

**NOTICE TO TITLE EXAMINERS: THIS DEED OF CONSERVATION EASEMENT
CONTAINS COVENANTS THAT INCLUDE RESTRICTIONS ON THE USE,
SUBDIVISION AND OFF-CONVEYANCE OF LAND.**

THIS DEED OF CONSERVATION EASEMENT ("Conservation Easement") made this _____ day of _____ 2008, by and between _____ having an address at _____ ("Grantor") and the **COUNTY COMMISSIONERS OF CECIL COUNTY, MARYLAND**, a body corporate and politic, having an address at 200 Chesapeake Blvd., Elkton, MD 21921 ("Grantee").

WITNESSETH

WHEREAS, conditions of approval contained within the Cecil County Planning Commission dated {date} for the development project known as {"Development Name"}, require the creation, protection, maintenance and enhancement of forest interior dwelling bird species (FIDS) habitat and the associated natural, forestry, environmental, scenic, historic, cultural, and rural, woodland and wetland characteristics of the Property through a conservation easement;

WHEREAS, Grantor owns in fee simple all that parcel of land **{LEGAL DESCRIPTION}** ("Property"), see Exhibit "A" attached hereto and made a part hereof;

WHEREAS, the Grantor is willing to grant a perpetual Conservation Easement over the Property, thereby restricting and limiting the use of the Property as hereinafter provided in this Conservation Easement for the purposes hereinafter set forth, and the Grantee is willing to accept such Conservation Easement;

WHEREAS, the Grantor and the Grantee, in consultation with the State of Maryland Critical Area Commission for the Chesapeake and Atlantic Coastal Bays ("CAC"), have identified significant conservation values for forest interior dwelling bird species (FIDS) habitat listed in Exhibit B, attached hereto and made a part of, and have common purposes in conserving and preserving these values and the natural, forestry, environmental, woodland and wetland characteristics of the Property, viable resource-based land use and proper management of wooded areas of the Property.

NOW, THEREFORE, as an absolute gift for no monetary consideration (\$0.00), but in consideration of the facts stated in the above paragraphs and the covenants, terms, conditions and restrictions (the "Terms") hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged by the parties, the Grantor unconditionally and irrevocably hereby grants and conveys unto the Grantee, its successors and assigns, forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, with respect to the Property;

The Purpose of this Conservation Easement is to conserve and preserve the significant conservation values in Exhibit B and the natural, forestry, environmental, woodland and wetland characteristics of the Property, maintain viable resource-based land use and proper management of wooded areas of the Property, and, to the extent hereinafter provided, prevent

the use or development of the Property for any purpose or in any manner that would conflict with the maintenance of the Property in its open-space condition.

To achieve these objectives, the following Terms are set forth:

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross and as such is inheritable and assignable in accordance with Article V and runs with the land as an incorporeal interest in the Property, enforceable with respect to the Property by the Grantees against the Grantor and its respective successors and assigns.

ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

A. Industrial or Commercial Activities on the Property

Activities other than Forest Management and associated Forest Practices (as those terms are defined below) are prohibited on the Property.

“Forest Management” is defined as the protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting (as defined in Section II H), water transpiration, wildlife habitat, etc.

“Forest Practice” is defined as the alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, aesthetic or water quality values.

B. Construction and Improvements

Buildings, means of access and other structures are prohibited on the Property, except the following which include the existing structures listed in Exhibit C:

- (1) Foot trails, small foot bridges, boardwalks, platforms, and similar structures for the purpose of providing pedestrian access to and/or within the Property, so long as such structures do not interfere with the protection, maintenance and enhancement of forest interior dwelling bird species (FIDS) habitat and the associated natural, forestry, environmental, scenic, historic, cultural, and rural, woodland and wetland characteristics of the Property;
- (2) Subject to paragraph II.C., reasonable means of access to all permitted uses and structures on the Property.

The Grantor shall notify the Grantee at least sixty (60) days prior to submitting any required permit applications for construction to local, state or federal agencies, or if no governmental permits are required, at least sixty (60) days in advance of any work whether for

construction or preparatory to construction regarding the location of any new or replacement structure, if different from the location of the replaced structure, and the location of a new means of access to a structure and all such changes shall be subject to the prior written approval of the Grantee.

