

2013 04010

NOTE TO TITLE EXAMINERS: This open-space easement contains restrictions on permitted uses and activities on the property described below, which run with the land and are applicable to the property in perpetuity.

Prepared by:

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PO Box 70
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After recording return to:

Department of Conservation and Recreation
Office of the Director
600 E. Main Street, 24th Floor
Richmond, VA 23219
Attn: Larry Smith

Tax Map Numbers: 79-A-140, 79-A-141, 79-A-142
Consideration: \$240,000
Insurer: Old Republic National Title Insurance Company

07900A000014000, 07900A000014100,
07900A000014200

This Deed is exempt from: (i) recordation tax under §58.1-811 (A)(3), and (ii) from Circuit Court Clerk's fees under §17.1-266 of the Code of Virginia (1950), as amended.

**DEED OF OPEN-SPACE EASEMENT AND
NATURAL AREA PRESERVE DEDICATION**

Addition to
Mutton Hunk Fen Natural Area Preserve
Accomack County, Virginia

THIS DEED OF OPEN-SPACE EASEMENT AND NATURAL AREA DEDICATION, dated this 18th day of Sept, 2013 (the "Easement"), by and between G.R.B. FAMILY LIMITED PARTNERSHIP, LLLP, a Maryland limited liability limited partnership, whose address is 8097 Stevens Road, Eden, Maryland 21822 (the "Grantor"), and the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF CONSERVATION AND RECREATION, whose address is Office of the Director, 600 East Main Street, 24th Floor, Richmond, VA 23219 (the "Grantee") (the designations "Grantor" and "Grantee" refer to Grantor and Grantee and their respective successors and assigns).

RECITALS:

R1. Grantor is the owner in fee simple of real property situated on State Route 742 (Baker Road), State Route 679 (Metompkin Road), and State Route 677 (Whites Neck Road) in the Metompkin Magisterial District of Accomack County, Virginia, containing approximately 115 acres as further described below (the "Property"), and desires to sell, give, grant and convey to Grantee a perpetual open-space easement over the Property as herein set forth.

- R2. Grantee is a governmental agency of the Commonwealth of Virginia and a “qualified organization” and “eligible donee” under § 170(h)(3) of the Internal Revenue Code (references to the Internal Revenue Code in this Easement shall be to the United States Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings issued thereunder, or the corresponding provisions of any subsequent federal tax laws and regulations) (the “IRC”) and Treasury Regulation § 1.170A-14(c)(1), and is willing to accept a perpetual open-space easement over the Property as herein set forth.
- R3. Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, §§ 10.1-1700 through 1705 of the Code of Virginia (1950), as amended (the “Open-Space Land Act”) declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth by curbing urban sprawl and encouraging more desirable and economical development of natural resources, and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land.
- R4. Pursuant to §§ 10.1-1700 and 10.1-1703 of the Open-Space Land Act, the purposes of this Easement (as defined below in SECTION I) include retaining and protecting open-space and natural resource values of the Property, and the limitation on division, residential construction and commercial and industrial uses contained in SECTION II ensures that the Property will remain perpetually available for protection of natural resources, forest, or open-space use, all as more particularly set forth below.
- R5. Chapter 525 of the Act of 1966, Chapter 2, Title 10.1, Section 208, authorizes the Director of Grantee to acquire by gift or purchase easements in gross or other interests in real estate as are designed to maintain the character of the land as open-space land.
- R6. As required by § 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the County of Accomack Comprehensive Plan, adopted by the Accomack County Board of Supervisors on August 4, 1997 and updated in 2008 (the “Plan”).
- R7. The Virginia Natural Area Preserves Act, Chapter 2, Title 10.1, §§ 10.1-209 *et seq.*, of the Code of Virginia (1950), as amended (the “Virginia Natural Area Preserves Act”), provides for the preservation of any land area, water, or both land and water, whether publicly or privately owned, that retains or has reestablished its natural character, or which is important in preserving rare or vanishing flora, fauna, native ecological systems, geological, natural, historical, scenic or similar features of scientific or educational value benefiting the citizens of the Commonwealth.
- R8. The Virginia Natural Area Preserves Act authorizes the Director of the Department of Conservation and Recreation (the “Director”), in his discretion, to hold any interest in real property as may be necessary and proper in carrying into effect the provisions of the Virginia Natural Area Preserves Act, and designating acceptance on the instrument of dedication, such as this Easement.
- R9. This Easement is intended to constitute (i) a “qualified conservation contribution” as defined in IRC Section 170(h)(1) and as more particularly explained below, and (ii) a qualifying “interest in land” under the Virginia Land Conservation Incentives Act of

1999 (§ 58.1-510 *et seq.* of the Code of Virginia (1950), as amended (the “Virginia Code”)).

