

This document is not subject to recordation tax pursuant to Md. Ann. Code Tax-Property 12-108(a).

**NOTICE: THIS DEED OF CONSERVATION EASEMENT CONTAINS COVENANTS THAT INCLUDE RESTRICTIONS ON USE, SUBDIVISION, AND SALE OF LAND AND REQUIRES SPECIFIC REFERENCE IN A SEPARATE PARAGRAPH OF ANY SUBSEQUENT DEED OR OTHER LEGAL INSTRUMENT BY WHICH ANY INTEREST IN THE PROPERTY IS CONVEYED.**

### **DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT ("Conservation Easement") made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ and \_\_\_\_\_, having an address at \_\_\_\_\_ (collectively, "Grantors") and the MARYLAND ENVIRONMENTAL TRUST, having an address at 100 Community Place, Third Floor, Crownsville, Maryland 21032 ("MET") and \_\_\_\_\_, a Maryland nonprofit corporation, having an address at \_\_\_\_\_ ("\_\_\_\_") (collectively, "Grantees").

This Conservation Easement is based upon a form that assumes there are multiple Grantors and multiple Grantees. In the event that this assumption is wrong for this Conservation Easement, then, as appropriate, any Provision assuming multiple Grantors or Grantees shall be interpreted to mean only one Grantor or Grantee, as the case may be. In addition, Art. VI. D shall be disregarded when there is only one Grantee.

Maryland Environmental Trust, created pursuant to Subtitle 2 of Title 3 of the Natural Resources Article, Annotated Code of Maryland, is charitable in nature. It was established to conserve, improve, stimulate, and perpetuate the aesthetic, natural, health and welfare, scenic and cultural qualities of the environment, including, but not limited to, land, water, air, wildlife, scenic qualities, open spaces, buildings or any interest therein, and other appurtenances pertaining in any way to the State. MET is a "qualified organization" within the meaning of Section 170(h)(3) of the United States Internal Revenue Code ("IRC").

\_\_\_\_\_ Land Trust, Inc. is a nonprofit tax exempt organization within the meaning of Section 501(c)(3) of the IRC, established for \_\_\_\_\_, and is a "qualified organization" within the meaning of Section 170(h)(3) of the IRC.

Grantors own in fee simple \_\_\_\_ acres, more or less, of certain real property in \_\_\_\_\_ County, Maryland, and more particularly described in Exhibit A attached hereto, which was conveyed to the Grantors by \_\_\_\_\_ by Deed dated \_\_\_\_\_ and recorded among the Land Records of \_\_\_\_\_ County, Maryland in Liber \_\_\_\_\_, Folio \_\_\_\_ (the "Property"). The address of the Property is \_\_\_\_\_. The Property is identified on tax map \_\_\_\_\_, parcel \_\_\_\_\_.

The Property consists of \_\_\_\_ acres of [agricultural land, woodlands, open fields, etc...]; a portion of the [stream or river]; shoreline on the [Chesapeake Bay, Deep Creek Lake, etc...]; relatively natural habitat for [significant flora or fauna]; scenic value of significant public benefit [along road, street, highway, or navigable waterway].

In recognition of the Conservation Attributes defined below, Grantors intend hereby to grant a perpetual Conservation Easement over the Property, thereby restricting and limiting the use of the Property as provided in this Conservation Easement for the purposes set forth below. Grantors thus intend to make a charitable gift of a qualified conservation contribution in the form of this Conservation Easement with respect to the Property to further the preservation and conservation of the Property and the goals of Grantees.

Grantees intend hereby to accept this Conservation Easement and to hold such Conservation Easement exclusively for conservation purposes, as defined in Section 170(h)(4)(A) of the IRC. Grantees are able to monitor and enforce such Conservation Easement.

#### ARTICLE I. GRANT AND DURATION OF EASEMENT

The above paragraphs are incorporated as if more fully set forth herein. 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 in this Conservation Easement (the “Provisions”), Grantors unconditionally and irrevocably hereby voluntarily grant and convey in trust **[delete “in trust” if a charitable trust is not intended]** unto Grantees, their successors and assigns, forever and in perpetuity, this Conservation Easement of the nature and character and to the extent set forth below, with respect to the Property. By execution hereof, Grantors intend to create a charitable trust to benefit the citizens of the State of Maryland. **[delete last sentence if charitable trust is not intended]**

This Conservation Easement shall be perpetual. It is an easement in gross and as such it is inheritable and assignable in accordance with Article XI, runs with the land as an incorporeal interest in the Property, and is enforceable with respect to the Property by Grantees against Grantors and their personal representatives, heirs, successors and assigns.

#### ARTICLE II. CONSERVATION PURPOSE

Pursuant to and in compliance with the requirements of Section 170(h)(4)(A) of the IRC and Section 1.170A-14(d) of the Treasury Regulations, the conservation of the Property will protect the following conservation attributes, as further set forth in Exhibit B: (1) the preservation of land areas for outdoor recreation by or the education of the general public; (2) the protection of relatively natural habitat of fish, wildlife or plants, or similar ecosystems; (3) the preservation of open space for the scenic enjoyment of the general public and which yields a significant public benefit, or pursuant to a clearly delineated Federal, State, or local governmental conservation policy and which yields a significant public benefit; and (4) the preservation of historically important land areas or certified historic structures (“Conservation Attributes”). **[Note to drafter: remove items 1-4 as applicable]**.

