

**BATTLEFIELD EASEMENT TEMPLATE--NONPROFIT**

*This sample deed is provided to assist landowners and their attorneys in preparing deeds of easement to be conveyed to the Virginia Board of Historic Resources (VBHR). As each property contains unique Preservation and Conservation Values, the easement language will be tailored to each individual property and the resources to be protected. The Virginia Department of Historic Resources (VDHR) staff may recommend additional provisions appropriate to the individual property and its resources. Landowners should discuss present and future land management practices with staff before preparation of the deed of easement.*

*If any federal and/or state grant funds have been or will be awarded or transferred to the Grantor for the full or partial purchase of the property in fee simple or of this easement, additional restrictions and legal obligations may apply. Please contact the relevant federal and/or state agency responsible for the applicable grant fund for more information.*

*Neither the VBHR nor the VDHR can provide legal or tax advice; grantors are strongly advised to obtain the counsel of independent attorneys and/or tax advisors. This template is designed for nonprofit grantors and does **not** meet federal or state requirements for a federal deduction or state tax credits as a charitable contribution of an interest in real property.*

*Regardless of the nature of the transaction, this deed of easement is perpetual and runs with the land in perpetuity.  
[September 20, 2018; revised February 8, 2019]*

**NOTE TO TITLE EXAMINERS: This perpetual 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:

[If prepared by other than VDHR, provide name, organization, address]

[If by an attorney, Name and VSB No.]

Prepared under the supervision of  
The Office of the Attorney General of Virginia

When recorded, please return to:  
Virginia Department of Historic Resources  
2801 Kensington Avenue  
Richmond, VA 23221

Title Insurance: [Name of insurer or None]

[As applicable] Tax Map/GPIN/Parcel Number:

Exempted from recordation taxes  
under the Code of Virginia (1950), as amended,  
§§ 58.1-811(A)(3) and 58.1-811(D)  
and from Circuit Court Clerk’s Fees under § 17.1-266

**DEED OF GIFT OF HISTORIC PRESERVATION AND OPEN-SPACE EASEMENT**

[PROPERTY NAME]

\_\_\_\_\_ Battlefield  
\_\_\_\_\_ County

**VDHR EASEMENT FILE NO. \_\_\_\_\_ ep**

**THIS DEED OF GIFT OF HISTORIC PRESERVATION AND OPEN-SPACE EASEMENT**  
 (“Deed of Easement”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by [Grantor name/title],  
 [if nonperson, describe legal status (corporation, nonprofit, etc.)] (“Grantor”), and the

**COMMONWEALTH OF VIRGINIA, BOARD OF HISTORIC RESOURCES** (“Grantee”) (the designations “Grantor” and “Grantee” refer to Grantor and Grantee and their respective successors or assigns) [and \_\_\_\_\_ (“Noteholder”) and \_\_\_\_\_ (“Trustee”), to be indexed as additional grantors, for the purpose of consenting to and subordinating their interests in the Property (as hereinafter defined)].

**RECITALS:**

**R-1** Grantor is the owner in fee simple of real property commonly known as \_\_\_\_\_, situated in \_\_\_\_\_ County, Virginia, containing in the aggregate \_\_\_\_ acres, more or less, located at [911 number, Street or Road, City/Town, Virginia, zip code], and more particularly described on **Exhibit A** attached hereto (the “Property”).

[if applicable] **R-\_\_\_\_** The Property is subject to a Deed of Trust dated \_\_\_\_\_, and recorded \_\_\_\_\_ [as Instrument Number] [in Deed Book \_\_, at page \_\_\_\_\_] in the Clerk’s Office of the Circuit Court of \_\_\_\_\_, Virginia (the “**Deed of Trust**”), wherein the Property was conveyed to Trustee, in trust, to secure repayment of certain indebtedness to Noteholder, as more specifically set forth in the Deed of Trust.

[if applicable] **R-\_\_\_\_** Grantor acquired the Property, in part, with grant funds in the amount of \$ \_\_\_\_\_ awarded through the Battlefield Land Acquisition Grant Program administered by the American Battlefield Protection Program (“**ABPP**”) (54 U.S.C. §§ 308101 – 308103 (the “**ABPP Authorization Statutes**”)), which, among other things, requires that a perpetual easement be placed on the Property. Property, by virtue of the grant, is subject to 54 U.S.C. § 200305(f)(3), commonly referred to as “**Section 6(f)(3)**” of the Land and Water Conservation Fund Act (54 U.S.C. §§ 200301 - 200310).

[if applicable] **R-\_\_\_\_** Grantor acquired the Property, in part, with grant funds in the amount of \$ \_\_\_\_\_ awarded through the Virginia Battlefield Preservation Fund established under Virginia Code § 10.1-2202.4, which, among other things, requires that a perpetual easement be placed on the Property.

[if applicable] **R-\_\_\_\_** Grantor acquired the Property, in part, with grant funds in the amount of \$ \_\_\_\_\_ awarded through the Virginia Land Conservation Foundation established under Virginia Code § 10.1-1017 *et seq.*, which, among other things, requires that a perpetual easement be placed on the Property.

**R-3** Grantor and Grantee desire to protect in perpetuity the historic battlefield and battlefield landscape [and any archaeological, architectural, open-space, natural or water quality] values of the Property, listed in Section 2.2(a)-(b) and more particularly described in the BDR (defined in Section 2.3) and in **Exhibit B** attached hereto (collectively, the “**Preservation and Conservation Values**”), by restricting the use of the Property pursuant to the terms and conditions of this Deed of Easement, and Grantor desires to grant and convey to Grantee, and Grantee is willing to accept, a perpetual easement over the Property, all as more particularly set forth herein.

**R-4** Grantee is entering into this Deed of Easement pursuant to the authority granted under (i) Virginia Code § 10.1-2204(A)(4) and (ii) Virginia Code §§ 10.1-1700, *et seq.* (the “**Open-Space Land Act**”).

**R-5** The terms, conditions, and restrictions of this Deed of Easement will be administered and enforced by the Commonwealth of Virginia, Department of Historic Resources (“**VDHR**”) on behalf of Grantee and pursuant to authority granted under Virginia Code § 10.1-2202.

**WITNESSETH:**

**NOW, THEREFORE,** in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

**ARTICLE I: EASEMENT AND DESIGNATION**

**1.1 EASEMENT:** Grantor hereby GRANTS and CONVEYS to Grantee a perpetual historic preservation and open-space easement in gross over, and the right **IN PERPETUITY** to restrict the use of, the Property, collectively, all as more particularly set forth in this Deed of Easement (the “**Easement**”). The date upon which this Deed of Easement is recorded in the land records of \_\_\_\_\_ County, Virginia shall be the effective date (“**Effective Date**”) hereof.

**1.2 DESIGNATION AS OPEN-SPACE:** Grantee, by acceptance of this Deed of Easement, hereby designates the Property to be retained and used in perpetuity for the preservation and provision of open-space land pursuant to the Open-Space Land Act.

**ARTICLE II: PURPOSE AND CONDITION OF THE PROPERTY**

**2.1 PURPOSE:** In accordance with the Open-Space Land Act and Chapter 22 of Title 10.1 of the Virginia Code, the purpose of the Easement is to preserve and protect the Preservation and Conservation Values of the Property in perpetuity by restricting the development, alteration, and use of the Property and by providing for the enforcement of those restrictions. Even if the Property consists of more than one parcel for real estate tax or any other purpose or has been acquired previously as separate parcels, the covenants, restrictions, and enforcement rights set forth in this Deed of Easement apply to all parcels as if they were one and bind all successors in interest of the Property in perpetuity.