- R10. This Easement is intended to be a grant “exclusively for conservation purposes” under IRC § 170(h)(1)(C), because it effects “the preservation of open space (including farmland and forest land)” under IRC § 170(h)(4)(A)(iii); specifically the preservation of open space on the Property is pursuant to clearly delineated state governmental conservation policies and will yield a significant public benefit, *e.g.*, the protection of a relatively natural habitat of fish, wildlife, or plants or similar ecosystem.
- R11. The Virginia Coastal Zone Management Program at the Department of Environmental Quality (“DEQ”) has provided funding to the Grantee, Virginia Department of Conservation and Recreation, for the partial purchase of this Easement, in the amount of \$200,000, representing 83.33 % of the easement purchase price of \$240,000.00, for the acquisition of interests in the Property for the permanent protection of its conservation values. This grant is derived from the Federal Coastal Zone Management Act, administered by DEQ for NOAA (CFDA number 11-419), under Section 306a Land Acquisition.
- R12. DEQ has approved payment of the Grant to Grantor for the purchase of this Easement by grant #NA10NOS4190205 Task #10, with 100% cash advance prior to closing on or before 30 September 2013.
- R13. Grantee will provide funding for the partial purchase of this Easement, in the amount of \$45,000.00, for the acquisition of interests in the Property for the permanent protection of its conservation values.
- R14. This open-space easement in gross constitutes a restriction granted in perpetuity on the use that may be made of the Property and is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below:
- (a) Land conservation policies of the Commonwealth of Virginia as set forth in:
- (i) 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;
 - (ii) The Open-Space Land Act, cited above;
 - (iii) The Virginia Natural Area Preserves Act, cited above;
 - (iv) Chapter 2 of Title 10.1, §§ 10.1-200 to 10.1-217 of the Virginia Code entitled “Parks and Recreation;”
 - (v) It is a policy of the Commonwealth to protect natural heritage resources. As defined in § 10.1-209 of the Virginia Code, “Natural heritage resources” means the habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.” (“Natural Heritage Resources”);

- (vi) The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, §§ 58.1-510 through 58.1-513 of the Virginia Code, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth's unique natural resources, wildlife habitats, open spaces and forest resources; and
- (vii) Grantee's formal practices in reviewing and accepting this Easement. Grantee has engaged in a rigorous review, considered and evaluated the benefits provided by this Easement to the general public as set forth in these recitals, and concluded that the protection afforded the open-space character of the Property by this Easement will yield a significant public benefit and further the open-space conservation objectives of Grantee and the Commonwealth of Virginia. Treasury Regulation § 1.170A-14(d)(4)(iii)(B) states that such review and acceptance of this Easement by a governmental entity tends to establish a clearly delineated governmental conservation policy as required under IRC § 170(h)(4)(A)(iii).

(b) Land use policies of the County of Accomack, Virginia::

- (i) As delineated in the Plan, to which the restrictions set forth in SECTION II of this Easement (the "Restrictions") conform, sets as objectives "The conservation of unique and environmentally sensitive areas for open spaces, recreation and habitat protection" and the "recognition and protection of the County's rural nature."
- (ii) The Property lies within an area of Accomack County designated for the above-described habitat protection and open-space land use purposes and conforms in all respects to the Plan. The future land use map of the Plan shows the Property within a designated "Agricultural Area."
- (iii) A portion of the Property has been approved for use value assessment by the County in accordance with §§ 82-126 to 82-134 of the Accomack County Code, which provides for use value assessment of real estate devoted to agricultural, horticultural, or forestal uses.

R15. This Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in the Recitals above and, more particularly, as set forth below:

- (a) The Property adjoins and will complement the conservation purposes of the Mutton Hunk Fen Natural Area Preserve (as shown on Exhibit A) and as such, the Conservation Purpose of this Easement is to support the conservation of those Natural Heritage Resources it supports, now or in the future, including, without limitation:
 - (i) sea-level fen natural community,
 - (ii) ten-angled pipewort (*Eriocaulon decangulare* var. *decangulare*),
 - (iii) northern white beaksedge (*Rhynchospora alba*),
 - (iv) white-top fleabane (*Erigeron vernus*),
 - (v) brown-fruited rush (*Juncus pelocarpus*),

- (vi) southern bladderwort (*Utricularia juncea*),
- (vii) seaside goldenrod stem borer (*Papaipema duovata*).

(b) This Property shall also protect maritime forest communities and habitat for many species of waterfowl and Neotropical migratory songbirds.