The purpose of this Conservation Easement is to preserve and protect in perpetuity the Conservation Attributes of the Property identified above and further described in Exhibit B, and to prevent the use or further development of the Property in any manner that would conflict with these Conservation Attributes (“Conservation Purpose”). The Conservation Attributes are not

likely to be adversely affected to any substantial extent by the continued use of the Property as authorized herein or by the use, maintenance or construction of those Structures (as defined below) that exist on the Property or are permitted herein.

### ARTICLE III. LAND USE AND STRUCTURES

A. General. This Article sets forth certain specific restrictions, prohibitions, and permitted activities, uses, and Structures under this Conservation Easement. Other than the specifically enumerated Provisions described below, any activity on or use of the Property that is otherwise consistent with the Conservation Purpose of this Conservation Easement is permitted. All manner of industrial activities and uses is prohibited. If Grantors believe or reasonably should believe that an activity not expressly prohibited by this Conservation Easement may have a significant adverse effect on the Conservation Purpose of this Conservation Easement, Grantors shall notify Grantees in writing before undertaking such activity.

B. Agricultural Uses and Activities. “Agriculture,” or “Agricultural” as the context requires, means production and/or management of products such as livestock, poultry, crops, trees, shrubs, plants and other vegetation, and aquaculture, but not surface, sub-surface, or spring water. This includes, by way of example and not limitation, the related activities of tillage, fertilization, application of pesticides, herbicides and other chemicals, harvesting and mowing, and the feeding, housing, breeding, raising, boarding, training and maintaining of animals such as horses, ponies, cattle, sheep, goats, hogs, and poultry. Commercial (as defined below) small animal kennel operations are prohibited.

Agricultural uses and activities are permitted on the Property on a Commercial (as defined below) or non-Commercial basis.

C. Commercial Uses and Activities. “Commercial” means any use or activity conducted by Grantors or a third party for the purpose of realizing a profit or other benefit to Grantors, their designees, or such third party from the exchange of goods or services by sale, barter, or trade. In instances in which the Grantors are a nonprofit corporation, Grantors may conduct only those Commercial uses or activities that are directly related to Grantors’ mission. Commercial activities and uses that are permitted shall be limited in scale to those appropriate to the size and location of the Property and shall not harm the Conservation Attributes. The following Commercial activities and uses are permitted:

(1) Commercial activities within Dwelling Units (as defined below) (for example: ongoing activities such as a professional office, or an at-home child day care; or occasional activities such as fundraisers or benefits);

(2) Commercial activities related to Agriculture inside of Structures (as defined below) used for Agriculture (for example: farm machine repair shop or seed and mineral shop);

(3) seasonal or occasional outdoor Commercial activities that are accessory to the Agricultural uses of the Property (for example: hay rides, corn maze, farm animal petting zoo, pick your own produce) and sale of Agricultural products produced off of the Property but

associated with such seasonal or occasional activities (for example, the sale of apple cider on a hay ride);

(4) production/processing (within a permitted Structure) of Agricultural products (as listed in Article III.B above), a majority of which are produced on the Property or another property owned by Grantors, into derivatives thereof;

(5) the Commercial retail and/or non-retail sale of (i) Agricultural products (as listed in Article III.B above), a majority of which are produced on the Property or on a property owned by Grantors; or (ii) derivatives produced pursuant to III.C(4) above;

(6) Commercial services related to Agriculture limited to equestrian sports, events, and shows, boarding, the training of horses/ponies and riders, and the provision of recreational or therapeutic riding opportunities;

(7) Commercial Passive Recreational (as defined below) uses operated by a resident of a Dwelling Unit on the Property, or by the Grantors. Structures associated with these uses must be permitted according to Article III.E (3) below. Any Commercial Passive Recreational uses not prohibited by Articles III.C and III.D shall be limited to a de minimis amount; and

(8) Commercial Ecosystems Services Marketing (as defined below) and Commercial Mitigation and Conservation Banking (as defined below), with approval of Grantees as per Article III.Q and Article V, and Commercial compensation from the implementation of appropriate Agricultural conservation practices; provided, however, that Grantors may not earn Commercial compensation if the activities generating such compensation are required as a result of Grantors' violation of this Conservation Easement. Grantees shall not be entitled to any such compensation.

D. Private Passive Recreational Uses and Activities. "Private" means the intensity of activity that could reasonably be expected in proportion to the number of residents that would typically occupy the permitted Dwelling Units (as defined below) on the Property. "Passive Recreation," or "Passive Recreational" as the context may require, means low-impact activities conducted outdoors, including, by way of example and not by way of limitation, nature study, orienteering, hunting, fishing, hiking, kayaking, canoeing, sailing, boating, horseback riding, camping, and cross country skiing.

Private Passive Recreational uses are permitted on the Property but shall be limited in scale to those appropriate to the size and location of the Property. Athletic fields and golf courses are prohibited on the Property.

E. Structures, Buildings, Dwelling Units, and Means of Access. "Structure" means anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. "Building" means any Structure which is designed, built, or occupied as a shelter for persons, animals, or personal property. "Dwelling Unit" means one or more rooms in a Building arranged for independent housekeeping purposes with: (i) furnishing for eating, living, and sleeping; (ii) the provisions for cooking; and (iii) the provisions

for sanitation. “Means of Access” means gravel or paved driveways, lanes, farm roads, and parking areas meant to carry vehicular traffic to permitted uses and Structures.

