signs, “no mowing” signs, temporary signs indicating the Mitigation Property is for sale, educational signs identifying the trees, vegetation, wetlands or conservation ecological services of the Mitigation Property, and signs identifying the owner, and other signs as stipulated in the Mitigation Plan.

4.6 Mitigation Measures. Grantors and Holder may undertake restoration and mitigation measures required under the Mitigation Plan or otherwise required under law.

5. Grantors’ Duties. Grantors shall undertake all reasonable actions to prevent potential unlawful entry and trespass by persons and entities whose activities may degrade or harm the aquatic resource functions and values, scenic, resource, environmental, and other conservation values, and conservation functions and ecological services of the Mitigation Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantors shall undertake all necessary actions to perfect and defend Holder’s rights under this Conservation Easement.

6. Holder’s Duties. Holder shall act in good faith to uphold this Conservation Easement and to protect and retain the aquatic resource functions and values, scenic, resource, environmental, and other conservation values, and conservation functions and ecological services of the Mitigation Property in perpetuity. Specifically, the Holder shall be responsible for the following:

6.1 Duty of Enforcement. Holder shall preserve and protect the aquatic resource functions and values, scenic, resource, environmental, and other conservation values, and conservation functions and ecological services of the Mitigation Property and shall enforce the terms of this Conservation Easement pursuant to section 8.

6.2 Duty of Monitoring. In accordance with the requirements of the Mitigation Plan, or as otherwise requested by the Corps and State, but in any event no less than on an annual basis, Holder shall perform monitoring of the Mitigation Property to determine compliance with this Conservation Easement and shall submit to the Corps and the State a report of its monitoring.

6.3 Duty of Notice. Holder shall promptly notify the Corps and State of any non-compliance with this Conservation Easement.

7. Holder’s Rights. To accomplish the purpose of this Conservation Easement, the following rights are granted to the Holder or its authorized representatives, successors and assigns:

7.1 Mitigation Measures. Holder may undertake restoration and mitigation measures, provided that the restoration and mitigation measures comply with the Mitigation Plan and are performed under the supervision or approval of the Corps and State.

7.2 Right of Entry. Holder and its agents may enter in, on, over, and across the Access Property and Mitigation Property to inspect and monitor the Mitigation Property, undertake restoration and mitigation measures, and to enforce the terms of this Conservation

Easement.

8. Enforcement. If Holder becomes aware a violation of this Conservation Easement has occurred, is occurring, or is likely to occur, Holder shall pursue the following measures:

8.1 Notice of Violation. Holder shall give written notice to Grantors, the Corps, and the State of the violation and demand corrective action sufficient to cure the violation and restore the Mitigation Property to its prior or planned condition, as contemplated by this Conservation Easement and the Mitigation Plan.

8.2 Failure to Cure. If Grantors fail to cure the violation within thirty (30) days after receipt of a notice of violation or, under circumstances where the violation cannot reasonably be cured within thirty (30) days, fails to begin curing said violation within thirty (30) days after receipt of a notice of violation, Holder may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: (i) to recover any damages to which Holder may be entitled for violation of the terms of this Conservation Easement or for any injury to the Mitigation Property, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values; (ii) to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; (iii) to pursue any other legal or equitable relief, including but not limited to, the restoration of the Mitigation Property to the condition in which it existed prior to any violation or injury; (iv) or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantors, Holder may apply any damages recovered to the cost of undertaking any corrective action on the Mitigation Property.

8.3 Immediate Action. If Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Mitigation Property, Holder may pursue its remedies under this section without prior notice to Grantors or without waiting for the period provided for cure to expire. Holder's rights under this section apply equally to actual or threatened violations of this Conservation Easement. Holder will notify in writing the Grantors, Corps, and State within thirty (30) days of such an occurrence.

8.4 Injunctive Relief. Grantors agree that Holder's remedies at law for any violation of this Conservation Easement are inadequate and that Holder will be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Holder may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Holder's enforcement rights and remedies granted in this Conservation Easement are cumulative and in addition to all enforcement rights and remedies available to Holder now or hereafter existing at law or in equity. The failure of Holder to discover a breach or violation or to take immediate legal action will not bar Holder from taking such action at a later time.