**2.2 EXISTING RESOURCES:**

(a) *[if applicable]* Existing Historic Resources. The following historic buildings, structures, amenities, features, and sites exist on the Property as of the Effective Date (collectively, the “**Existing Historic Resources**”):

1. *[list historic buildings/structures/amenities/features, including core and study battlefield areas and all known archaeological sites]*

(b) *[if applicable]* Existing Natural Resources. The following natural resources and features exist on the Property as of the Effective Date (collectively, the “**Existing Natural Resources**”):

1. *[list natural resources including, as applicable, prime soils, water bodies, riparian buffers, forest, etc.]*

(c) *[if applicable]* Existing Non-Historic Resources. The following non-historic buildings, structures, amenities, features, and sites exist on the Property as of the Effective Date (collectively, the “**Existing Non-Historic Resources**”):

1. [list non-historic buildings/structures/amenities/features]

(d) [if applicable] Existing Resources. For purposes of this Deed of Easement, the Existing Historic Resources [, the Existing Natural Resources,] and the Existing Non-Historic Resources are collectively defined as the “**Existing Resources**”.

### 2.3 CONDITION OF PROPERTY:

(a) Maintenance and Preservation of the Property. From and after the Effective Date the Property shall be maintained, preserved, and protected in the same or better condition and state of repair as documented in the Baseline Documentation Report dated \_\_\_\_\_ (the “**BDR**”), except for changes or modifications permitted under this Deed of Easement.

(b) Baseline Documentation Report. The BDR contains, among other items, (i) a written report describing the Property (including the Existing Resources), and (ii) aerial, topographic, and photopoint maps, a site plan, and photographs taken by the Easement Program \_\_\_\_\_ of VDHR in support of the written report. Grantor hereby acknowledges that it has received a copy and accepts the findings of the BDR. An additional copy of the BDR shall be stored permanently at the VDHR, which is located at 2801 Kensington Avenue, Richmond, Virginia, or such other location as Grantee may determine. The BDR is hereby incorporated by reference into this Deed of Easement and may be used in determining compliance with and enforcing the terms of this Deed of Easement.

### 2.4 DIVISION:

(a) Tax Parcels. As of the Effective Date, the Property consists of \_\_\_\_\_ [separate] tax parcel(s) (\_\_\_\_\_ County Tax Map/Parcel No(s). \_\_\_\_\_) described as follows:

1. [[if applicable] Parcel 1, identified as Tax Map/Parcel No. \_\_\_\_\_, currently comprising \_\_\_\_\_ acres, more or less; and]

(b) [if applicable] Division. The Property may be divided or subdivided as follows:  
[describe any reserved subdivision rights]

**[Use either DIVISION or NO DIVISION – NOT both]**

[if applicable] No Division. The Property shall not be divided or subdivided. The Property shall not be conveyed in fee other than as a single tract, and any such conveyance shall be subject to the terms, conditions, and restrictions of this Deed of Easement.

(c) [if applicable] Boundary Line Adjustment. Boundary line adjustments involving parcels of land that are (i) adjacent to the Property, and (ii) not subject to this Deed of Easement shall not be permitted unless:

1. The entire adjacent parcel is subject to a recorded perpetual conservation easement held by Grantee or another agency of the Commonwealth of Virginia (the “**Commonwealth**”) pursuant to the Open-Space Land Act and the Property remains subject to this Deed of Easement after the boundary line adjustment;

2. Grantee reviews and approves in writing, in advance, the proposed boundary line adjustment; and
3. Grantee is made a party to any deed or instrument creating such boundary line adjustment.

Boundary line adjustments meeting the criteria of this Section 2.4(c) shall not be considered a division of the Property.

**ARTICLE III:  
LIMITATIONS ON USES OF AND  
CONVEYANCES OF INTERESTS IN THE PROPERTY**

**3.1 ACTIVITIES AND USES GENERALLY:** From and after the Effective Date, Grantor's activities on and uses of the Property shall be subject to the terms of this Deed of Easement. Any change in the use of the Property or the commencement of any new activity on the Property not being undertaken or maintained on the Property as of the Effective Date is subject to the prior, written approval of Grantee. Without limiting the restrictions set forth in this Deed of Easement, the following activities on and uses of the Property are prohibited:

- (a) Mining on the Property by any method, including without limitation, (i) strip, surface, or subsurface mining (including the extraction or removal of gravel or similar materials, whether or not deemed "minerals" under the laws of the Commonwealth), (ii) dredging on or from the Property, and (iii) drilling for oil, gas, or any natural resource, excluding fresh water for private use;
- (b) Relic hunting of any kind, including without limitation, metal detecting;
- (c) Ground Disturbing Activities (hereinafter defined) that result in damage to or disturbance of (i) cemeteries, buried human remains, funerary markers or monuments, in violation of federal, Commonwealth, or local law, or (ii) archaeological sites, deposits, or features on the Property, whether known or unknown as of the Effective Date;
- (d) Installation and maintenance of billboards, outdoor advertising structures, moving signs or banners, including without limitation, windblown structures, internally illuminated signs, or electronic signs (collectively, "**Billboards**");
- (e) Industrial commercial manufacturing activities, including without limitation, those producing noxious fumes, smoke, dust, excessive noise, or industrial waste, byproducts or co-products as defined by federal, Commonwealth, or local law;
- (f) Industrial farm animal production, including without limitation an "animal feeding operation" as that term is defined in 40 C.F.R. § 122.23(b);
- (g) Non *de minimis* commercial recreational activities, including without limitation, use of the Property as a golf course or as a course for motorized vehicles, including, but

not limited, to all-terrain vehicles, motorcross or mudbogging;

- (h) Commercial airstrip, airport, helipad or heliport; or
- (i) Establishment of a commercial wind farm or a commercial solar energy production facility.

**3.2 PERMITTED NEW IMPROVEMENTS:** No new building, structure, amenity, or feature may be built or maintained on the Property after the Effective Date, other than the buildings, structures, amenities, and features described in this Section 3.2 (collectively, the “**Permitted New Improvements**”). **The following constitute the Permitted New Improvements and are subject to and must comply with the terms, conditions, and restrictions of this Deed of Easement, including without limitation, approvals required under Section 3.3:**

- (a) *[if applicable]* Agricultural buildings and structures necessary and appropriate for agricultural uses of the Property.
- (b) Reconstructions of historic buildings or structures which are documented through professional historical or archaeological investigation to have been located on the Property, which reconstructions shall be consistent with and evaluated according to the *Secretary’s Standards* (defined in Section 6.3(b)).
- (c) Permanent roads made of pervious material that are graded, improved, and maintained, including any seasonal unimproved roads and two-track roads (“**Roads**”).
- (d) Improved paths and paved trails constructed from pervious materials or unimproved paths and unpaved trails established by human use (“**Trails**”).
- (e) Utilities, utility lines, and other infrastructure serving permitted uses on the Property (“**Infrastructure**”).
- (f) New outbuildings and structures such as a shed, kiosk, or other buildings or structures ancillary to the Property’s use as a [*battlefield park, historic site, etc.*], provided that the collective footprint for such outbuildings and structures shall not exceed three hundred (300) square feet of the Permitted Collective Footprint (hereinafter defined).