C. Dumping, Placement or Storage of Materials

No materials may be dumped, placed or stored on the Property, including, but not limited to, ashes, sawdust, bark, trash, garbage, rubbish, dredge spoil, chemicals, pesticides, fertilizers, abandoned vehicles, appliances, or machinery. Notwithstanding the previous sentence, the Grantor may, if otherwise permitted by law, (1) place or store soil, rock, other earth materials, vegetative matter, compost, and all types of legally permitted pesticides and fertilizers for Forest Management uses if customarily and regularly done for that type of Forest Management use (2) place soil, rock, other earth materials, vegetative matter, and compost reasonably necessary for the purpose of combating erosion or flooding, and (3) place materials reasonably necessary for construction or maintenance of permitted structures and means of access as provided in paragraph II.B., (4) place materials for wildlife habitat with the approval of Grantee.

D. Excavation of Materials

No excavation of materials is permitted, including, but not limited to, dredging, mining and removal of loam, gravel, soil, rock, sand, coal and petroleum. Notwithstanding the previous sentence, the Grantor may excavate materials (1) for Forest Management use if customarily and regularly done for that type of Forest Management use, (2) reasonably necessary for the purpose of combating erosion or flooding, and (3) reasonably necessary for construction or maintenance of permitted structures and means of access as provided in paragraph II.B., and (4) for wildlife habitat with the approval of Grantee, provided that these materials are not excavated from or placed or stored on wetlands (as described in paragraph II.G.).

E. Wetlands

No diking, draining, filling, dredging or removal of any wetland or wetlands is permitted. "Wetland" or "wetlands" means portions of the Property defined by any State or federal laws as a wetland or wetlands at the time of the proposed activity.

F. Forest Management

Management and harvesting of all forests on the Property is permitted so long as such management and harvesting is done to protect and enhance Forest Interior Dwelling Species (FIDS) habitat. All Forest Management and associated Forest Practices (defined in II A), including but not limited to Harvesting (defined below), shall be in accordance with: 1) *FIDS/Forestry Task Force Chesapeake Bay Critical Area Timber Harvest Guidelines* ("FIDS Guidelines"), prepared to provide guidance to resource managers who prepare and review timber harvest plans in the Chesapeake Bay Critical Area, or comparable provisions of any guidelines or regulations which may replace the FIDS Guidelines in the future or as they may be amended from time to time 2) a Forest Stewardship Plan (the "Plan") or a Forest Management

Plan prepared by a licensed, registered forester or other professional, in coordination with and approved by the Natural Heritage Program of the Maryland Department of Natural Resources, that manages for the protection and enhancement of FIDS habitat, 3) *Soil Erosion and Sediment Control Guidelines for Forest Harvest Operations in Maryland* (“Guidelines”), prepared by the Maryland Department of the Environment, or comparable provisions of any guidelines or regulations which may replace the Guidelines in the future or as they may be amended from time to time, and 4) all applicable State laws and regulations as they may be amended from time to time. To that end, the property owner shall have a regularly updated Plan which shall include:

- (1) An inventory of any physical and natural features of the land (including wetlands, streams, water bodies, roads, trails, public use areas, special plant and wildlife habitats, rare or unique species and communities, and other environmentally sensitive features) not already identified in Exhibit B;
- (2) An access plan for the Property, including all areas to be managed for forest harvest;
- (3) Erosion Control measures, specifically addressing water bodies and wetland areas;
- (4) Management strategies for non-native invasive species, diseased or infested trees, and sensitive habitats such as riparian areas (including the need to leave cover over streams and water bodies), endangered or threatened species habitat, FIDS habitat, steep slopes, and all those features identified in Exhibit B.

The Grantor shall notify the Grantee in writing at least sixty (60) days in advance of any timber harvest activity, receive written approval of Grantee and comply with the requirements herein prior to conducting any tree harvesting on the Property.

“Harvesting” is hereby defined as the severing of a tree from its stump.