R16. The Property shall be designated as Open-Space and dedicated in perpetuity as an addition to the Mutton Hunk Fen Natural Area Preserve for the preservation of the Natural Heritage Resources it supports and for the protection of its open space and biodiversity values and shall be protected from conversion to inappropriate uses.

NOW, THEREFORE, in consideration of the foregoing recitals incorporated herein and made a part hereof and in consideration of the mutual covenants herein and their acceptance by Grantee, and in further consideration of other good and valuable consideration in the amount of \$245,000 funded in part by a grant from the Department of Environmental Quality's Coastal Zone Management Program, Grantor does hereby sell, give, grant and convey to Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of, the Property, which is described below and consists of 104.35 acres, in gross and not by the acre, located in Accomack County, Virginia, east of Parksley, fronting on State Route 742 (Baker Road), State Route 679 (Metompkin Road), and State Route 677 (Whites Neck Road), to-wit:

Tract 1. ALL that certain tract or parcel of land, situate in Accomack County, Virginia, containing 45 acres, more or less, but the same is conveyed in gross and not by the acre, without accountability for any excess or deficiency, situate in Metompkin Post Office, and bounded on the North, by the Neck Road and by the Parks Land, now or formerly owned by Alfred Justis; on the East, by the land now or formerly of Richard Justis and the land belonging now or formerly to Herbert Barnes; on the South, by the Baker Land and the land now or formerly belonging to Coley Watkinson and now or formerly owned by Herbert Barnes; on the West, by the Parks Land now or formerly owned by the said Alfred Justis. [For tax purposes only this parcel is identified as Tax Map No. 79 A 142]

Tract 2. ALL that certain tract or parcel of land, situate in White's Neck, Accomack County, Virginia, containing by actual survey 22.70 acres of cleared land and 16.20 acres of woodland, a total of 38.90 acres, and bounded on the North, by a certain twenty-foot road and by the land now or formerly of W.A. Taylor; on the East, by the land now or formerly of W.A. Taylor; on the South, by the land now or formerly of Thomas Cutler and J.J. White; and on the West, by the lands now or formerly of the heirs of William E. Matthews and Edward Baker. Said parcel is on both sides of Baker Road (Route 742). [For tax purposes only this parcel is identified as Tax Map No. 79 A 141]

Tract 3. ALL that certain tract or parcel of woodland situate as aforesaid containing 35 acres, more or less, but same is expressly sold and conveyed in gross and not by the acre and without accountability for excess or deficiency in

acreage, and bounded as follows, to-wit: On the West by the public road known as Seaside Road (Route 629) running from the Village of Newtown to the Village of Modestown; on the South by the public road (Route 677 now known as Whites Neck Road) running from the main Seaside Road in a general Easterly direction down White's Neck and by land now or formerly of Mary Chandler; on the North by the public road (Route 742 now known as Baker Road) leading from the main Seaside Road to the Russell Farm now owned by Nancy C. Matthews, Matthew R. Porter, Jacob A. Porter and Jennifer D. Porter; and on the East by the land now or formerly of Alfred Justice [sic Justis]. [For tax purposes only this parcel is identified as Tax Map No. 79 A 140]

LESS AND EXCEPT all those certain tracts or parcels of land located in Accomack County, Virginia, containing in the aggregate 36.833 acres, comprised of Lot 1 (4.325 acres), Lot 2 (4.499 acres), Lot 3 (4.499 acres), Lot 4 (4.573 acres), Lot 5 (4.509 acres), Lot 6 (4.517 acres) and 9.911 acres on the North side of Virginia Secondary Route 742 (Baker Road), as conveyed to the Commonwealth of Virginia, Department of Conservation and Recreation, by deed dated April 8, 2005, recorded May 5, 2005, in the Clerk's Office, Circuit Court, Accomack County, Virginia, as Instrument No. 200502685.

TRACTS 1, 2 & 3 BEING a portion of the same real estate conveyed to G.R.B. Family Limited Partnership, by deed from Nancy C. Matthews, divorced, (who is the same person as Nancy Matthews Porter), Matthew R. Porter, Jacob A. Porter and Jennifer D. Porter, dated April 16, 2001, recorded April 23, 2002, in the Clerk's Office, Circuit Court, Accomack County, Virginia, as Instrument No. 200202295. Subsequently, G.R.B. Family Limited Partnership was amended to a limited liability limited partnership named G.R.B. Family Limited Partnership, LLLP, a Maryland limited liability limited partnership, by Certificate of Amendment to the Certificate of Limited Partnership dated February 17, 2004.