**3.3 ALTERATIONS, NEW CONSTRUCTION, DEMOLITION, AND DESTRUCTION:**

(a) Alterations and New Construction. Any work involving the construction, alteration, rehabilitation, restoration, renovation, replacement, extension, demolition, or removal, in whole or in part, of any Existing Resources or Permitted New Improvements is prohibited unless Grantor obtains Grantee’s prior written approval for such work. Without limiting the foregoing, Grantee’s prior, written approval will be required with respect to the location, size, design, footprint, massing, scale, height, and materials, of any such Existing Resources or Permitted New Improvements. Grantor shall comply with all applicable federal, Commonwealth, and local laws and regulations concerning any land or land use, including those applying

to any zoning, overlay, design, or historic district in which the Property is located, for any new construction, reconstruction, alteration, restoration, or rehabilitation of Existing Resources and Permitted New Improvements.

(b) *[if applicable]* Demolition. VDHR has determined that the Existing Non-Historic Resources do not retain integrity or significance as historic resources eligible for listing on the Virginia Landmarks Register or the National Register of Historic Places. Within three (3) years after the Effective Date, Grantor shall treat the Existing Non-Historic Resources in accordance with the Rehabilitation and Landscape Management Plan dated \_\_\_\_\_ that has been prepared in consultation with, and approved in writing by, Grantee (the “**Management Plan**”). The Management Plan is incorporated into this Deed of Easement by this reference, and a copy of the Management Plan shall be stored permanently at the VDHR or such other location as Grantee may determine. Any residential uses associated with the Existing Non-Historic Resources shall immediately cease upon demolition and removal of the Existing Non-Historic Resources.

(c) Permitted Collective Footprint. The ground area measured in square feet covered by Existing Historic Resources, Existing Non-Historic Resources, and Permitted New Improvements, including without limitation, all roofed decks, porches, stoops, and other attached structures, and all other impervious surfaces, shall not exceed one percent (1%) of the total area of the Property (the “**Permitted Collective Footprint**”). The ground area of Roads and Trails will not be included in the calculation of Permitted Collective Footprint.

(d) Damage and Destruction.

1. If any Existing Historic Resources are destroyed or damaged by causes beyond Grantor’s reasonable control, including without limitation, by fire, flood, storm, earth movement, or other acts of God, to such extent that in the opinion of Grantee, applying the *Secretary’s Standards* and the *National Register Criteria for Evaluation* (36 C.F.R. Parts 60.3 and 60.4, as amended; *see also* 36 C.F.R. Part 63, as amended), such Existing Historic Resources would no longer qualify for listing on the Virginia Landmarks Register or the National Register of Historic Places, Grantor shall have no obligation under this Deed of Easement to rehabilitate or reconstruct such Existing Historic Resources or return them to their condition as existed on the Effective Date or as thereafter altered or changed in accordance with this Deed of Easement.
2. If any Existing Historic Resources are damaged, but, in the opinion of Grantee, applying the *Secretary’s Standards*, the *National Register Criteria for Evaluation*, and the *Virginia Rehabilitation Code* (Part II of the *Virginia Uniform Statewide Building Code* (2011, as amended), such Existing Historic Resources are capable of being rehabilitated and retain sufficient integrity to continue to qualify for listing in the Virginia Landmarks Register or the National Register of Historic Places, such Existing Historic Resources shall be rehabilitated or reconstructed to their condition as existed on the Effective Date or as thereafter altered or changed in accordance with this Deed of Easement. Any such rehabilitation or reconstruction shall be undertaken in accordance with the provisions of this

Deed of Easement and the *Secretary's Standards*.

3. Notwithstanding the foregoing, in the event that any Existing Non-Historic Resource or Permitted New Improvement is destroyed or damaged by causes beyond Grantor's reasonable control, including without limitation, by fire, flood, storm, earth movement, or other acts of God, Grantor shall have no obligation under this Deed of Easement to rehabilitate or reconstruct such building, structure, amenity, or feature.

(e) Right to Erect Certain Markers or Signs. Grantor may erect signs or markers for interpretation of the Property as a historic resource, and for informational, wayfinding, and visitor safety purposes. Such signs can be no greater than two (2) feet by two (2) feet without the prior, written approval of Grantee, and no more than four (4) signs or markers may be located on the Property at any given time. Grantor must obtain prior, written approval from Grantee for any sign or marker exceeding two (2) feet by two (2) feet or when the total number of signs or markers on the Property at any given time exceeds a quantity of four (4). Grantee, in its discretion, and upon reasonable notice to Grantor, may erect at a location mutually acceptable to Grantor and Grantee, a single marker or sign, not exceeding two (2) feet by two (2) feet, which states the name of Grantee and advises that Grantee is the holder of the Easement. *[if applicable – ABPP funding only]* Grantor may construct, install, and maintain one (1) sign not to exceed three (3) feet by three (3) feet to provide notice that this [Property *or* Easement] was acquired in part with a grant from the Land and Water Conservation Fund, administered by the National Park Service, provided that Grantor obtains Grantee's prior written approval for the location of such sign. Any markers or signs erected pursuant to this Section 3.3(e) will not be counted toward the Permitted Collective Footprint.

### **3.4 TEMPORARY STRUCTURES:**

(a) Temporary Structures. Temporary structures not requiring trenching, footers, a pad, or other Ground Disturbing Activities (defined in Section 3.5) and erected for no more than sixteen (16) consecutive calendar days for use by Grantor or Grantor's designees, not to exceed a maximum of one-hundred sixty (160) days per calendar year may be placed on the Property. Any extension of the sixteen (16) day duration must be reviewed and approved in advance in writing by Grantee. *[if applicable]* Temporary agricultural structures may be constructed, erected, or maintained if such duration does not exceed one hundred sixty (160) consecutive calendar days or one hundred eighty (180) days total within a calendar year.

(b) Temporary Signs. Temporary signs not requiring any Ground Disturbing Activities that may be readily moved and are displayed for no more than sixteen (16) consecutive calendar days for use by Grantor or Grantor's designees may be placed on the Property. Any extension of the sixteen (16) day duration must be reviewed and approved in advance in writing by Grantee.

**3.5 GROUND DISTURBING ACTIVITIES:** Any and all grading, topographic changes, blasting, earth removal, and any other ground disturbing activities on the Property (each a "**Ground Disturbing Activity**," and collectively, "**Ground Disturbing Activities**") are subject to Grantee's prior, written approval and compliance with ARTICLE IV of this Deed of Easement. Ground Disturbing Activities include, without limitation, those activities incidental to (i) rehabilitation of the historic battlefield landscape; (ii) installation and construction of Permitted New Improvements; or (iii) forest or timber management activities with the exception of those activities listed in Section 5.1. All Ground Disturbing Activities shall be conducted in accordance with all applicable federal, Commonwealth, and local laws and regulations.

**3.6 TRASH:** The accumulation or dumping of (a) trash, refuse, junk, or other unsightly material, or (b) any toxic or hazardous material or substance as defined by federal or Commonwealth law is prohibited on the Property. Grantor shall be responsible for the removal of trash, refuse, junk, and other unsightly materials present on the Property as of the Effective Date or at any point thereafter, in compliance with applicable laws and regulations. *[if applicable]* The provisions of this Section 3.6 do not prevent Grantor from (i) creating brush piles, (ii) composting, or (iii) storing farm machinery, organic matter, agricultural products, or agricultural by-products, so long as these practices are conducted in accordance with applicable federal, Commonwealth, and local laws and regulations. *[if applicable]* Grantor may burn brush piles and other organic matter if Grantor obtains the prior, written approval of Grantee as to the proposed location and size of the burn pile and if such burning is conducted in accordance with all applicable federal, Commonwealth, and local laws.