9. Third Parties' Rights. The following rights are granted to the Corps and State:

9.1 Right of Entry. The Corps, State, and their authorized agents are granted an irrevocable and assignable right to enter in, on, over and across the Access Property and

Mitigation Property to inspect and monitor the Mitigation Property; to implement the Mitigation Plan or take corrective measures under the Mitigation Property; to take any actions necessary to maintain or restore the Mitigation Property in accordance with the Mitigation Plan; or to take any actions necessary to verify compliance with this Conservation Easement. No rights of access or entry to or use of any portion of the Mitigation Property or Access Property is granted or conveyed to members of the general public by this Conservation Easement.

9.2 Third-Party Right of Enforcement. The Corps and the State each have an independent discretionary right to enforce this Conservation Easement in a judicial action against any person or other entity violating or attempting to violate this Conservation Easement; provided, however, that no violation of this Conservation Easement shall result in forfeiture or reversion of title. In any enforcement action for violations of this Conservation Easement, the Corps and the State shall be entitled to complete restoration of the Mitigation Property by Grantors for any violation, as well as any other remedy available under law or equity, such as injunctive relief and administrative, civil or criminal penalties. No omission or delay in acting by the Corps and/or State shall bar subsequent enforcement rights or constitute a waiver of any enforcement right. These enforcement rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, or under any applicable authorization or certification. Nothing herein shall limit the right of the Corps to modify, suspend, or revoke the Authorization. Nothing herein shall limit the right of the State to modify, suspend, or revoke the Certification. Nothing herein shall be construed to authorize the Corps or State to institute proceedings against Grantors for changes to the Mitigation Property due to acts of God or natural disasters outside the control of Grantors, so long as the compensatory mitigation is completed and determined by the Corps and State to be successful in accordance with the Mitigation Plan. Nothing herein shall be construed to authorize the Corps or State to institute proceedings against Grantors, Holder or any of their successors for unauthorized acts of third parties outside the control of Grantors, so long as the compensatory mitigation is completed and determined by the Corps and State to be successful in accordance with the Mitigation Plan and Grantors seek restoration from the third party.

10. Assignment or Transfer by Holder. Holder may assign or transfer the benefits of this Conservation Easement only upon the following conditions:

- (i) Holder requires that the purpose of this Conservation Easement continues to be carried out in perpetuity;
- (ii) The assignee or transferee must be authorized to hold this Conservation Easement pursuant to Virginia Code Section 55.1-339 and the laws of the United States;
- (iii) Holder gives the Grantors, Corps, and State at least sixty (60) days prior written notice of the proposed assignment or transfer;
- (iv) The assignment or transfer is subject to prior written approval by the Corps and State;
- (v) The assignee or transferee records the assignment or transfer instrument in the official property records of the Office of the [ENTER COUNTY OFFICE NAME]

within thirty (30) calendar days of its execution;

- (vi) Within thirty (30) calendar days of recording, the assignee or transferee, provides the Corps and State with a copy of the recorded assignment or transfer instrument and exhibits; and
- (vii) The assignee or transferee keeps a current copy of the Mitigation Plan at its offices.

11. Notice to the Government. Grantors and Holder shall provide sixty (60) calendar days prior written notice to the Corps and State before taking any of the following actions, or immediately upon becoming aware that any of the following actions have already been taken:

11.1 Submitting any application, request for certification, or request for modification to any governmental entity that may affect the Mitigation Property. Any such submission must expressly reference and include a copy (with the recording stamp) of this Conservation Easement.

11.2 Any legal action affecting the Access Property, Mitigation Property, or this Conservation Easement, including but not limited to foreclosure proceedings, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation proceedings, and the exercise of the power of eminent domain.

11.3 Any action that might result in any provision of this Conservation Easement being voided or modified.

11.4 Any grant, transfer, or conveyance of any interest in any or all of this Conservation Easement, the Access Property, or the Mitigation Property. The notices to the Corps and the State shall include the name, address, and telephone number of the prospective transferee, a copy of the proposed deed, assignment or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the portion of the Access Property and/or Mitigation Property being transferred.

12. Property Transfers. Grantors and Successors shall include the following notice on all deeds, mortgages, plats, or any other legal instrument used to convey any interest in the Access Property and/or Mitigation Property:

NOTICE: This Property is subject to a Conservation Easement dated_____, recorded in the [ENTER COUNTY OFFICE NAME] on_____in Deed Book_, Page_and enforceable by the [INSERT HOLDER NAME]; the U.S. Army Corps of Engineers (DA Permit no. [FILL IN PERMIT NO.]; and the Virginia Department of Environmental Quality (Agency Interest no. [FILL IN AI]).