Structures, Buildings, Dwelling Units, and Means of Access are prohibited on the Property, except the following, which include those listed in Exhibit C:

- (1) \_\_\_\_\_ (\_\_\_) single-family detached Dwelling Unit(s) (“Primary Dwelling Unit”). A permitted Primary Dwelling Unit may be remodeled, renovated, replaced, enlarged, or maintained without the prior written approval of Grantees. The relocation of a Primary Dwelling Unit or the conversion of any previously non-residential Structure to a Primary Dwelling Unit shall be subject to Grantees’ approval as further set forth in Article V below.
- (2) \_\_\_ (\_\_\_) Dwelling Unit(s) accessory in nature to a Primary Dwelling Unit and limited to the following types: detached guest house, detached caretaker residence, detached farm manager’s or employee’s house, detached pool house or detached boat house if either Structure meets the definition of Dwelling Unit herein, apartment within a barn, or accessory apartment located within a Primary Dwelling Unit described in paragraph (1) above (“Accessory Dwelling Unit”). An apartment within a barn or an accessory apartment located within a Primary Dwelling Unit must be fully contained within its Structure and may not be replaced by a detached Dwelling Unit of any kind.

Each Accessory Dwelling Unit may not exceed a gross floor area of one thousand five hundred (1,500) square feet, calculated by first multiplying the exterior footprint of the portions of the Structure with multiple stories by the number of stories with windows and then adding the exterior footprint of any portions of the Structure with one story, including, but not limited to, porches, but excluding unenclosed decks, basements and attics. The relocation of an Accessory Dwelling Unit or the conversion of any previously non-residential Structure to an Accessory Dwelling Unit shall be subject to Grantees’ approval as further set forth in Article V below.

As pertaining to Art. III.E(1) and (2) above, the total number of all Dwelling Units on the Property shall never exceed \_\_\_ ( ), and the location of any new Structure containing a Dwelling Unit shall be subject to Grantees’ approval as further set forth in Article V below.

(3) Non-residential accessory Structures designed, constructed and utilized for the purpose of serving each Primary Dwelling Unit (for example: detached garage; well house; boat house; pool house; swimming pool; pier; Structures related to hunting such as deer stands or waterfowl blinds);

(4) Non-residential Structures designed, constructed and utilized in connection with the Agricultural uses of the Property. This Provision shall not be construed to permit what is otherwise defined herein as a Dwelling Unit, even if the structure is designed, constructed or utilized for dwelling or residential purposes associated or in conjunction with the Agricultural uses of the Property;

(5) Reasonable Means of Access serving the Structures set forth above in III.E and other permitted uses; provided, however, that reasonable Means of Access to a Structure or use permitted by Art. III.C (3) and/or Art. III.E (1) and (2) is subject to Grantees' approval in accordance with the provisions of Article V below;

(6) Fencing, fences, and gates, which may be constructed, maintained, improved, removed, or replaced to mark boundaries, to secure the Property, or as needed in carrying out activities permitted by this Conservation Easement, and in accordance with Article III.N below; and

(7) Structures permitted pursuant to Article III(Q).

F. Utilities. Grantor may repair and replace existing Utilities (as defined below) and may install new Utilities as set forth herein. Utilities must be sized and designed to serve the Property and shall not be installed for the purpose of facilitating development, use, or activities on an adjacent or other property or to serve an adjacent or other property. "Utilities" includes, but is not limited to, satellite dishes, electric power lines and facilities, sanitary and storm sewers, septic systems, cisterns, wells, water storage and delivery systems, telephone and communication systems and renewable energy systems (including but not limited to solar energy devices on a Building or, with approval of Grantees pursuant to Article V, on a Structure that is not a Building; geothermal heating and cooling systems, also known as ground source heat pump; wind energy devices; systems based on the use of Agricultural byproducts and waste products from the Property to the extent not prohibited by governmental regulations; and other renewable energy systems that are not prohibited by governmental regulations). Cellular communication Structures and systems are prohibited. To the extent allowed by law, any net excess generation produced by such renewable energy installation(s) may be credited to the Grantors' utility bill or sold to the utility and shall not constitute Commercial activity.

G. Access Across the Property. No right-of-way for utilities or roadways shall be granted across the Property in conjunction with any industrial, commercial, or residential use or development of an adjacent or other property not protected by this Conservation Easement without the prior written approval of both Grantees, as per Article V.B.(ii).

H. Subdivision. The division, partition, subdivision, or boundary line adjustment of the Property, including the lease of any portion less than one hundred percent (100%) of the Property for a term in excess of twenty (20) years ("Subdivision," or "Subdivided" as the case may be), is prohibited. Grantees, however, may approve the Subdivision of the Property for reasons which Grantees determine, in their sole discretion, are sufficiently extraordinary to justify an exception to the prohibition, in accordance with the provisions of Article V below.

I. Buffer Requirements. A one-hundred (100) foot vegetative buffer strip along each side of the \_\_\_\_\_ River (Creek, etc...) is required on the Property. Grantors shall maintain such buffer strip if it currently exists, or allow it to naturally revegetate or plant such buffer strip with native species. Once established, Grantors shall not disturb such buffer, except when reasonably required for: (1) erosion control; (2) Passive Recreational uses which require

water access and associated Structures, subject to Grantees' approval, per Article V; (3) access to the water for irrigation of the Property; (4) control of non-native and invasive species or removal of dead, diseased, or infested trees as provided for in Article III.K below; (5) access to portions of the Property which are accessible only by crossing said water body; (6) livestock stream crossings in accordance with an approved Soil and Water Conservation Plan prepared by the Soil Conservation District; (7) enhancement of Wetlands (as defined below), wildlife habitat or water quality; (8) the existing \_\_\_\_\_ (*list existing Structure(s) located within the buffer*), as described in Exhibit C. Grantors shall not store manure or compost nor use or deposit pesticides, insecticides, herbicides or fertilizers (except for revegetation or planting of native species, or control of invasive or diseased species) within the buffer strip. The buffer strip shall comply with Art. III.N of this Conservation Easement.