**3.7 PUBLIC ACCESS:**

(a) **Public Access.** At a minimum, Grantor shall make the Property accessible to the public for six (6) consecutive hours on at least two (2) days per calendar year. This requirement may be fulfilled through a tour, open house, or similar event that is open to the general public. Grantor may have a representative present during such public access, and access may be subject to reasonable restrictions to ensure security of the Property and safety of the visitors.

(b) *[if applicable]* **No Obstruction of View.** The Property is visible from *[State/County route number or road/ street name and/or navigable waterway]*, a *[public right-of-way or navigable waterway accessible to the public]*, and members of the general public may view the Property from said right-of-way. *[if applicable]* Nothing permanent shall be constructed, erected, maintained, or allowed to grow above four (4) feet measured from ground level that would obstruct the views of the Property, from *[visual access points]*, *[if applicable]* except as exists as of the Effective Date and as documented in the BDR. *[if applicable]* Temporary agricultural buildings and structures, features, fixtures, or plants, including seasonal crops, that will obstruct views of the Property from *[list visual access points]* may be constructed, erected, maintained, or allowed to grow above four (4) feet measured from ground level provided such duration does not exceed one hundred sixty (160) consecutive calendar days or one hundred eighty (180) days total within any calendar year.

(c) **No Public Use.** Nothing in this Easement should be construed as dedicating the Property for public use.

**3.8 CONVEYANCE OF INTEREST IN REAL PROPERTY:** Grantor shall notify Grantee in writing within no less than forty-five (45) calendar days prior to any transfer of fee simple title of the Property. All conveyances by Grantor of any interest in the Property less than fee simple, excluding deeds of trust given for the purpose of securing loans, requires the prior, written approval of Grantee. After the Effective Date, this Deed of Easement shall be referenced by deed book and page number, instrument number, or other appropriate reference in any deed conveying an interest in the Property, but failure of Grantor to comply with this requirement will not impair the validity of the Easement or the conveyance or limit the enforceability of this Deed of Easement in any way.

**ARTICLE IV: ARCHAEOLOGICAL RESOURCES**

**4.1 ARCHAEOLOGICAL SURVEY AND INVESTIGATION:** For purposes of this Deed of Easement, “**Archaeological Survey and Investigation**” includes without limitation, pedestrian survey,

shovel testing and test unit excavation, and the use of remote sensing techniques for the purposes of protecting, preserving, and documenting archaeologically significant deposits, sites, and features in the area of proposed Ground Disturbing Activities. Archaeological Survey and Investigation by a professional archaeologist may be required if, in the sole opinion of Grantee, a Ground Disturbing Activity may impact (a) the historic battlefield and battlefield landscape; [if applicable] (b) Existing Historic Improvements; [if applicable] (c) known archaeological site(s); or (d) archaeologically significant deposits, sites, or features on the Property, whether known or unknown as of the Effective Date. Archaeological Survey and Investigation may be undertaken on the Property only if a scope of work for such survey or investigation is reviewed and approved in writing in advance by Grantee and only if the Archaeological Survey and Investigation is performed in accordance with VDHR's *Guidelines for Conducting Historic Resources Survey in Virginia* (2017 and as amended) and the *Secretary's Standards* and under the supervision of a professionally qualified archaeologist meeting or exceeding the *Secretary of the Interior's Professional Qualifications Standards*. All Archaeological Survey and Investigation must be completed prior to the commencement of the proposed Ground Disturbing Activity. Grantor shall be responsible for all costs and expenses associated with any Archaeological Survey and Investigation.

**4.2 TREATMENT OF ARTIFACTS:** Artifacts, both prehistoric and historic, recovered from Archaeological Survey and Investigation of the Property pursuant to Section 4.1 (“**Artifacts**”) shall remain the personal property of Grantor, unless otherwise provided by law. Prior to Grantor’s donation of Artifacts to an organization or institution other than VDHR for curation, Grantor shall provide Grantee with written notice of such donation, which written notice shall include: (a) the name of the organization or institution, (b) the location where the Artifacts will be stored, treated, curated, and preserved, and (c) an affirmation that the Artifacts will be treated consistent with the *Virginia Department of Historic Resources State Collection Management Standards* (as amended or superseded) and the *Secretary's Standards*.

**4.3 TREATMENT OF HUMAN REMAINS:** If human remains are identified during Archaeological Survey and Investigation of the Property pursuant to Section 4.1 or during any other Ground Disturbing Activity, then Grantor shall immediately cease all activities at the specific location(s) where human remains have been found and notify Grantee. Grantor shall comply with all laws applicable to the discovery of human remains, including without limitation, notifying local law enforcement and obtaining any necessary permits or authorizations for treatment of the human remains. Grantor shall be responsible for all costs and expenses associated with the treatment and removal of the human remains.

**4.4 TREATMENT OF ARCHAEOLOGICAL RESOURCES:** Grantor’s treatment of all archaeological resources, including Artifacts and human remains, discovered during Archaeological Survey and Investigation of the Property pursuant to Section 4.1 shall be consistent with the *Guidelines for Conducting Historic Resources Survey in Virginia*, *Virginia Department of Historic Resources State Collection Management Standards* (as amended or superseded) and the *Secretary's Standards*. Grantor shall take reasonable precautions to protect Artifacts, human remains, archaeological deposits, sites, and features on the Property, whether known or unknown as of the Effective Date, from vandalism, erosion, mutilation, or destruction from any cause. Grantor shall notify Grantee as soon as practicable, but in no event later than thirty (30) calendar days following discovery or knowledge of any vandalism, erosion, mutilation, or destruction of Artifacts, human remains, archaeological deposits, sites, or features on the Property.

## **ARTICLE V: LANDSCAPE**

**5.1 TREES AND VEGETATION:** Trees and vegetation on the Property shall be managed in accordance with established arboreal and horticultural practices and in a manner that will prevent damage to

Existing Resources and Permitted New Improvements consistent with the Preservation and Conservation Values. Grantor reserves the right to manage forested land by selective *de minimis* cutting, pruning, and planting for non-commercial purposes, which may include forest management for: (a) the collection of firewood for Grantor's personal use; (b) prevention or removal of individual dead, diseased, or dying trees or invasive plant species; (c) control of active fire and prevention of fire and disease; (d) household gardening and landscaping; (e) construction of Permitted New Improvements; (f) removal of trees that impose an imminent hazard to (i) human health or safety, or (ii) Existing Resources, Permitted New Improvements, livestock, or other domesticated animals maintained on the Property. For purposes of this Deed of Easement, "**invasive plant species**" means those species listed on the *Commonwealth of Virginia, Department of Conservation and Recreation's Invasive Alien Plant Species of Virginia List* (as amended).

**5.2 LANDSCAPE ALTERATION:** As of the Effective Date, the Property contains approximately XXXX acres of [*describe as forested cover, agriculture crops, or open field/meadow*] as documented in the BDR. Grantor shall not convert such [*forested cover, agriculture crops, open field/meadow, and/or significant landscape features such as topography, road traces, walls or trenches*] to any other use or cover without the prior, written approval of Grantee.