Failure to comply with this section does not impair the validity or enforceability of this Conservation Easement.

13. Grantor's Warranties. Grantors represents and warrants that:

[SELECT ONE OF THE FOLLOWING PARAGRAPHS FOR SUBSECTION 13.1. SELECT THE FIRST PARAGRAPH IF THERE ARE NO ENCUMBRANCES. SELECT THE SECOND PARAGRAPH IF THE ONLY ENCUMBRANCES ARE UTILITY EASEMENTS. SELECT THE THIRD PARAGRAPH IF THERE ARE INTERESTS OTHER THAN UTILITY EASEMENTS THAT WILL BE SUBORDINATED.]

13.1 Grantors are the co-owners of the Access Property and Mitigation Property and hold fee simple title which is free and clear of any and all liens, loans, claims, restrictions, easements and encumbrances;

13.1 Grantors are the co-owners of the Access Property and Mitigation Property and hold fee simple title which is free and clear of any and all liens, loans, claims, restrictions, easements and encumbrances, except as otherwise identified in Exhibit [ENTER EXHIBIT LETTER] hereto;

13.1 To the extent that other interests in the Access Property and Mitigation Property exist, the holders of such interests have agreed to subordinate their interests in the Access Property and Mitigation Property to this Conservation Easement, pursuant to the subordination agreement(s) attached hereto as Exhibit [ENTER EXHIBIT LETTER];

[END OF SUBSECTION 13.1 SELECTION.]

13.2 Grantors are the co-owners of all oil, gas, mineral, quarry, mining, and timber interests associated with the surface estate of the Access Property and Mitigation Property;

13.3 Grantors have identified all other parties that hold any interest (e.g. encumbrances) in the Access Property and/or Mitigation Property and has notified such parties of Grantors' intent to grant this Conservation Easement, and each such interested party has signed a Subordination Agreement (attached hereto and incorporated herein as Exhibits [ENTER EXHIBIT LETTERS]);

13.4 There are no conflicting property interests or rights, including, but not limited to, oil, gas, mineral, quarry, mining, or timber interests held by third parties;

13.5 This Conservation Easement will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which Grantors are a party, or by which Grantors may be bound or affected;

13.6 This Conservation Easement will not materially violate or contravene any zoning law or other law regulating use of the Access Property and/or Mitigation Property;

13.7 This Conservation Easement does not authorize a use of the Access Property and/or Mitigation Property that is otherwise prohibited by a recorded instrument that has priority over the Conservation Easement;

13.8 No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, or regulation, as hazardous, toxic, polluting, or otherwise contaminating to the

water or soil, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Mitigation Property;

13.9 There are no underground storage tanks located on the Mitigation Property whether presently in service or closed, abandoned, or decommissioned; and

13.10 The Mitigation Property is in compliance with all federal, state, and local laws, regulations, authorizations, and permits and there is no pending or threatening litigation in any way affecting, involving, or relating to the Mitigation Property and its use.

14. Notification. Any notice, request for approval, approval, or other communication required by this Conservation Easement shall be made in writing and deemed to have been duly sent and received on the third business day after the date on which it is so mailed if it is sent by certified or registered mail with postage prepaid to the following addresses (or such addresses as may be hereinafter specified by notice pursuant to this section):

To Grantors: [ENTER ADDRESSES FOR GRANTORS]

To Holder: [ENTER ADDRESS FOR SPONSOR]

To Corps:

NORFOLK DISTRICT
803 Front Street
Norfolk, VA 23510
Attn:

To State:

15. Amendment. After recording, this Conservation Easement may only be amended by a recorded document signed by the Grantors, Holder, Corps, and State. Amendment shall be allowed at the discretion of the Corps and State, in consultation with resource agencies as appropriate, and then only in exceptional circumstances. Any amendment must be consistent with the requirements of Sections 401 and 404 of the Clean Water Act. There shall be no obligation to allow an amendment.