G. Signs and Billboards

No signs, billboards, or outdoor advertising displays may be erected, displayed, placed or maintained on the Property except signs not exceeding four (4) feet x four (4) feet for each of the following purposes: (1) to state the name of the Property and the name and address of the owner; (2) to advertise the Property’s sale or rental; (3) to advertise the forestry uses of the Property; (4) to prevent trespassing; and (5) to display information for the interpretive use in connection with Forest Management, natural, historic or cultural features of the Property; (6) to recognize its protection by the Grantee under this Conservation Easement, and state and local environmental or game laws. All signs must also comply with other applicable laws.

H. Rights of Third Parties to Use the Property

The Grantor may not authorize or allow a third party to use the Property in a manner inconsistent with the Terms of this Conservation Easement. Therefore, no right to use the Property, whether in the form of a right-of-way, easement, oil, gas or mineral lease or other right or interest in, on or through the Property, may be conveyed or permitted to be established

in, on or through the Property, unless the right or interest is consistent with the Terms of this Conservation Easement. (These prohibitions do not apply to a right to use the Property that was in existence prior to this Conservation Easement unless said right was subordinated to this Conservation Easement). However, the Grantee may approve a conveyance of a right to use the Property that benefits permitted uses or structures, such as a utility easement, for reasons which the Grantee determines, in its sole discretion, are sufficiently extraordinary to justify an exception to the prohibitions.

I. Public Access

This Conservation Easement does not grant the public any right to access or any right of use of the Property.

J. Reserved Rights

If the Grantor has any doubt with respect to whether or not any particular use of the Property is prohibited by the Terms of this Conservation Easement, the Grantor may submit a written request to the Grantee for consideration and approval of such use.

ARTICLE III. ENFORCEMENT AND REMEDIES

A. Remedies

Upon any breach of the Terms of this Conservation Easement by the Grantor, the Grantee may, after reasonable notice to the Grantor, exercise any or all of the following remedies:

1. Institute suits to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction either prohibitive or mandatory; and
2. Require that the Property be restored promptly to the condition required by this Conservation Easement.

The Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to the Grantee at law or equity. If the Grantor is found to have breached any of the Terms under this Conservation Easement, the Grantor shall reimburse the Grantee for any costs or expenses incurred by the Grantee, including court costs and reasonable attorney's fees.

B. Effect of Failure to Enforce

No failure on the part of the Grantees to enforce any Term hereof shall discharge or invalidate such Term or any other Term hereof or affect the right of the Grantees to enforce the same in the event of a subsequent breach or default.

C. Right of Inspection

The Grantees, and their respective employees and agents have the right, with reasonable notice to the Grantor, to enter the Property at reasonable times for the purpose of inspecting the Property to determine whether the Grantor is complying with the Terms of this Conservation Easement, provided that, except in cases where Grantor determines that immediate entry is required to prevent, terminate or mitigate a suspected or actual violation of this Conservation Easement, such entry shall be upon sending prior reasonable notice to Grantor's last know address.

ARTICLE IV. EXHIBITS

The following exhibits are hereby made a part of this Conservation Easement:

A. Exhibit A: Property Description and Boundary Survey of the Property is attached hereto and made a part hereof. Exhibit A consists of ____ (__) pages.

B. Exhibit B: Summary of Conservation Values is attached hereto and made a part hereof. Exhibit B consists of one (1) page.

C. Exhibit C: Inventory of Existing Structures is attached hereto and made a part hereof. Exhibit C consists of one (1) page.

D. Exhibit D: Color Photos of the Property With Description of Photos and Photo Index Numbers are kept on file at the principal offices of the Grantee and are fully and completely incorporated into this Conservation Easement as though attached hereto and made a part hereof, except for the Photo Index which is attached hereto and made a part hereof. Exhibit D consists of _____ (__) color photos.

These exhibits reflect the existing uses, conservation values and structures on the Property as of the date of this Conservation Easement.