**5.3 FOREST MANAGEMENT** (*if applicable*): [*for properties > 20 acres*] As of the Effective Date, the Property contains [*as applicable*] XXXX acres of forested cover [*identify and describe location(s)*], as documented in the BDR. Notwithstanding the provisions of Section 5.1, Grantor shall not engage in any forest management activities, including without limitation, planting, harvesting, or removal of trees, without the prior, written approval of Grantee. Further, any forest management activity will be subject to and will require Grantor to submit the following to Grantee for review and approval at least sixty (60) calendar days prior to any forest management activity: (a) a written forest management plan prepared by a forester meeting or exceeding the professional qualification requirements set forth in Virginia Code § 10.1-1181.9, and (b) a pre-harvest plan prepared according to guidelines promulgated by the Commonwealth of Virginia, Department of Forestry. Grantee reserves the right to require changes to the forest management plan or pre-harvest plan as necessary to protect and preserve the Preservation and Conservation Values.

## **ARTICLE VI: INSPECTION, APPROVALS, AND ENFORCEMENT**

### **6.1 INSPECTION:**

(a) **Right of Entry.** Grantee, and its representatives and agents, have the right to enter onto the Property once per calendar year, upon not less than ten (10) days' notice to Grantor, to inspect and document the condition of the Property [*if applicable* - including the interior of any Existing Historic Resources]. Grantee and its representatives and agents, otherwise have the right to enter onto the Property, upon reasonable notice to Grantor, to inspect the Property and to enforce the terms, conditions, and restrictions of this Deed of Easement. Grantor's consent is not a necessary condition to the right of entry by Grantee and its representatives and agents; however, the parties agree to cooperate in determining a mutually agreeable time to access the Property. Grantee may take photographs, drawings, or other representations documenting the historical, [*if applicable*] architectural, archaeological, and cultural character and features of the Property and may use or publish them.

(b) **Emergency Access.** No notice to or consent of Grantor is required if, in the reasonable opinion of Grantee, emergency access is necessary to prevent irreversible damage to the Preservation and Conservation Values. Following such emergency access, Grantee shall provide Grantor with a written explanation of the reason for such emergency access and the actions taken by Grantee on the

Property during such emergency access. Grantee shall limit its actions during such emergency access to those necessary to prevent irreversible damage to the Preservation and Conservation Values.

**6.2 APPROVALS:** Whenever Grantee's approval is necessary under this Deed of Easement for a proposed use or activity, including without limitation, any construction work on the Property, Grantor shall submit in writing to Grantee, for Grantee's evaluation: (i) Grantor's specific request identifying a proposed activity or use; (ii) relevant information about the proposed activity or use (including without limitation, photographs, plans, specifications, and designs, as applicable); (iii) a timetable for the proposed activity or use sufficient to permit Grantee to monitor it, and (iv) such other information as Grantee may reasonably request. Grantor shall not make any changes to the proposed activity or use, including without limitation, any scope of work, without Grantee's written authorization. Grantee will use reasonable efforts to respond to any written request of Grantor within thirty (30) business days after Grantee's receipt of such request. Nothing herein should be construed, however, to require Grantee to issue a final decision on such request within such thirty (30) business day period, provided that a final decision is issued as timely as is practicable under the circumstances. Such circumstances may include, but are not limited to, the complexity of the activity or use, the adequacy of the information submitted with the written request, the degree to which the activity or use complies with the terms of the Deed of Easement, whether the activity or use is consistent with the *Secretary's Standards*, the need for Archaeological Survey and Investigation, the need for on-site inspections, or the need for consultation. In the event that Grantee does not respond in writing to Grantor's written request within thirty (30) business days of receipt of such request, then Grantee will be deemed to have denied the request, and Grantor may proceed with any appeal for reconsideration of such request in accordance with Grantee's written policies. Grantee is not liable to Grantor or any third party for any damage, injury, liability, or consequence arising out of or resulting from Grantor's failure to obtain Grantee's prior, written approval as required under this Deed of Easement. *[if applicable]* Nothing herein shall be construed to affect the authority of the Secretary of the Interior under Section 6(f)(3).

### **6.3 STANDARDS FOR REVIEW:**

(a) Sole Determination by Grantee. Any determination made by Grantee in exercising its rights of inspection, approval, or review under this Deed of Easement is made in Grantee's sole discretion, and Grantee, in making such a determination, may consider, without limitation, whether the activity or use (i) is consistent with this historic character of the Property; (ii) is consistent or compatible with the Preservation and Conservation Values; (iii) complies with the terms of this Deed of Easement; or (iv) complies with the *Secretary's Standards*.

(b) Secretary's Standards. The following standards promulgated by the Secretary of the Interior are collectively referred to in this Deed of Easement as the "***Secretary's Standards***":

1. *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 Fed. Reg. 44,716, 44,716 – 44,740 (Sept. 29, 1983), as amended).
2. *Secretary of the Interior's Professional Qualifications Standards* (48 Fed. Reg. 44,716, 44,738 – 44,739 (Sept. 29, 1983, as amended)).
3. *Secretary of the Interior's Standards for Rehabilitation* (36 C.F.R. § 67.7 (2017), as amended).

4. *Secretary of the Interior's Standards for the Treatment of Historic Properties* (36 C.F.R. Part 68 (2017), as amended).
5. *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* (National Park Service, 2017, as amended).
6. *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes* (National Park Service, 1995, as amended).

**6.4 EASEMENT REVIEW FEES:** Grantee reserves the right to assess and collect fees relating to requests initiated by Grantor involving matters such as boundary line adjustments, amendments to this Deed of Easement or the BDR, project reviews, preparation of reports to facilitate sales, review of access or utility easements over the Property, and infrastructure projects affecting the Property. Such fees shall be determined and periodically adjusted by Grantee, as set forth in a published fee schedule.

**6.5 ENFORCEMENT:**

(a) Grantee's Enforcement Rights. Grantee has the right to bring an action at law or in equity to enforce the covenants and restrictions contained in this Deed of Easement, including without limitation, the right to: (i) require restoration of the Property to comply with the terms of this Deed of Easement; (ii) recover any damages arising from non-compliance, including but not limited to disgorgement of any monies received by Grantor connected with such non-compliance; (iii) enjoin non-compliance by *ex parte* temporary or permanent injunction; and (iv) pursue any other appropriate remedy in law or equity.

(b) Reimbursement of Costs. If a court determines that Grantor has failed to comply with this Deed of Easement, Grantor shall reimburse Grantee for all reasonable costs of enforcement, including costs of restoration, court costs, expert-witness costs, and reasonable attorneys' fees, in addition to any other payments ordered by such court.

(c) No Rights in Public. Nothing in this Deed of Easement shall create any right in the public or any third party to maintain any judicial proceeding against Grantor or Grantee or to enforce this Deed of Easement through any means including, but not limited to, judicial action.

**ARTICLE VII: GENERAL PROVISIONS**

**7.1 GRANTOR'S RESERVED RIGHTS:** Grantor reserves the right to use and enjoy the Property to the extent consistent with the Preservation and Conservation Values and the terms and conditions of the Deed of Easement.

**7.2 GRANTEE'S PROPERTY INTEREST:** Grantor agrees that the conveyance of this Easement gives rise to a property interest, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the conveyance bears to the fair market value of the Property as a whole at that time.