The Property is indexed as Tax Map Numbers 79-A-140, 79-A-141, 79-A-142 among the land records of the County of Accomack, Virginia. Even though the Property consists of more than one parcel for real estate tax or any other purpose, or if it may have been acquired previously as separate parcels, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole. It is the intent of the Parties that this Easement shall restrict the use of all of the acreage contained in the Property. The Parties recognize that there are discrepancies among the various documents referenced herein regarding actual acreage, but the Easement is intended to encumber all for the Property, whatever the actual acreage may be.

Grant payments were calculated by the value of the Property after the restrictions of the Easement are imposed, which value is \$267,000.00 as determined based on an appraisal completed on 21 December 2012 by James Windley, MAI, Virginia, an appraiser licensed in the Commonwealth of

Virginia, and which appraisal was reviewed and corroborated by James H. Boykin, Ph.D., MAI, Midlothian Virginia, an appraiser licensed in the Commonwealth of Virginia.

SECTION I PURPOSE

1. The purpose of this Easement is to preserve and protect the conservation values of the Property in perpetuity by imposing the restrictions on the use of the Property set forth in SECTION II and providing for their enforcement in SECTION III. The protected conservation values of the Property are described in the above recitals, are documented in the Baseline Documentation Report described in SECTION IV and include the Property's open-space and Natural Heritage Resources values, and its value as land preserved for uses such as protection of natural areas and open-space.
2. Pursuant to the Virginia Land Conservation Foundation's Conservation Value Review Criteria the further purpose of this Easement is preservation of land for Natural Heritage Resources and biological diversity.
3. Grantor covenants that no acts or uses that are inconsistent with the purpose of this Easement or the conservation values herein protected shall be conducted on the Property.

SECTION II RESTRICTIONS

Restrictions are hereby imposed on uses of the Property pursuant to the statute and policies set forth above. The acts that Grantor covenants to do or not do upon the Property, and the restrictions that Grantee is hereby entitled to enforce, are, and shall be, as follows:

1. DIVISION

- (a) Separate conveyance of a portion of the Property or division of the Property is prohibited.
- (b) Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered separate conveyances of portions of the Property or divisions of the Property, provided that Grantee approves such adjustments, is made party to any deed creating a boundary line adjustment, and at least one of the following conditions is met:
 - (i) The entire adjacent parcel is subject to a recorded open-space easement owned by Grantee; or
 - (ii) The entire adjacent parcel is owned in fee simple by Grantee; or
 - (iii) The proposed boundary line adjustment shall have been reviewed and approved in advance by the Grantee.
- (c) The acquisition of a *de minimis* portion of the Property adjacent to State Routes 742, 679, or 677 for minor road improvements shall not be considered a division of the Property, and neither the acquisition of such a *de minimis* portion of the Property nor the use of the portion of the Property so acquired shall be prohibited

by this Easement, provided that Grantee approves such conveyance or taking, which approval shall be contingent upon the project including all reasonable actions, such as landscaping or topographic improvements, to minimize the project's impact on the Property and prevent harm to its conservation values. Grantor reserves its separate rights to approve such acquisition. Use of the Property for such a project is limited to minor improvements to Routes 742, 679, or 677 in its/their present alignment(s), including, but not limited to, maintenance, correction, repair, or upgrading of the existing public roads. Such improvements could include, but are not limited to, the addition or renovation of ditches, box culverts, drainage swales, side slopes, curbing, regrading, or enhancements, such as pull-offs, bike lanes, and restoration projects. For the purpose of this paragraph, "minor road improvements" does not include the addition of new travel lanes. Any portion of the Property acquired from Grantor pursuant to this paragraph shall remain subject to the terms and restrictions of this Easement.

2. **BUILDINGS, STRUCTURES, ROADS, AND UTILITIES.**

- (a) No buildings, structures, roads or utilities, other than the following, are permitted on the Property:
 - (i) **SMALL-SCALE MISCELLANEOUS STRUCTURES.** No more than 3 miscellaneous structures, individually occupying no more than 64 square feet of ground area, such as hunting stands and wildlife observation structures that are consistent with the conservation purposes of this Easement and which will not impair the conservation values protected herein are permitted on the Property.
 - (ii) **ROADS AND TRAILS.** The location of the one trail on the Property is shown on Exhibit A. No new roads or trails or realignments of roads or trails may be constructed without the written approval of Grantee, and any such new construction shall not materially impair or interfere with the protected conservation, biodiversity, or Natural Heritage Resources values of the Property. Grantor shall maintain all trails in a manner that minimizes erosion and prevents runoff. Trails may be repaired and maintained with materials, including culverts, similar to those currently used, without notice to Grantee. Grantee shall repair any damages to roads or trails caused by its employees or representatives, but is otherwise not obligated to maintain roads or trails on the Property.