ARTICLE V. MISCELLANEOUS

A. Notification by the Grantor of a Grant, Conveyance or Other Transfer

The Grantor shall notify the Grantee in writing of the names and addresses of any party to whom the Property, or any part thereof, is to be granted, conveyed or otherwise transferred at or prior to the time said transfer is consummated. The Grantor further agrees to make specific reference to this Conservation Easement in a separate paragraph of any subsequent deed or other legal instrument by which any interest in the Property is granted, conveyed or otherwise transferred. The Grantor shall provide a copy of this Conservation Easement to all subsequent grantees of the fee simple interest of any part or all of this Property.

B. Effect of Laws Imposing Affirmative Obligations on the Grantor

In the event that any applicable State or federal law imposes affirmative obligations on

owners of land which if complied with by the Grantor would be a violation of a Term of this Conservation Easement, the Grantor shall: (i) if said law requires a specific act without any discretion on the part of the Grantor, comply with said law and give the Grantees written notice of the Grantor's compliance as soon as reasonably possible, but in no event more than thirty (30) days from the time the Grantor begins to comply; or (ii) if said law leaves to the Grantor discretion over how to comply with said law, use the method most protective of the conservation values of the Property listed in Exhibit B., and notify Grantees prior to the time Grantor begins to comply.

C. Notices to the Grantee

Any notices by the Grantor to the Grantee pursuant to any Term hereof shall be sent by registered or certified mail, return receipt requested, addressed to the County Commissioners of Cecil County, Maryland, having an address at 200 Chesapeake Blvd., Elkton, MD 21921 and to such other addresses as the Grantees may establish in writing on notification to the Grantor.

D. Approval of the Grantee

In any case where the Terms of this Conservation Easement require the approval of the Grantee, such approval shall be requested by written notice. Unless the Grantee's approval is deemed to have been given in accordance with the prior sentence, any approval shall be written. The Grantee will take into account the Terms and purposes of this Conservation Easement in determining whether to give such approval, but their decision shall be final and in their sole discretion.

E. Assignment By the Grantee and Effect of Dissolution of the Grantee

If at any time Grantee intends to acquire the fee simple interest of the Property encumbered by this Conservation Easement, prior to any such conveyance of the fee simple interest, Grantee shall assign its interest in this Conservation Easement to a "qualified organization" within the meaning of Section 170(h) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code.

So long as a government agency continues to hold title to this Conservation Easement, the Grantee may assign, upon prior written notice to the Grantor, their rights under this Conservation Easement to any "qualified organization" within the meaning of Section 170(h) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code and only with assurances that the purposes of this Conservation Easement will be maintained; and, if any such assignee shall be dissolved or shall abandon this Conservation Easement or the rights and duties of enforcement herein set forth the Conservation Easement and rights of enforcement shall revert to the Grantee; and if the Grantee shall be dissolved and if the terms of the dissolution fail to provide a successor, then the Grantor, or its successors or assigns, shall institute in a court of competent jurisdiction a proceeding to appoint an appropriate successor as Grantee. Any such successor shall be a "qualified organization" within the meaning of Section

170 (h)(3) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code.

F. The Grantees Hold for Conservation Purposes

The Grantee agrees to hold this Conservation Easement exclusively for conservation purposes, as defined in Section 170(h)(4)(A) of the Internal Revenue Code.

G. Mortgages and Deeds of Trust

The Grantor and the Grantee agree that all mortgages and deeds of trust affecting the Property are subordinate to the rights of the Grantee under this Conservation Easement.

The Grantor has provided a copy of this Conservation Easement to all mortgagees, trustees and beneficiaries of deeds of trust affecting the Property as of the date of this Conservation Easement, and each mortgagee, trustee and beneficiary has subordinated the mortgage or deed of trust to this Conservation Easement, by signing a subordination agreement which shall be recorded in the Land Records of Cecil County, Maryland at the time of recording of this Conservation Easement.

H. Condemnation

The purposes of the Property as restricted for natural, forestry, environmental, scenic and rural woodland and wetland resource preservation are hereby considered to be the highest public use of the Property. Whenever all or part of the Property is taken in the exercise of eminent domain, so as to abrogate, in whole or in part, the restrictions imposed by this Conservation Easement, or this Conservation Easement is extinguished, in whole or in part, by other judicial proceeding, the Grantor and the Grantee shall be entitled to proceeds payable in connection with the condemnation or other judicial proceedings in an amount equal to the current fair market value of the relative real estate interests of the fee simple (Grantor) and Conservation Easement (Grantee). Any costs of a judicial proceeding allocated by a court to Grantor and Grantee shall be allocated in the same manner as the proceeds are allocated.