J. Wetlands. "Wetlands" means portions of the Property defined by Maryland state law or federal law as wetlands at the time of the proposed activity. The diking, draining, filling, dredging or removal of Wetlands is prohibited; provided, however, that (1) the creation, restoration and maintenance of Wetlands and man-made ponds is permitted with all necessary and appropriate permits; and (2) the maintenance of all Agricultural drainage ditches is permitted.

K. Forest Management. Management and harvesting of all forests on the Property shall be consistent with the *Soil Erosion and Sediment Control Guidelines for Forest Harvest Operations in Maryland*, prepared by the Maryland Department of Environment (the "Guidelines"), or comparable provisions of any guidelines or regulations which may replace the Guidelines in the future and as they may be amended from time to time.

L. Dumping. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, hazardous or toxic substances, dredge spoils, industrial and commercial byproducts, effluent and other materials on the Property is prohibited, whether by Grantors or third parties. Soil, rock, other earth materials, vegetative matter, or compost may not be placed except when reasonably required for: (1) Agriculture or other permitted uses on the Property; or (2) the construction and/or maintenance of Structures, Buildings, Dwelling Units, and Means of Access permitted under this Conservation Easement; or (3) erosion control. This Conservation Easement does not permit or require Grantees to become an operator or to control any use of the Property that may result in the treatment, storage, disposal, or release of hazardous materials within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

M. Excavation; Surface and Sub-surface Extraction. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, sand, surface or sub-surface water or other material substance in a manner as to affect the surface or otherwise alter the topography of the Property is prohibited, whether by Grantors or third parties, except for: (1) the purpose of combating erosion or flooding, (2) Agriculture or other permitted uses on the Property, (3) Wetlands or stream bank restoration, or (4) the construction and/or maintenance of permitted Structures and associated Utilities, Means of Access, man-made ponds and wildlife habitat. Grantors shall not sell, transfer, lease, or otherwise separate any mineral rights, currently owned or later acquired, from

the surface of the Property. All manner of surface mining is prohibited. Sub-surface mining or drilling is permitted only in accordance with Treasury Regulation 1.170A-14(g)(4) and subject to Grantees' approval, pursuant to Article V below. In addition to the requirements of Article V, Grantees shall consider whether the impact will be limited, localized, and irretrievably destructive of Conservation Attributes.

N. Visual Screening. In order to maintain the scenic view of the Property from \_\_\_\_\_ set forth as a Conservation Attribute in Exhibit B, Grantors shall not erect, construct, assemble, or plant visual screening, including but not limited to stockade fences, tall berms, and dense hedges, that would, in Grantees' sole discretion, substantially block views of the Property from such public roadways or waterways.

O. Signage. Display of billboards, signs or advertisements is prohibited on or over the Property, except to: (1) state solely the name and/or address of the Property and/or the owners; (2) advertise the sale or lease of the Property; (3) advertise the Agricultural uses of the Property; (4) advertise the goods or services sold or produced in accordance with permitted Commercial uses of the Property; (5) commemorate the history of the Property, its recognition under local, state or federal historical registers, or its protection under this Conservation Easement or federal, state or local environmental or game laws; (6) provide directions to permitted uses and Structures on the Property; and/or (7) address hunting, fishing, or trespassing (including signs or blazes on trees, the latter of which may be unlimited in number, for the purpose of delineating Property boundaries, which Grantees encourage in order to prevent encroachments). No billboard, sign, or advertisement on or over the Property shall exceed sixteen (16) square feet. Multiple signs shall be limited to a reasonable number, shall be placed at least five hundred (500) feet apart, and shall be placed in accordance with applicable local regulations, except that signs permitted under exceptions (5) and (7) may be placed the lesser of one hundred (100) feet apart or the distance required by law.

P. Reserved Rights Exercised to Minimize Damage. All rights reserved by Grantors or activities not prohibited by this Conservation Easement shall be exercised so as to prevent or to minimize damage to the Conservation Attributes identified above and water quality, air quality, land/soil stability and productivity, wildlife habitat, scenic and cultural values, and the natural topographic and open space character of the Property.

Q. Ecosystems Services, Ecosystems Services Marketing, and Mitigation and Conservation Banking. "Ecosystems Services" means the conditions and processes through which natural ecosystems (such as forests, wetlands, grasslands, and endangered species habitat and the species that inhabit them) provide services (such as air and water purification, flood control, carbon and nutrient scrubbing, soil formation, decomposition and filtration of waste, pollination of crops, provision of habitat) that sustain and fulfill healthy human and natural systems. "Ecosystems Services Marketing" means sale, trade, exchange or payment to conserve, establish or enhance a particular natural function or Ecosystems Service. "Mitigation and Conservation Banking" means current or future programs with state or federal agencies or private entities intended to provide incentive or compensation for the conservation of rare, threatened or endangered species or communities by protecting or enhancing their habitats, or for other environmental preservation or enhancement efforts (such as Wetland mitigation, carbon

credit, and similar programs).