**7.3 INSURANCE:** Grantor shall keep the Property insured by an insurance company licensed to issue policies in the Commonwealth of Virginia and rated “Secure” by A.M. Best Company or other qualified insurance rating company for comprehensive general liability insurance against claims for personal injury, death, and property damage. [*if applicable*: Without limiting the foregoing, Grantor shall also insure all Existing Historic Resources for their full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies.] The Commonwealth, Grantee, and VDHR shall be named as additional insured parties in [any] such policy[ies].

**7.4 CONVERSION OR DIVERSION:** No part of the Property may be converted or diverted from historic preservation or open-space uses except (a) in accordance with the Open-Space Land Act, which does not permit loss of open-space land; [*if applicable*] and (b) with the written approval of the Secretary of the Interior acting through the ABPP in accordance with the requirements of Section 6(f)(3) and the ABPP Authorization Statutes. There is no remedy in the event of a breach of Section 6(f)(3) other than immediate compliance with Section 6(f)(3), nor can grant funds be repaid to nullify the requirements of Section 6(f)(3).

**7.5 EXTINGUISHMENT:** Should an attempt be made to extinguish this Easement, such extinguishment can be carried out only by judicial proceedings and only if in compliance with the Open-Space Land Act [*if applicable*] and Section 6(f)(3). In any sale, exchange, or involuntary conversion of the Property or portion of the Property subsequent to such extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of the perpetual conservation restriction computed as set forth in Section 7.2. Grantee shall use the proceeds from the sale of the Property in a manner consistent with the conservation purposes of this Deed of Easement, Virginia Code §§ 10.1-2200 *et seq.*, the Open-Space Land Act, [*if applicable*] and the requirements of Section 6(f)(3).

**7.6 SEVERABILITY:** The invalidity or unenforceability of any provision of this Deed of Easement shall not affect the validity or enforceability of any other provision of this Deed of Easement.

**7.7 AMENDMENT:** Grantee and Grantor may amend this Deed of Easement to enhance the Property’s Preservation and Conservation Values or to increase the amount of real property subject to this Easement. No amendment to this Deed of Easement shall:

- (a) affect this Easement’s perpetual duration;
- (b) conflict with or be contrary to or inconsistent with the purpose of this Easement as set forth in Section 2.1;
- (c) reduce the protections to the Preservation and Conservation Values;
- (d) affect the qualification of this Easement as an “open-space easement”; or
- (e) affect the status of Grantee as a “public body”.

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 \_\_\_\_\_ County, Virginia. [*if applicable*] Where feasible, Grantee will notify ABPP in writing of any proposed amendment at least thirty (30) business days prior to the recordation of any such amendment.

**7.8 DURATION; SUCCESSORS IN INTEREST:** This Easement is 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 Deed of 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 contained in this Deed of Easement of an owner of the Property, or any portion thereof, 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.

**7.9 GRANTOR'S REPRESENTATIONS AND WARRANTIES:** Grantor hereby represents, covenants, and warrants that: (a) Grantor has good, fee simple title to the Property; (b) the Property is free and clear of all encumbrances, other than restrictions, covenants, conditions, and utility and access easements recorded in the land records of \_\_\_\_\_ County, Virginia, prior to the Effective Date including, but not limited to, any mortgages, liens, leases, or option contracts not subordinated to this Deed of Easement; (c) Grantor has all requisite power and authority to enter into this Deed of Easement and to grant and convey the Easement; (d) no consents of any lender or any third party are required for Grantor to enter into this Deed of Easement that have not already been obtained and made known to Grantee; (e) *[if applicable]* Grantor is and shall be duly organized and legally existing under the laws of the state of its formation and duly qualified to transact business in the Commonwealth; and (f) *[if applicable]* each person and/or entity signing on behalf of Grantor is authorized to do so.

**7.10 ASSIGNMENT:** Assignment of this Deed of Easement is permitted by Virginia Code § 10.1-1704(B), and Grantee may assign this Deed of Easement, in its discretion, after consultation with Grantor if:

- (a) The assignment, transfer or conveyance is consistent with the Open-Space Land Act; and
- (b) All restrictions and covenants and preservation and conservation purposes set forth in this Easement are to be continued in perpetuity.

Such assignment shall be in writing with all signatures notarized and shall be recorded in the Clerk's Office of the Circuit Court of \_\_\_\_\_ County, Virginia. Where feasible, Grantee will notify ABPP in writing of any proposed assignment at least thirty (30) business days prior to the recordation of any such assignment.

**7.11 NO MERGER:** Grantor and Grantee agree that in the event that Grantee, or any agency or entity of the Commonwealth, 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.

**7.12 JOINT OWNERSHIP:** If Grantor at any time owns the Property, any portion of the Property, or any interest therein in joint tenancy, tenancy by the entireties, or tenancy in common, all such tenants shall be jointly and severally liable for all obligations of Grantor set forth herein.

**7.13 CONTROLLING LAW; INTERACTION WITH OTHER LAWS:**

(a) Controlling Law. This Deed of Easement shall be construed according to the laws of the Commonwealth, and any legal action with respect to this Deed of Easement shall be instituted and maintained only in state courts of the Commonwealth sitting in the City of Richmond. Any general rule of construction notwithstanding, Grantor and Grantee agree that this Easement will be liberally construed in favor of the conveyance to Grantee to protect the Preservation and Conservation Values and to effect the purposes of this Deed of Easement.

(b) Interaction with Other Laws. This Easement does not permit any use of the Property that is otherwise prohibited by federal, Commonwealth, or local law or regulation. Compliance with this Deed of Easement in no way obviates, negates, supersedes, waives, or satisfies applicable federal, Commonwealth, or local laws or regulations. In the event of any conflict between applicable federal, Commonwealth, or local laws or regulations and the provisions of this Deed of Easement, the standard which more effectively protects and promotes the Preservation and Conservation Values will prevail.

**7.14 RECODIFICATION AND AMENDMENT OF STATUTES AND REGULATIONS:** In the event that any of the statutes or regulations cited in this Deed of Easement are re-codified or amended, this Deed of Easement will be interpreted and enforced according to the re-codified or amended statutes and regulations most closely corresponding to those cited herein and carrying out the purposes recited herein.

**7.15 CONSTRUCTION:** Pursuant to the public policy of the Commonwealth favoring land conservation, any general rule of construction to the contrary notwithstanding (including the common-law rule that covenants restricting the free use of land are disfavored and must be strictly construed), it is the intent of Grantor and Grantee that this Deed of Easement and all language contained herein shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policies and purposes of Grantee. If any provision of this Deed of Easement is found to be ambiguous, an interpretation that is consistent with the purposes of this Easement (to protect the Preservation and Conservation Values and prevent the exercise of reserved rights in a way that would impair such values) and that would render the provision valid will be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses consistent with the purposes of and not expressly prohibited by this Deed of Easement are permitted on the Property.

**7.16 STATUS OF GRANTEE AS AN INSTRUMENTALITY OF THE COMMONWEALTH:** With respect to tort liability for acts or occurrences on or about the Property, the Commonwealth and Grantee and VDHR, as instrumentalities of the Commonwealth, are either: (i) constitutionally immune (or partially immune) from suit, judgment or liability; (ii) insured; or (iii) covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies, and practices. Grantor acknowledges that neither Grantee, nor VDHR have agreed to provide any indemnification or save harmless agreements running to Grantee. No provision, covenant, or agreement contained in this Deed of Easement is deemed, in any manner, to be a waiver of the sovereign immunity of the Commonwealth, Grantee, or VDHR, from tort or other liability.