I. Construction

This Conservation Easement shall be construed pursuant to the purpose of this Conservation Easement and the law of the State of Maryland, including the purposes of Section 2-118 of the Real Property Article of the Annotated Code of Maryland, and the conservation purposes of this Conservation Easement.

J. Effect of Laws and Other Restrictions on the Property

The Terms of this Conservation Easement shall be in addition to any local, State or federal laws imposing restrictions to the Property and any real estate interests imposing restrictions to the Property.

K. Entire Agreement and Severability of the Terms

This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any Term is found to be invalid, the remainder of the Terms of this Conservation Easement, and the application of such Term to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

L. Successors

The terms “Grantor” and “Grantee” wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and their personal representatives, heirs, successors and assigns and the above-named Grantee and their successors and assigns.

M. Recordation

The Grantee shall record this instrument for the Grantee and the Grantor in a timely fashion among the Land Records of Cecil County, Maryland, and the Grantees may re-record it at any time as may be required to preserve its rights under this Conservation Easement.

N. Real Property Taxes

Except to the extent provided for by State or local law, nothing herein contained shall relieve the Grantor of the obligation to pay taxes in connection with the ownership or transfer of the Property.

O. Captions

The captions in this Conservation Easement have been inserted solely for convenience of reference and are not a part of this instrument. Accordingly, the captions shall have no effect upon the construction or interpretation of the Terms of this Conservation Easement.

P. Authorization

The Grantor authorizes the local Soil Conservation District and any other entities or government agencies to release to the Grantee information contained in Grantor’s Soil Conservation and Water Quality Plan, Forest Stewardship Plan, Forest Management Plan or any other information applicable to the Terms of this Conservation Easement.

TO HAVE AND TO HOLD unto the County Commissioners of Cecil County, Maryland, its successors and assigns, forever. The covenants agreed to and the terms, conditions and restrictions imposed as aforesaid shall be binding upon the Grantor, their survivors, agents, personal representatives, heirs, assigns and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the Property.

AND said Grantor hereby covenants that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed, that they will

warrant specially the Property granted and that they will execute such further assurances of the same as may be requisite.

IN WITNESS WHEREOF, the Grantor and the Grantees have hereunto set their hands and seals the day and year above written.

GRANTOR:

Witness _____

By: _____(SEAL)

ACCEPTED BY GRANTEES:

**COUNTY COMMISSIONERS OF
CECIL COUNTY, MARYLAND**

Attest:

By: _____(SEAL)

I hereby certify that this Deed of Conservation Easement has been prepared under my supervision, and that I am admitted to practice law in the State of Maryland.

Attorney at Law

State of Maryland, Cecil County, To Wit:

I HEREBY CERTIFY, that on this _____ day of _____, 20____, before me the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared known to me (or satisfactory proven) to be a Grantor of the foregoing Deed of Conservation Easement and acknowledged that he executed the same for the purposes therein contained and in

my presence signed and sealed the same.

WITNESS my hand and Notarial Seal.

_____(SEAL)
Notary Public

My Commission Expires: _____

State of Maryland, Cecil County To Wit:

I HEREBY CERTIFY, that on this _____ day of _____, 20____, before me the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared **President**, President of the County Commissioners of Cecil County, Maryland, and duly acknowledged the Deed of Conservation Easement to be the act of the said body corporate and politic.

WITNESS my hand and Notarial Seal.

_____(SEAL)
Notary Public

Exhibit A:
Property Description and Boundary Survey
Four (4) Pages to follow prepared by

Exhibit B:

Summary of Conservation Values

Page 1 of 1

Description of Conservation Values and FIDS.....

Exhibit C:
Inventory of Existing Structures
Page 1 of 1

	<u>Structure</u>	<u>Approximate Size</u>
1.	None	

Exhibit D:

Color Photos of the Property With Description of Photos and Photo Index Numbers
Page 1 of 1

Color Photo Number:

1.