If Grantors wish to develop or enhance existing Ecosystems Services on the Property, Grantors may do so by installing vegetative treatments and by excavating, filling and grading for forest or grassland establishment, erosion control measures, streambed or stream bank restoration, habitat restoration or wetland creation or restoration; provided, however, that such actions must be consistent with the Conservation Attributes of the Property as they are identified in this Conservation Easement. If Grantor wishes to create wetlands in an historically upland area, Grantor may do so only if such area has either historical or current evidence of two or more of the following: (a) hydric soils; (b) hydrophytic vegetation; (c) wetland hydrology. In connection with such activities, Grantors may construct new Structures (including but not limited to dams, weirs, water flow control gates) but not new Buildings. Grantors reserve the right to enter into agreements whereby Grantors agree to manage or permit a third party to manage the natural resources associated with the Property in a specific manner consistent with this Conservation Easement. Grantors may also enter into overlay conservation easements; provided, however, that Grantees must approve any request to subordinate this Conservation Easement to an overlay conservation easement.

With approval of Grantees as further set forth in Article V below, Grantors may engage in Ecosystems Services Marketing and/or Mitigation and Conservation Banking on the Property on a Commercial basis.

#### ARTICLE IV. GRANT OF UNRESERVED PROPERTY RIGHTS

Grantors retain the right to sell, devise, transfer, lease, mortgage or otherwise encumber the Property subject to the provisions of this Conservation Easement. Grantors retain the right to sell, trade, or exchange credits allocated to Agricultural products produced on the Property. Grantors hereby grant to Grantees all rights (except as specifically reserved herein) that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated and extinguished and may not be used or transferred to any other property adjacent or otherwise, and may not be used for the purpose of calculating permissible lot yield of the Property or any other property. Grantors further agree that the Property shall not be used to provide required open space for the development or subdivision of another property, nor shall it be used in determining any other permissible residential, commercial or agricultural uses of another property.

#### ARTICLE V. GRANTEE APPROVAL PROCESS

A. This Conservation Easement provides that, in specified circumstances, before Grantors can take certain actions Grantees must first give their permission, consent or approval. These specified circumstances include, but are not limited to:

- location of any new Structure containing a Dwelling Unit, as per Article III.E;
- location of any replacement Dwelling Unit if different from the location of the replaced Dwelling Unit, as per Article III.E;

- conversion of any previously non-residential Structure to be or include a Dwelling Unit, as per Article III.E;
- location of a new Means of Access to a Dwelling Unit, as per Article III.E(5);
- size of a parking area and Means of Access for a small-scale seasonal or occasional outdoor Commercial use or activity accessory to Agriculture, as per Article III.E(5);
- location of a solar panel on a Structure that is not a Building, as per Article III.F or approval of a Structure the sole purpose of which is to hold a solar panel;
- access across the Property for utilities or roadways serving another property, as per Article III.G;
- Subdivision of the Property, as per Article III.H;
- Structures associated with Passive Recreational water uses, located within the 100-foot buffer strip, as per Article III.I (2);
- sub-surface mining or drilling, as per Article III.M; and
- use of the Property for Commercial Ecosystems Services Marketing or Mitigation and Conservation Banking, as per Article III.Q.

B. Whenever the Provisions of this Conservation Easement require the permission, consent or approval of Grantees, Grantors shall submit to Grantees a written and visual description of the request for which approval is sought, accompanied by such plats, maps, Subdivision plans, drawings, photographs, written specifications, or other materials as Grantees may need to consider the request. Said materials shall be submitted prior to any start of construction and in advance of, or concurrent with, application for permits from federal, state, or local governments. Grantees shall evaluate the submission for completion and may require that Grantors submit additional information necessary for a complete submission. When Grantees deem the submission complete (“Request”), Grantees shall act on the Request within the timeframe provided for in Article V.C below.

(i) In evaluating the Request, each Grantee shall consider the specific Provision of this Conservation Easement requiring the approval, and said approval shall be granted or denied based on such Grantee’s sole discretion as to whether the Request conforms to the Conservation Attributes listed in Article II and Exhibit B of this Conservation Easement and the Conservation Purpose of this Conservation Easement. Approval is required by both Grantees.

(ii) If Grantors, with the support of a state or local government, are seeking approval of access across the Property for utilities or roadways as referenced in Article III.G, Grantees shall consider, in addition to the Conservation Attributes listed in Article II and Exhibit B of this Conservation Easement and the Conservation Purpose of this Conservation Easement, the following:

1. Does the project serve a valid public purpose, promote the public interest, or provide a public benefit;
2. Can the project be located in an alternative site without significant expense to a public agency;
3. Has the project received the written support of a state or local government;
4. Does the project maximize the use of concealment methods, if applicable;

5. Is the location of the project acceptable to Grantees;
6. Will the project provide a private benefit to Grantors;
7. Will the party making the Request compensate Grantees for Grantees' actual administrative costs and/or attorneys' fees (including but not limited to outside counsel fees) related to its review of the Request (whether or not such Request is approved), and, if approved, inspection of installation of the project, monitoring for violations and enforcement related to the project;
8. Has the party making the Request proffered acceptable mitigation, on or off the Property, to address the adverse impacts of the project and provide a net gain in Conservation Attributes, if feasible (for example, additional plantings, the grant of additional land, or a monetary payment).

(iii) If Grantors are seeking location approval for a permitted Dwelling Unit or are seeking approval of a reserved Subdivision right, all Grantors who have a real property interest in the portion of the Property at issue must join in the submission before it will be deemed a Request. If Grantors are seeking location approval for a permitted Dwelling Unit and the requested Dwelling Unit is to be situated on a newly Subdivided lot, Grantors shall submit a Request for such Subdivision at the same time.

C. Grantees shall each provide to Grantors a written decision regarding the Request within ninety (90) days after receipt of the Request, unless the time for consideration is extended by mutual agreement of the parties. Failure of any Grantee to act within the time provided shall be deemed a denial by such Grantee.