3. **ACTIVITIES ON THE PROPERTY**

- (a) Industrial or commercial activities are prohibited, with the exception of small-scale incidental commercial operations that Grantee approves in writing as being consistent with the conservation purpose of this Easement.
- (b) Educational, recreational, or religious activities are permitted on the Property, provided that they are consistent with the conservation purposes of this Easement

and do not impair the conservation values protected herein. (Recreational activities may include use of all or a portion of the Property as a park for passive recreational activities, such as hiking, photography, bird watching, and nature study.)

- (c) Notwithstanding any other provision of this easement, no commercial recreational use (except for *de minimis* commercial recreational uses) shall be allowed on the Property.

4. **MANAGEMENT PLAN.** Grantor shall manage the Property in a manner consistent with the continued preservation of the Natural Heritage Resources on the Property. No activities shall be permitted on the Property that would threaten the integrity of the Natural Heritage Resources, biodiversity, or open space values of the Property. All activities conducted on the Property shall be consistent with a Natural Area Preserve Management Plan (the "Management Plan") to be prepared by Grantee in consultation with Grantor. The final plan and all amendments thereto shall be approved by Grantee and Grantor. The Management Plan will address biological inventory, monitoring, research, invasive species control, vegetation management, habitat restoration, watershed management and hydrology. The Management Plan will be periodically reviewed and amended as necessary to accomplish the preservation purposes of this Easement. The Management Plan and all amendments thereto shall be prepared at the sole expense of Grantee, and Grantor reserves the right to approve any such plan.

5. **USE**

- (a) As a dedicated Natural Area Preserve, the use of the Property is restricted to those activities that are consistent with the preservation of its Natural Heritage Resources. The principal activities in this Natural Area Preserve shall be conducting biological inventories and resource management actions such as monitoring and restoration to benefit Natural Heritage Resources, plus compatible uses such as walking, observing wildlife, teaching, and research oriented activities. Activities that are unrelated to those listed above are prohibited, except as may be provided in the Management Plan or this Easement. Nothing in the Management Plan shall alter the exclusive commitment to the long-term preservation of the property as part of Mutton Hunk Fen Natural Area Preserve.
- (b) Grantor expressly reserves the right to use the Property for:
 - (i) Recreational Uses. Grantor has the right to engage in and permit others to engage in non-intensive or low impact recreational uses of the Property, including hunting, hiking, bird-watching, and nature study.
 - (ii) Motorized Vehicles. Motorized vehicles must be confined to existing trails as shown on Exhibit A; unless used off-road for temporary and incidental uses related to management or maintenance of the trails as provided for in SECTION II Subparagraph 2(ii) above, management of invasive species, retrieval of game, or management of wildlife food plots as provided for in SECTION II Subparagraph 7(b) below. The aforementioned permissive off-trail use of motor vehicles shall not

materially impair or interfere with the protected conservation values of the Property. Use of motorized vehicles as a recreational activity is prohibited.

- (iii) Hunting. Recreational hunting and the harvesting of game, subject to the regulations and restrictions of the Commonwealth of Virginia, are permitted. Should a permitted hunting activity negatively affect any of the Property's protected Natural Heritage Resources, Grantee shall notify Grantor in the manner outlined at SECTION V Paragraph 14 below, including a summary of the conduct compromising protected Natural Heritage Resources and the necessary actions Grantor must undertake to remove Grantee's objection to such activities. Grantor shall cure the conduct giving rise to Grantee's objection within thirty (30) days of Grantee sending notice to Grantor. Thereafter, Grantee, in addition to any other rights or remedies contained in this Deed, may proceed to enjoin the activity in court. Grantee may, in its sole discretion, offer Grantor a reasonable extension, not to exceed sixty (60) days, to conclude corrective measures.

6. **SALE OR TRANSFER OF PROPERTY.** Grantor shall notify Grantee, in the manner described in SECTION V Paragraph 14 below, of any pending sale or transfer of the Property. In any deed conveying the Property, this Easement shall be referenced by Deed Book and Page or Instrument Number in the deed of conveyance.

7. **MANAGEMENT OF FOREST AND OTHER VEGETATION.**

- (a) The forest on the Property shall not be managed for commercial return. No trees shall be cut for any purpose other than for the safety of visitors to the Property, to clear trails, to manage Natural Heritage Resources, to restore natural community species composition and structure, or to maintain wildlife food plots as described in SECTION II Subparagraph 7(b) below. Cutting or removal of trees for any other purpose shall be in accord with the Management Plan and with the approval of Grantee.
- (b) The wildlife food plot, an area of approximately 5 acres, the location and boundaries of which are illustrated in Exhibit A, may be maintained in an open, un-forested condition by mowing, burning, disking or any generally accepted practice, and planted with non-invasive species, provided management of the plot does not threaten or impair the conservation values protected with this easement. Grantor shall not introduce or allow to be introduced on the Property those plants included on the most current list of Virginia Department of Conservation and Recreation's "Invasive Alien Plant Species of Virginia" or similar list promulgated by the Commonwealth of Virginia.
- (c) Non-native invasive vegetation, shrubs and trees, such as multiflora rose (*Rosa multiflora*) and tree-of-heaven (*Ailanthus altissima*), may be controlled, suppressed, or removed by cutting or herbicide application or by any generally accepted practice.