16. Termination. This Conservation Easement is perpetual in nature and runs with the land as set forth in section 1 and 2 of this Conservation Easement. However, if the Corps and State determine that the compensatory mitigation undertaken on the Mitigation Property set forth in

the Mitigation Plan is not successful and the approved alternative mitigation does not involve the Mitigation Property, then the Grantors, Holder, Corps, and State may terminate this Conservation Easement by a recorded document signed by the Grantors, Holder, Corps, and State.

17. Recording. Grantors shall record this Conservation Easement in the official property records of the Office of the [ENTER COUNTY OFFICE NAME] within thirty (30) calendar days of execution of this Conservation Easement by the Grantors and Holder, and Grantors shall, within thirty (30) calendar days of recording, provide the Corps and the State with a copy of the recorded Conservation Easement and each of its Exhibits. Grantors or Holder may re-record this instrument at any time as may be required to preserve their rights.

18. Successor in Interest. All references to the Corps and the State shall include successor governmental agencies, departments, or divisions, or any other successor entities prescribed by law.

19. Severability Provision. Should any part, provision, representation, or warranty of this Conservation Easement be held by a court of competent jurisdiction to be contrary to law, unenforceable, or void, the remainder of this Conservation Easement shall be unaffected thereby and shall continue to be valid and enforceable.

20. Merger. The doctrine of merger will not operate to extinguish this Conservation Easement if the Conservation Easement and Mitigation Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish this Conservation Easement, then Grantors shall record a replacement conservation easement containing the same protections embodied in this Conservation Easement against the Mitigation Property unless the Grantors, Holder, Corps, and State otherwise agree in writing.

IN WITNESS WHEREOF, Grantors and Holder have duly executed this Conservation Easement effective on the date first written above, but actually on the date set forth below.

GRANTORS

By: _____

[ENTER NAME OF SIGNATORY]

[ENTER SIGNATORY TITLE IF CONSERVATION EASEMENT BEING GRANTED BY ENTITY]

Date

By: _____

[ENTER NAME OF SIGNATORY]

[ENTER SIGNATORY TITLE IF CONSERVATION EASEMENT BEING GRANTED BY ENTITY]

Date

STATE OF VIRGINIA

COUNTY OF [ENTER COUNTY NAME]

Subscribed and sworn to before me by _____
this the _____ day of _____, _____.

NOTARY PUBLIC

My Commission Expires: _____

HOLDER

By: _____

[ENTER NAME OF SIGNATORY]

[ENTER SIGNATORY TITLE IF CONSERVATION EASEMENT BEING MADE BY AN ENTITY]

Date

STATE OF VIRGINIA

COUNTY OF [ENTER COUNTY NAME]

Subscribed and sworn to before me by _____
this the _____ day of _____, _____.

NOTARY PUBLIC

My Commission Expires: _____

CONSIDERATION CERTIFICATES

For purposes of Virginia Code Section 55.1-339, Grantors certify that this conveyance is made without monetary consideration. Based solely upon the market analysis and appraisal dated _____ prepared by _____, the estimated fair cash value of the property is _____.

GRANTORS

By: _____

[ENTER NAME OF SIGNATORY]

[ENTER SIGNATORY TITLE IF CONSERVATION EASEMENT BEING GRANTED BY ENTITY]

Date

By: _____

[ENTER NAME OF SIGNATORY]

[ENTER SIGNATORY TITLE IF CONSERVATION EASEMENT BEING GRANTED BY ENTITY]

Date

STATE OF VIRGINIA

COUNTY OF [ENTER COUNTY NAME]

Subscribed and sworn to before me by _____
this the _____ day of _____, _____.

NOTARY PUBLIC

My Commission Expires: _____

For purposes of Virginia Code Section 55.1-339, Holder certifies that this conveyance is made without monetary consideration. Based solely upon the market analysis and appraisal dated _____, prepared by _____, the estimated fair cash value of the property is _____.

HOLDER

By: _____

[ENTER NAME OF SIGNATORY]

[ENTER SIGNATORY TITLE IF CONSERVATION EASEMENT BEING MADE BY AN ENTITY]

Date

STATE OF VIRGINIA

COUNTY OF [ENTER COUNTY NAME]

Subscribed and sworn to before me by _____
this the _____ day of _____, _____.

NOTARY PUBLIC

My Commission Expires: _____

Instrument Prepared By:

[NAME OF PREPARER]

[ADDRESS OF PREPARER]