D. If an expert within the Maryland Department of Natural Resources advises Grantees of an occurrence of a rare, threatened, or endangered species that was not previously recognized on the Property, and that the habitat, survivability, or fitness for such species could be enhanced by a practice or activity which would otherwise result in a violation of a Provision of this Conservation Easement, Grantees, in their sole discretion, may approve of such a practice or activity.

## ARTICLE VI. ENFORCEMENT AND REMEDIES

A. Grantees and their employees and agents shall have the right to enter the Property at reasonable times for the purpose of inspecting and surveying the Property to determine whether Grantors are complying with the Provisions of this Conservation Easement. Grantees shall provide prior notice to Grantors at their last known address, unless Grantees determine that immediate entry is required to prevent, terminate, or mitigate a suspected or actual violation of this Conservation Easement which poses a serious or potentially permanent threat to Conservation Attributes, in which latter case prior reasonable notice is not required.

In the course of such inspection, Grantees may inspect the interior of Buildings and Structures permitted by Article III.E (3) and III.E (4) for the purpose of determining compliance with this Conservation Easement. In the event that a dispute arises between Grantees and Grantors as to whether a Building or Structure is a Dwelling Unit which would not otherwise be

permitted by this Conservation Easement, such Building or Structure shall be deemed to contain a Dwelling Unit unless proven otherwise by the Grantors.

B. Upon any breach of a Provision of this Conservation Easement by Grantors, Grantees may institute suit to enjoin any such breach or enforce any Provision by temporary, *ex parte* and/or permanent injunction, either prohibitive or mandatory, including a temporary restraining order, whether by *in rem*, *quasi in rem* or *in personam* jurisdiction; and require that the Property be restored promptly to the condition required by this Conservation Easement (which may, depending on circumstances, be to the condition at the time of the grant of this Conservation Easement) at the expense of Grantors. Before instituting such suit, Grantees shall give notice to Grantors and provide a reasonable time for cure; provided, however, that Grantees need not provide such notice and cure period if Grantees determine that immediate action is required to prevent, terminate or mitigate a suspected or actual breach of this Conservation Easement.

Grantees' remedies shall be cumulative and shall be in addition to all appropriate legal proceedings and any other rights and remedies available to Grantees at law or equity. If Grantors are found to have breached any of Grantors' obligations under this Conservation Easement, Grantors shall reimburse Grantees for any costs or expenses incurred by Grantees, including court costs and reasonable attorneys' fees.

C. No failure or delay on the part of Grantees to enforce any Provision of this Conservation Easement shall discharge or invalidate such Provision or any other Provision or affect the right of Grantees to enforce the same in the event of a subsequent breach or default.

D. Each Grantee has independent authority to enforce the Provisions of this Conservation Easement. In the event that the Grantees do not agree as to whether the Grantors are complying with the Provisions, each Grantee may proceed with enforcement actions without the consent of the other Grantee.

#### ARTICLE VII. NO PUBLIC ACCESS

Although this Conservation Easement will benefit the public in the ways recited above, the granting of this Conservation Easement does not convey to the public the right to enter the Property for any purpose whatsoever.

#### ARTICLE VIII. BASELINE DOCUMENTATION

The parties acknowledge that Exhibits A – F (collectively, the “Baseline Documentation”) reflect the legal description of the Property, existing uses, location, Conservation Attributes and Structures, Buildings, and Dwelling Units on the Property as of the date of this Conservation Easement. Grantors hereby certify that the attached Exhibits are sufficient to establish the condition of the Property at the time of the granting of this Conservation Easement. All Exhibits are hereby made a part of this Conservation Easement:

A. Exhibit A: Boundary Description and Property Reference is attached hereto and made a part hereof. Exhibit A consists of \_\_\_\_ (\_\_\_\_) pages.

B. Exhibit B: Conservation Attributes is attached hereto and made a part hereof. Exhibit B consists of \_\_\_\_ (\_\_\_\_) pages.

C. Exhibit C: Inventory of Existing Structures is attached hereto and made a part hereof. Exhibit C consists of \_\_\_\_ (\_\_\_\_) pages.

D. Exhibit D: Color Digital Images of the Property are not recorded herewith but are kept on file at the principal office of the Maryland Environmental Trust and are fully and completely incorporated into this Conservation Easement as though attached hereto and made a part hereof. A list of the image numbers, vantage points, and image descriptions is recorded herewith. Exhibit D consists of a photo point map, \_\_\_\_ (\_\_\_\_) color digital images and \_\_\_\_ (\_\_\_\_) pages.

E. Exhibit E: Aerial Photograph and Topographic Map of the Property are not recorded herewith but kept on file at the principal office of the Maryland Environmental Trust and is fully and completely incorporated into this Conservation Easement as though attached hereto and made a part hereof. Exhibit E consists of two (2) pages.

F. Exhibit F: Tax Map Showing Approximate Location of Property is attached hereto. This is to be used only by Grantees as an aid for locating the Property. It is not a plat or legal description of the Property. Exhibit F consists of one (1) page.

#### ARTICLE IX. DUTIES AND WARRANTIES OF GRANTORS

A. Change of Ownership. In order to provide Grantees with notice of a change in ownership or other transfer of an interest in the Property, Grantors agree to notify Grantees in writing of the names and addresses of any party to whom the Property, or any part thereof, is transferred in accordance with Section 10-705 of Real Property Article, Ann. Code of Maryland, or such other comparable provision as it may be amended from time to time. Grantors, their personal representatives, heirs, successors and assigns further agree 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 conveyed.