8. **GRADING, BLASTING, & MINING.** All manners and methods of mining are expressly prohibited on the Property. No grading, blasting, drilling, or earth removal shall be permitted on the Property.
9. **UPKEEP AND MAINTENANCE.** Grantor retains all responsibilities and shall bear all costs and liability related to the ownership, operation, upkeep, repair, and maintenance of the Property, including maintaining adequate comprehensive general liability insurance coverage. Grantor acknowledges that Grantee has no obligation for the upkeep, repair or maintenance of the Property.
10. **LIVESTOCK.** Livestock, including, but not limited to, cattle, sheep, goats, pigs, chickens, and horses, are not permitted anywhere on the Property, unless in the sole opinion of the Grantee, use of livestock is deemed appropriate for management of Natural Heritage Resources.
11. **ACCUMULATION OF TRASH.** Accumulation or dumping of trash, refuse, junk or toxic materials is not permitted on the Property.
12. **SIGNS.** No billboards or other signs may be displayed on the Property, except for signs that relate to the Property or to permitted activities (including commercial activities) thereon. Temporary political signs are allowed. No sign visible from outside the Property shall exceed thirty-two square feet in size.

SECTION III INSPECTION AND ENFORCEMENT

1. **RIGHT OF INSPECTION, INVENTORY, RESEARCH, AND STEWARDSHIP.** Representatives of Grantee hereby retain the exclusive right to enter and enforce the Restrictions of this Easement, with or without consulting Grantor. Grantee may enter the Property for purposes of inspection (including photographic documentation of the Property) and enforcement of the terms of this Easement. Representatives of Grantee may enter the Property with reasonable notice to Grantor to conduct biological inventories, research, and stewardship activities for Natural Heritage Resources.
2. **ENFORCEMENT.**
 - (a) Grantee has the right to bring an action at law or in equity to enforce the Restrictions contained herein. This right specifically includes the right to require restoration of the Property to a condition of compliance with the terms of this Easement as existed on the date of this Easement, except to the extent such condition thereafter changed in a manner consistent with the Restrictions; to recover any damages arising from non-compliance; and to enjoin non-compliance by *ex parte* temporary or permanent injunction.
 - (b) If a court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay shall not waive or forfeit its right to take such action as may be necessary to insure compliance with this Easement, and

Grantor hereby waives any defenses of waiver, estoppel, or laches with respect to any failure to act by Grantee.

- (c) Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage or change to the condition of the Property caused by fire, flood, storm, Act of God, governmental act, or other cause outside of Grantor's control or any prudent action taken by Grantor to avoid, abate, prevent, or mitigate damage or changes to the Property from such causes.

SECTION IV DOCUMENTATION

1. Grantor has made available to Grantee, prior to conveyance of this Easement, documentation sufficient to establish the condition of the Property at the time of the conveyance, and documentation retained in the office of Grantee including, but not limited to, the Baseline Documentation Report describes the condition and character of the Property at the time of the conveyance. This Baseline Documentation Report may be used to determine compliance with and enforcement of the terms of this Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination.
2. The parties hereby acknowledge that the Baseline Documentation Report contained in the files of Grantee is an accurate representation of the Property and contains a statement signed by Grantor and a representative of Grantee as required by Treasury Regulation § 1.170A-14(g)(5)(i).

SECTION V GENERAL PROVISIONS

1. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions and restrictions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
2. **TITLE.** Grantor covenants and warrants that Grantor has good title to the Property (including the mineral rights located under the surface of the Property), that Grantor has all right and authority to grant and convey this Easement, and that the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record) including, but not limited to, any mortgages or deeds of trust not subordinated to this Easement.
3. **ACCEPTANCE.** Acceptance of this conveyance by Grantee is authorized by Virginia Code §§ 10.1-1700 through 10.1-1705 and is evidenced by the signature of the Director.
4. **NO PUBLIC ACCESS AND GRANTOR'S RETENTION OF USE.** Although this Easement will benefit the public as described above, nothing herein

shall be construed to convey to the public a right of access to, or use of the Property. Subject to the terms hereof, Grantor retains the exclusive right to such access and use including, but not limited to, the right to hunt, fish, or trap on the Property.