**7.17 EXTINGUISHMENT OF DEVELOPMENT RIGHTS:** Any and all development rights, subdivision rights and other rights affecting the future development (collectively, the “**Development Rights**”) of the Property, [if applicable] except for those rights expressly reserved herein, are hereby extinguished and terminated in perpetuity. Grantor unconditionally and irrevocably relinquishes the right to transfer the Development Rights to any other real property or to use them for purposes of calculating lot yield, density allowances, increases or decreases, and/or development potential of the Property or any other property. Grantor warrants and covenants that neither the Property, nor any portion of it, has been or will be dedicated as open-space within, or as part of, a residential subdivision or any other type of real estate development plan or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits. No Development Rights that have been encumbered or extinguished by this Deed of Easement will be transferred to any other real property pursuant to a transfer of Development Rights or purchase of Development Rights

program, cluster development plan, planned unit development, or other type of land use program or regulation intended to restrict the future development of the Property.

**7.18 ENVIRONMENTAL LIABILITY:** Grantee is in no way liable for any condition existing in, on, or about the Property, whether known or unknown, as of the Effective Date under the Clean Water Act (33 U.S.C. §§ 1251, *et seq.*), the Clean Air Act (42 U.S.C. §§ 7401, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601, *et seq.*), or any comparable Commonwealth or local law concerning the storage, disposal, remediation, or release of any toxic or hazardous waste, material, or substance. Grantor agrees to indemnify and hold Grantee harmless from any and all claims, suits, judgments, damages, fines, penalties, liability, costs, and expenses (including costs and expenses for any required abatement, environmental clean-up or remediation, or reasonable fees for costs and expenses for any required attorneys, consultants, or experts) resulting or arising from any toxic or hazardous waste, material, or substance located in, on, or about the Property as of the Effective Date or from the use, generation, storage, release, or disposal of any toxic or hazardous waste, material, or substance in, on, or about the Property from and after the Effective Date.

**7.19 TAX MATTERS:** Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from the donation [*or*] [partial donation] of this Easement, or that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.

**7.20 RECORDING:** This Deed of Easement shall be recorded in the land records in the Clerk's Office of the Circuit Court of \_\_\_\_\_ County, Virginia, and Grantee may re-record it at any time to preserve its rights under this Easement.

**7.21 COUNTERPARTS:** This Deed of Easement may be executed in one or more counterparts, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same Deed of Easement. Execution of this Deed of Easement at different times and in different places by the parties hereto shall not affect the validity of the Easement.

**7.22 NOTICE:** All notices and communications under this Easement shall be directed as follows:

**Grantor:**  
[mailing address]

or

At the address reflected in the tax records maintained by the City *or* County of [City/County name], Virginia, for the Property.

**Grantee:**  
Easement Program  
Virginia Department of Historic Resources  
2801 Kensington Avenue

Richmond, Virginia 23221

*[if applicable]* **ABPP:**  
National Park Service  
American Battlefield Protection Program  
1849 C Street, NW, Room 7228  
Washington, D.C. 20240

*[if applicable]* **Subordinated Parties:**  
[mailing address]

**7.23 ENTIRE AGREEMENT:** This instrument, the exhibits attached hereto, and the documents incorporated herein by reference set forth the entire agreement of the parties hereto with respect to this Deed of Easement and supersede all prior discussions, negotiations, understandings, documents, drafts, and agreements relating to the conveyance of this Easement.

**7.24 PRESUMPTIONS; INDEPENDENT LEGAL COUNSEL:** This Deed of Easement shall be construed without regard to any presumption or other rule requiring construction against the party causing the Deed of Easement to be drafted. No presumption shall be created in favor of or against Grantee with respect to the interpretation of any term or provision hereof due to the fact that this Deed of Easement may have been prepared by Grantee or by the Office of the Attorney General of the Commonwealth. Grantor acknowledges and understands that the Office of the Attorney General of the Commonwealth, in preparing this Deed of Easement, solely represents Grantee. Grantor represents that Grantor has had a chance to review this Deed of Easement and has had an opportunity to engage and consult separate independent legal counsel of Grantor's own choice concerning the legal and other effects of the provisions of this Deed of Easement, the rights and interests waived and granted hereunder, and all other matters pertaining hereto.

**7.25 RECITALS AND EXHIBITS:** All recitals set forth above and exhibits attached hereto are hereby incorporated into and made a part of this Deed of Easement.

**7.26 HEADINGS; DEFINITIONS:** The headings and titles to the articles, sections, and subsections of this Deed of Easement are for convenience only and have no effect upon the construction or interpretation of any part of this Deed of Easement. For the purposes of this Deed of Easement, all references to the "**Virginia Code**" mean the Code of Virginia 1950, as amended.

**7.27** *[if applicable]* **SUBORDINATION OF DEED OF TRUST:** As evidenced by the signatures hereto of the Trustee and the Noteholder, Noteholder consents to the terms, conditions, and restrictions of this Deed of Easement and hereby subordinates the lien represented by Deed of Trust to this Deed of Easement and directs Trustee to execute this Deed of Easement to give effect to the subordination.

Witness the following signatures and seal:

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

{Remainder of page intentionally left blank}

**Exhibit A**

**Legal Description**

*[Insert legal property description from source deed here.]*

*[if there is a survey that is different from the legal description]* ALSO BEING the same real estate shown on that survey/plat entitled “ \_\_\_\_\_”, prepared by \_\_\_\_\_, dated \_\_\_\_\_, which plat [is attached hereto as **Exhibit A-1**] [is recorded in the Clerk’s Office of the Circuit Court of \_\_\_\_\_, Virginia in \_\_\_\_\_].

## Exhibit B

### Preservation and Conservation Values

**B-1** *[Include description of Property and historic and archaeological resources in sequential recitals. Should reference all historic buildings, structures, features and amenities including landscape features and archaeological sites, deposits or features in individual recitals.]*

**B-2** The Property, as of the Effective Date, contains approximately \_\_\_\_\_ acres of land that lie within the *[core/study]* area of the \_\_\_\_\_ Battlefield as determined by the Civil War Sites Advisory Commission (the “CWSAC”), which has given the \_\_\_\_\_ Battlefield a Preservation Priority \_\_\_\_ Class \_\_ Rating.

**B-3** The CWSAC defines Priority \_\_\_\_ battlefields as *[insert rating and explain definition]*.

**B-4** *[Describe battle as it pertains to the property to be eased]*.

**B-5** *[if applicable]* A portion of the Property also lies within the *[core/study]* area of the \_\_\_\_\_ Battlefield, as determined by the CWSAC, which Commission has given the \_\_\_\_\_ Battlefield a Preservation Priority \_\_\_\_ Class \_\_ Rating.

**B-6** *[if applicable]* The CWSAC defines Priority \_\_\_\_ battlefields as *[insert rating and explain definition]*.

**B-7** *[if applicable]* *[Describe second battle as it pertains to the property to be eased]*.

**B-8** *[if applicable]* The Property contains known archaeological site(s) which contain(s) *[a site or a deposit or a feature]* *[associated with or representative of]* *[describe resource and cite specific historic context]*, which site is formally recorded in the VDHR’s permanent archive.

**B-9** The Property is further significant for its archaeological potential as a *[Civil War/Revolutionary War/War of 1812]* battlefield. Although the Property has not been subjected to professional archaeological survey, in the opinion of the VDHR, the Property has the potential to contain archaeological sites, deposits and features associated with the *[Civil War/Revolutionary War/War of 1812]*, specifically the Battle(s) of \_\_\_\_\_ *[and \_\_\_\_\_]*, based on *[the concentration of troop movement, direct engagement of the opposing armies, the location of a camp, the use of \_\_\_\_\_ [historic building] as officer’s quarters, a hospital, etc.]* across or on the Property.