B. Subordination. Grantors certify that all mortgages, deeds of trust, or other liens (collectively “Liens”), if any, affecting the Property are subordinate to, or shall at time of recordation become subordinate to, the rights of Grantees under this Conservation Easement. Grantors have provided, or shall provide, a copy of this Conservation Easement to all mortgagees of mortgages and to all beneficiaries and/or trustees of deeds of trust (collectively “Lienholders”) already affecting the Property or which will affect the Property prior to the recording of this Conservation Easement, and shall also provide notice to Grantees of all such Liens. Each of the Lienholders has subordinated, or shall subordinate prior to recordation of this Conservation Easement, its Lien to this Conservation Easement either by signing a subordination instrument contained at the end of this Conservation Easement which shall become a part of this Conservation Easement and recorded with it, or by recording a separate subordination agreement pertaining to any such Lien.

C. Real Property Taxes. Except to the extent provided for by State or local law, nothing in this Conservation Easement shall relieve Grantors of the obligation to pay taxes in connection with the ownership or transfer of the Property.

D. Warranties. The grantors who signed this Conservation Easement on the date set forth above (“Original Grantors”) are the sole owner(s) of the Property in fee simple and have the right and ability to convey this Conservation Easement to Grantees. The Original Grantors warrant that the Property is free and clear of all rights, restrictions, and encumbrances other than those subordinated to this Conservation Easement or otherwise specifically agreed to in writing by the Grantees. The Original Grantors warrant that they have no actual knowledge of any use or release of hazardous waste or toxic substances on the Property that is in violation of a federal, state, or local environmental law and will defend, indemnify, and hold Grantees harmless against any claims of contamination from such substances. The Original Grantors warrant that Exhibit C is an exhaustive list of all Dwelling Units on the Property.

E. Continuing Duties of Grantors. For purposes of this Conservation Easement, “Grantors” shall mean only, at any given time, the then current fee simple owner(s) of the Property and shall not include the Original Grantors or other successor owners preceding the current fee simple owner(s) of the Property, except that if any such preceding owners have violated any term of this Conservation Easement, they shall continue to be liable therefor.

#### ARTICLE X. TERMINATION

As set forth in Article I above, this Conservation Easement is granted in perpetuity. Grantees have determined that the Conservation Attributes set forth in Exhibit B constitute a valued public purpose worthy of permanent protection. Notwithstanding the preceding two sentences, this Conservation Easement may be terminated only due to extraordinary circumstances and only by way of Article X. A or B below.

A. Judicial Extinguishment. This Conservation Easement may be extinguished, other than as set forth in Art. X.B below, only if a court with jurisdiction, at the joint request of Grantors and Grantees, determines that conditions on or surrounding the Property have changed such that it has become impossible or impractical to fulfill the Conservation Purpose.

B. Condemnation. This Conservation Easement may be terminated through condemnation proceedings if condemnation of a part or all of the Property by a public authority renders it impossible or impractical to fulfill the Conservation Purpose. Grantees may, at their option, join in the negotiations or proceedings at any time to object to the taking and to recover the full value of the interests in the property subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by the parties to this Conservation Easement in connection with such taking shall be paid out of the recovered proceeds.

C. Proceeds. The granting of this Conservation Easement gives rise to a property right, immediately vested in Grantees, with a fair market value at least equal to the ratio of the value of

this Conservation Easement on the effective date of this grant to the value of the Property without deduction for the value of the Conservation Easement on the effective date of this grant.

If this Conservation Easement is terminated in whole or in part, whether by judicial extinguishment or condemnation, Grantees shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the greater of: (i) the percentage required pursuant to Treasury Regulation §1.170A-14(g)(6); or (ii) the proportion that the value of this Conservation Easement at the time of extinguishment or condemnation bears to the then value of the Property as a whole. Such proceeds received by Grantees shall be used by Grantees in a manner consistent with the Conservation Purpose of the original contribution. This paragraph is subject to Section 12-104(g) of Real Property Article, Ann. Code of Maryland as in effect on the date of this grant.

## ARTICLE XI. MISCELLANEOUS

A. Assignment. Each Grantee may assign, upon prior written notice to Grantors, its rights under this Conservation Easement to any "qualified organization" within the meaning of Section 170(h)(3) of the IRC or the comparable provision in any subsequent revision of the IRC and only with assurances that the Conservation Purpose will be maintained. If any such assignee shall be dissolved or shall abandon this Conservation Easement or the rights and duties of enforcement herein set forth, or if proceedings are instituted for condemnation of this Conservation Easement, this Conservation Easement and rights of enforcement shall revert to the assigning Grantee. If said Grantee shall be dissolved and if the terms of the dissolution fail to provide a successor, then Grantors 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 IRC or the comparable provision in any subsequent revision of the IRC. No assignment may be made by any Grantee of its rights under this Conservation Easement unless Grantee, as a condition of such assignment, requires the assignee to carry out the Conservation Purpose.