5. **GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the conveyance of this Easement to Grantee gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the perpetual conservation restriction at the time of the conveyance bears to the value of the Property as a whole at that time.
6. **CONVERSION OR DIVERSION.** Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of § 10.1-1704 of the Open-Space Land Act, which does not permit loss of open space.
7. **EXTINGUISHMENT.** Notwithstanding the provisions of § 10.1-1704 of the Open-Space Land Act, should an attempt be made to extinguish this Easement in whole or in part, such extinguishment shall be carried out by judicial proceedings in compliance with IRC § 170 (h) and applicable Treasury Regulations. In a sale or exchange of the Property subsequent to and resulting from such an extinguishment, the Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Recitals 11 and 13 above, but not to be less than the proportion that the value of this Easement at the time of extinguishment bears to the then value of the Property as a whole. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this Easement, the Open-Space Land Act, and the Virginia Natural Area Preserves Act.
8. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property by an amended deed of easement, provided that no amendment shall (i) affect this Easement's perpetual duration, (ii) conflict with or be contrary to or inconsistent with the conservation purpose of this Easement, (iii) reduce the protection of the conservation values, (iv) affect the qualification of this Easement in part 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 Accomack County, Virginia.
9. **ASSIGNMENT BY GRANTEE.** Grantee may not assign, transfer or convey this Easement unless authorized pursuant to Virginia Code § 10.1-109 and Grantee conditions such assignment, transfer or conveyance on the requirement that (i) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity, and (ii) the transferee then qualifies as an eligible donee as defined in IRC § 170(h)(3) and the applicable Treasury Regulations.

10. **NO 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.
11. **INDEMNIFICATION.** Grantor is solely responsible for any costs, damages, claims, liabilities and judgments arising from past and future acts or omissions of Grantor in connection with the Property. Grantor shall indemnify and hold harmless Grantee, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee may be subject or incur relating to the Property, which may arise from, but is not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.
12. **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. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.
13. **CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses not expressly prohibited by this Easement are permitted on the Property.
14. **NOTICES.** Any notices required by this Easement shall be sent by registered or certified mail or other courier providing reliable proof of delivery, to the following addresses, or such other person or address as may be hereafter specified by notice in writing to:

If to Grantor

G.R.B. Family Limited Partnership, LLLP
ATTN: Gary R. Breeding, General Partner
8097 Stevens Road
Salisbury, Maryland 21804

If to Grantee

Department of Conservation and Recreation
Office of the Director
600 East Main Street, 24th Floor
Richmond, VA 23219

With a copy to:

Office of the Attorney General,
Real Estate and Land Use Section
900 East Main Street
Richmond, VA 23219

- (a) Content of Notice. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided herein, is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner consistent with the terms and Purpose of this Easement. Such notices to Grantee or requests for Grantee approval required hereunder will include information on the nature, scope, design, location, timetable, and any other material aspect of the proposed activity, in sufficient detail, to enable Grantee to determine whether proposed plans are consistent with the requirements of this Easement and the purposes hereof.
- (b) Process of Notice and Approval. Whenever notice to Grantee is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the requirements and purpose of this Easement. Grantee shall not unreasonably condition, withhold, or delay its approval to such written request.
15. **REFERENCE TO EASEMENT SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number, or other appropriate reference in any deed or other instrument conveying any interest in the Property.
16. **SUCCESSORS IN INTEREST.** The covenants, terms, conditions, and restrictions contained in this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.
17. **ASSIGNMENT BY GRANTEE.** Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (i) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity and (ii) the transferee then qualifies as an eligible donee as defined in IRC § 170(h)(3) and the applicable Treasury Regulations.

18. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement.
19. **SEVERABILITY.** If any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.
20. **CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.
21. **RECORDING.** This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of Accomack, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.
22. **COUNTERPARTS.** This Easement may be executed in one or more counterpart copies, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto shall not affect the validity of the Easement.
23. **TERMS OF GRANT AWARD.** Funds for the purchase of this interest in the Property were provided in part by NOAA grant number NA10NOS4190205 Task #10 from the Virginia Coastal Zone Management Program at the Department of Environmental Quality and the National Oceanic and Atmospheric Administration. Future use and disposition of the property is subject to the terms and restrictions contained in the grants, which are hereby incorporated by reference, and the Terms of Grant Agreement, attached hereto as Exhibit B and recorded herewith, and to the other administrative requirements of the applicable grant funding program of the Department of Environmental Quality.