**B-10** *[if applicable]* The previously identified archaeological site(s) on the Property also serve as indication that the Property as a whole is likely to contain additional sites, deposits or features associated with its *[prehistoric and]* historic use and occupation.

**B-11** *[if applicable]* The Property contains approximately \_\_\_\_\_ (XX) acres of forested cover, primarily *[describe as primary growth, mature second growth, etc.]* as of the Effective Date.

**B-12** *[if applicable]* The Property contains approximately \_\_\_\_\_ (XX) acres of fields and meadows used for *[crop production including hay, corn, etc. or grazing livestock]* as of the Effective Date.

**B-13** [if applicable] The Property contains [streams, ponds, river frontage, wetlands, etc.] as of the Effective Date.

**B-14** [if applicable] The [stream/river/etc.] is perennial. Pursuant to the Chesapeake Bay Preservation Act, Virginia Code § 62.1-44.15:67-79, this portion of the tributary has been designated a Chesapeake Bay Preservation Area by \_\_\_\_\_ County's [cite county program title].

**B-15** [if applicable] [Insert any other conservation values.]

**B-16** The Property is visible from [cite State/County route number or name of road/ street or navigable waterway], which is a [public transportation corridor or navigable waterway accessible to the public]. The Property represents publicly significant open space in this corridor, and the Property's historic, [and any natural and open-space] resources contribute to the historic, cultural, and open-space features that define the existing [as applicable] [rural, suburban or urban] character and landscape quality along this roadway.

**B-17** [if applicable] [Identify road from which Property is visible as Scenic Byway or other designation].

**B-18** In accordance with Virginia Code § 10.1-200, the 2018 Virginia Outdoors Plan (the "VOP") is Virginia's official document regarding land conservation, outdoor recreation and open space planning. It provides guidance for the protection of lands through actions of the Virginia Land Conservation Foundation, and the VOP is required in order for Virginia to take part in the federal Land and Water Conservation Fund ("LWCF") program. Chapter 12 of the VOP, entitled "Land Conservation," states: "Conserved open-space lands provide benefits in terms of resilience to climate change, working (agricultural and forested) landscapes, scenic landscapes, recreation, natural areas and parks, cultural and historic resource protection, natural resource protection, water quality improvement and maintenance, and carbon sequestration, along with the substantial economic benefits associated with these functions;" (VOP, Page 12.2) and "Land conservation is vital for protecting many of Virginia's shared community assets, such as its rich biodiversity, outdoor recreation, water quality, historic and scenic resources, and working landscapes. Localities and stakeholders who wish to preserve essential landscape components will be well served by a comprehensive landscape-conservation strategy." (VOP, page 12.3) The VOP further states that the "Preservation of historic resources is linked with land conservation and open-space protection. As development spreads, it becomes even more important to protect cultural resources, which provide insight into the social, cultural and economic development of Virginia and give citizens a tangible link to the past. These resources include historic houses, commercial buildings, factories, mills, churches, battlefields, archaeological sites and cultural landscapes. It is sound environmental policy to protect these resources, which preserve important examples of the past needed to inspire and inform future generations." (VOP, Page 12.7) The VOP acknowledges that "Historic resources are also important to Virginia's economy. Attractive financial incentives spur private investment in historic structures, resulting in the rehabilitation and revitalization of neighborhoods and cities. At the same time, heritage tourism draws thousands of people to Virginia's towns and cities each year. The 2017 VODS (Virginia Outdoors Demand Survey) reports that visiting historic areas is the fifth most needed outdoor recreation activity. Thus, protecting Virginia's historic and cultural resources in their landscape settings is essential to maintaining the quality of life in the state." (VOP, Page 12.8)

**B-19** Chapter 13 of the VOP, titled "Regional Recommendations," establishes outdoor recreational planning regions, and Region \_\_\_\_: \_\_\_\_\_ incorporates the Property. Among its land conservation recommendations for this region, the VOP includes the following: [insert relevant

references] (VOP, Page \_); and offers the following recommendations for historic and landscape resources: [insert relevant provisions] (VOP, Page \_).

**B-20** [if applicable] [Cite location within established heritage areas, heritage trails, byways, scenic areas, etc. (e.g. Mosby Heritage Area, Journey Through Hallowed Ground National Heritage Area, as necessary)].

**B-21** The Property lies adjacent to or nearby lands protected by historic preservation and conservation easements held by Grantee in \_\_\_\_\_ County and recorded in the land records of the Clerk’s Office of the Circuit Court for \_\_\_\_\_ County including: [list each property under VBHR easement by name, acreage, address and instrument number/deed book and page numbers] and easements held by other public bodies or holders, including [list each property by name of holder, names of property, acreage, address and instrument number/deed book and page number to extent feasible].

**B-22** This Easement is in furtherance of and pursuant to clearly delineated governmental policies and documents set forth below:

a. Land conservation policies and documents of the United States of America as set forth in:

1. “The Report on the Nation’s Civil War Battlefields” (1993, revised 2009) issued by the CWASC, authorized under 54 U.S.C. § 100507 (as amended).
2. [if applicable] The ABPP Authorization Statutes.
3. [if applicable] The Land and Water Conservation Fund Act (54 U.S.C. §§ 200301 – 200310).
4. [if applicable] The provisions of the Consolidated Natural Resources Act of 2008 establishing the “Journey Through Hallowed Ground National Heritage Area” (Pub. L. 110-229, Title IV, Subtitle A, 122 Stat. 754, 802-09 (May 8, 2008)).
5. [if applicable] Report to Congress on the Historic Preservation of Revolutionary War and War of 1812 Sites in the United States (2007), as amended.
6. [if applicable] [Designation on National Register of Historic Places.]
7. [if applicable] The Natural Resources Conservation Service Soil Survey, which identifies areas of Prime Farmland, as classified and defined by the United States Department of Agriculture.

b. Land conservation policies and documents of the Commonwealth of Virginia as set forth in:

1. Section 1 of Article XI of the Constitution of Virginia.
2. Virginia Code §§ 10.1-2200 - 10.1-2214.
3. The Open-Space Land Act.
4. The Virginia Outdoors Plan (2018), prepared by the Virginia Department of Conservation and Recreation.
5. [if applicable] The Chesapeake Bay Preservation Act, Virginia Code §§ 62.1-44.15:67 - 79.
6. [if applicable] [State designated heritage area, heritage trail, etc as referenced above].
7. [if applicable] [Designation of Virginia Landmarks Register.]

8. Grantee's practices in reviewing and accepting this Easement, which include review by VDHR's Easement Program staff, review by a committee comprised of VDHR staff from different divisions and review and acceptance by Grantee at a public meeting, as set forth in Grantee's written adopted policies.

c. Land use policies of the County of \_\_\_\_\_ as delineated in:

1. the [*title of Comprehensive Plan*], adopted by the Board of Supervisors [*date, also reference any amendments or attachments*] to which plan the restrictions set forth in this deed conform as follows:
  - (i) [*cite specific statements in support of conservation, open-space preservation, agricultural use and the use of easements in the County and in the zone, district or area where the Property is located, including Chapter/page numbers*].
2. [*cite additional County level land-use, historic resource, etc. plans pertinent to this easement*]