B. Amendment. Grantors and Grantees recognize that circumstances could arise that justify an amendment of certain of the Provisions contained in this Conservation Easement. To this end, Grantors and Grantees have the right to agree to amendments to this Conservation Easement; provided, however, that:

(1) No amendment shall be allowed if it would adversely affect the qualification of this Conservation Easement or the status of Grantees under any applicable state or federal law, including Section 170(h) of the Internal Revenue Code;

(2) No amendment shall be allowed if it would create private inurement or private benefit;

(3) Proposed amendments will not be approved unless, in the opinion of each Grantee, the requested amendment satisfies the more stringent of the following: (A) (i) the amendment

either enhances or has no adverse effect on the Conservation Purpose protected by this Conservation Easement and (ii) the amendment upholds the intent of the original Grantors and the fiduciary obligation of the Grantees to protect the Property for the benefit of the public in perpetuity; or (B) the amendment complies with such Grantee's amendment policy at the time that the amendment is requested;

(4) The amendment must be in conformity with all of each Grantee's policies in effect at the time of the amendment;

(5) The amendment is subject to and dependent upon approval of the Maryland Board of Public Works; and

(6) The amendment must be recorded among the Land Records in the county or counties where this Conservation Easement is recorded.

Grantors and Grantees may agree to an amendment in lieu of engaging in full condemnation proceedings; provided that Grantees determine that the exercise of condemnation would be lawful, the best interest of all parties would be better served by negotiating a settlement with the condemning authority, and the Grantees receive and use compensation as set forth in Art. X.C above. In such event, an amendment shall only be required to satisfy Art. XI.B(5) and (6).

Proposed amendments that exceed the discretion granted to the Grantors and Grantees pursuant to this Provision are permitted only if they are authorized by a Maryland court having jurisdiction, and in evaluating any such proposed amendment, the court shall apply the law of charitable trusts as then in effect in the State of Maryland. Nothing in this Article XI.B shall require Grantors or Grantees to (i) agree to any amendment; or (ii) consult or negotiate regarding any amendment.

C. Compliance with Other Laws. The Provisions of this Conservation Easement do not replace, abrogate or otherwise set aside any local, state or federal laws, requirements or restrictions imposing limitations on the use of the Property.

In the event that any applicable state or federal law imposes affirmative obligations on owners of land which if complied with by Grantors would be a violation of a Provision of this Conservation Easement, Grantors shall: (i) if said law requires a specific act without any discretion on the part of Grantor, comply with said law and give Grantees written notice of Grantors' compliance as soon as reasonably possible, but in no event more than thirty (30) days from the time Grantors begins to comply; or (ii) if said law leaves to Grantors' discretion how to comply with said law, use the method most protective of the Conservation Attributes of the Property listed herein and in Exhibit B and give Grantees written notice of Grantors' compliance as soon as reasonably possible, but in no event more than thirty (30) days from the time Grantors begin to comply.

D. Construction. This Conservation Easement shall be construed to promote the purposes of the statutes creating and governing the Maryland Environmental Trust, the purposes

of Section 2-118 of Real Property Article, Ann. Code of Maryland, and the Conservation Purpose, including such purposes as are defined in Section 170(h)(4)(A) of the IRC. This Conservation Easement shall be interpreted under the laws of the State of Maryland, resolving any ambiguities and questions of the validity of specific provisions in a manner consistent with the Conservation Purpose.

E. Entire Agreement and Severability. 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 this Conservation Easement. If any Provision is found to be invalid, the remainder of the Provisions of this Conservation Easement, and the application of such Provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

F. Joint and Several. If Grantors at any time own the Property in joint tenancy, tenancy by the entireties or tenancy in common, all such tenants shall be jointly and severally liable for all obligations set forth in this Conservation Easement.

G. Recordation. Grantees shall record this instrument in a timely fashion among the Land Records of \_\_\_\_\_ County, Maryland, and may re-record it at any time as may be required to preserve their rights under this Conservation Easement.

H. Notice to Grantees. Any notices by Grantors to Grantees pursuant to any Provision hereof shall be sent by registered or certified mail, return receipt requested, addressed to:

Maryland Environmental Trust  
100 Community Place, Third Floor  
Crownsville, Maryland 21032

and to

*XYZ Land Trust, Inc.*  
*123 Fake Street*  
*Anytown, Maryland 21658*

or to such other addresses as Grantees may establish in writing on notification to Grantors, or to such other address as Grantors know to be the actual location(s) of Grantees.

I. Counterpart Signatures. The parties may execute this Conservation Easement in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

J. 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 Provisions of this Conservation Easement.

TO HAVE AND TO HOLD unto the Maryland Environmental Trust and \_\_\_\_\_, their successors and assigns, forever. The covenants agreed to and the terms, conditions, and restrictions imposed as aforesaid shall be binding upon Grantors, 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 Grantors covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the interest in 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, Grantors and Grantees have hereunto set their hands and seals the day and year above written.

GRANTOR:

\_\_\_\_\_(SEAL)  
Name

STATE OF MARYLAND, \_\_\_\_\_ of \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY, that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me the subscriber, a Notary Public of the State aforesaid, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be a Grantor of the foregoing Deed of Conservation Easement and acknowledged that he/she/it executed the same for the purposes therein contained and in my presence signed and sealed the same.

WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

ACCEPTED BY GRANTEES:

MARYLAND ENVIRONMENTAL TRUST

BY: \_\_\_\_\_ (SEAL)      DATE: \_\_\_\_\_  
William H. Leahy II  
Director

XYZ LAND TRUST, INC.,  
a Maryland nonprofit corporation

BY: \_\_\_\_\_ (SEAL)      DATE: \_\_\_\_\_  
John Doe  
President

I hereby certify this deed was prepared by or under the supervision of  
\_\_\_\_\_, an attorney admitted to practice by the Court of Appeals of  
Maryland.

Approved as to legal form and sufficiency this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
“Approved” means the document meets the legal requirements for a deed of conservation  
easement; it does not mean approval or disapproval of the transaction.

\_\_\_\_\_  
Assistant Attorney General