WITNESS the following signatures and seals:

[Counterpart signature pages follow]

[Counterpart signature page 1 of 2]

GRANTOR

G.R.B. Family Limited Partnership, LLLP,
a Maryland limited liability limited partnership

By: Gary Breeding (SEAL)
Gary R. Breeding, General Partner

STATE OF Maryland,
CITY/COUNTY OF Wicomico, to wit:

The foregoing instrument was acknowledged before me this 10th day of Sept, 2013, by Gary R. Breeding, General Partner, of G.R.B. Family Limited Partnership, LLLP, a Maryland limited liability limited partnership, Grantor.

Barbara N. Haberstroh
Notary Public

My commission expires: 6/13/15

[Notarial Seal]

Registration No.: _____

[Counterpart signature page 2 of 2]

By acceptance hereof, Grantee hereby designates the Property as open-space land pursuant to Virginia Code § 10.1-1701, and as dedicated land pursuant to Virginia Natural Area Preserves Act, Virginia Code § 10.1-209.

GRANTEE:

VIRGINIA DEPARTMENT OF
CONSERVATION AND RECREATION

By: *David A. Johnson*
For David A. Johnson, Director

COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, to-wit:

I, *Carolyn Scott*, a Notary Public for the Commonwealth aforesaid, hereby certify that David A. Johnson, as Director of the Department of Conservation and Recreation, personally appeared before me this *19th* day of *Sept.* 2013, and acknowledged the foregoing instrument.

Carolyn Scott
Notary Public

335824
Notary I.D. Number

My commission expires: *9/30/2017* (SEAL)



OFFICE OF THE ATTORNEY GENERAL

Approved as to Form:

Steven O. Owens

Steven O. Owens
Senior Assistant Attorney General and Chief

EXHIBIT B

Terms of Grant Agreement

The Commonwealth of Virginia, Department of Conservation and Recreation and its successors and assigns (hereinafter the Department) acknowledges that the above described Property is acquired in part with funds received from the Virginia Coastal Zone Management Program at the Department of Environmental Quality (hereinafter the VA CZM at DEQ) and that the Property is subject to all the terms and conditions of grant number NA10NOS4190205 Task #10.

The Department acknowledges that the Property is acquired for the approved purpose of long-term conservation of coastal ecosystems, thereby preserving and protecting in perpetuity the multiple, interrelated uplands and wetlands which are critical to coastal resident and migratory birds, fish, wildlife, rare species and their habitats. Further, this Property lies directly within the critical area boundary of that migratory songbird corridor. The protection, restoration and management of migratory songbird habitat on the Property are of primary importance.

(a) Disposition of Real Property: The real property interest acquired by the Department with Virginia Coastal Zone Management Program grant funds shall be administered in accordance with the grant terms and conditions for the long term management of the property as stated above. Otherwise, it shall be subject to Paragraphs b and c below.

(b) Prior Approval Required for Resale: By signature of the Department on this document and by acceptance of the grant monies, the Department agrees not to sell, transfer, hypothecate, or otherwise dispose of or encumber the land or parcels of land, or any portion thereof, or change the original use for which the Property was acquired, without first obtaining the prior written approval of the VA CZM at DEQ and the National Oceanic and Atmospheric Administration. If at any future date the Department deems it necessary and/or desirable to sell the Property or any portion thereof, the Department shall notify the VA CZM at DEQ immediately; and

(c) Terms of Resale: Further, upon such approval and at the option of the VA CZM at DEQ, if the land or any parcel of the land is sold, transferred, hypothecated, or otherwise disposed of or encumbered, or ceases, in the opinion of the VA CZM at DEQ, to be used in whole or in part for the purpose for which it was acquired and held, the VA CZM at DEQ will provide instructions for one of the following alternatives:

(1) Provide to the VA CZM at DEQ (or an appropriate landholding entity of the its choosing) real property that is of equal value and will serve the purpose for which the original Property was acquired; or

(2) Acquire title to and manage real property that is of equal value and will serve the purpose for which the original Property was acquired; or

(3) Repay to the VA CZM at DEQ, on terms and conditions satisfactory to the VA CZM at DEQ, in cash, the proportionate share of the funds of the original purchase price. The amount paid to the VA CZM at DEQ will be computed by applying the VA CZM at DEQ's percentage of participation in the cost of the original easement purchase as stated in R10 in the document above. A percentage of the funds derived from a resale shall be reinvested in land within Virginia's Coastal Zone for the purposes of sensitive coastal habitat protection and/or public access to coastal waters. This percentage shall be equivalent to the ratio of federal plus match dollars to total project cost as specified by the terms of grant number NA10NOS4190205 Task #10.

INSTRUMENT #201304010
RECORDED IN THE CLERK'S OFFICE OF
ACCOMACK COUNTY ON
SEPTEMBER 24, 2013 AT 10:40AM

SAMUEL H. COOPER, CLERK
RECORDED BY: NJR