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

Prepared by:

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After recording return to:

Virginia Department of Forestry  
900 Natural Resources Drive, Suite 800  
Charlottesville, VA 22903  
Attn: Mike Santucci

Insurer: Fidelity National Title Insurance Company

Tax Map Reference Numbers: 022.00-01-02.00-0000  
022.00-01-05.00-0000

Exempted from recordation tax  
under the Code of Virginia (1950), as amended,  
Sections 58.1-811 (A) (3), 58.1-811 (D)  
and from Circuit Court Clerk's fee under Section 17.1-266

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made this <sup>3<sup>rd</sup></sup> day of May, 2013, between CONNER FAMILY ROANOKE COUNTY PROPERTY, LLC, a Virginia Limited Liability Company, whose address is 5520 North Fork Road, Elliston, Virginia 24087 ("Grantor"); the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF FORESTRY, whose address is 900 Natural Resources Drive, Suite 800, Charlottesville, Virginia 22903 ("Grantee") (the designations "Grantor" and "Grantee" refer to the Grantor and Grantee and their respective successors and assigns).

**WITNESSETH:**

R1. WHEREAS, Grantor is the owner in fee simple of real property situated on State Secondary Route 622 (SR622), also known as Bradshaw Road in Roanoke County, Virginia, containing approximately 163.415 acres as further described below (the "Property"), and desires to give and convey to Grantee a perpetual conservation and open-space easement over the Property as herein set forth; and

R2. WHEREAS, the specific conservation values of the Property include the following:

a. *forest*: all of the Property is covered in stands of working forests the majority of which are managed for sustainable timber production, scenic values, wildlife habitat, and water quality. According to the Natural Resources Conservation Service of the United States Department of Agriculture (“NRCS”) *Web Soil Survey*, approximately thirty (30) percent of the forest soils on the Property are considered highly or very highly productive, exhibiting good to excellent site indices for yellow-poplar. According to the Virginia Department of Forestry (“VDOF”) *Forest Conservation Priority Map* at the time of this Easement, all of the forestland on the Property has been classified as having a high level of forest conservation value;

b. *watershed protection*: the Property fronts on approximately 2800 feet of Mason Creek, a tributary of the Roanoke River, as well as numerous springs and streams that flow into Mason Creek, all protected by existing vegetated and forested buffers;

c. *natural habitat*: the Property’s forest cover, edge areas, and springs and streams provide habitat for a variety of wildlife and plant species, and the maintenance of such natural habitat helps support wildlife and fisheries populations in the local ecosystem, which is largely in a natural, undeveloped state;

d. *general open space*: the Property is substantially undeveloped, is used primarily for forestal and wildlife habitat purposes, and contains features such as forests, riparian areas, cropland and pastures, all of which provide general open space benefits to the public; and

R3. WHEREAS, Grantee is a governmental agency of the Commonwealth of Virginia and a “qualified organization” and “eligible donee” under Section 170(h)(3) of the Internal Revenue Code (references to the Internal Revenue Code in this Easement shall be to the United States Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings issued thereunder, or the corresponding provision of any subsequent federal tax laws and regulations) (the “IRC”) and Treasury Regulation §1.170A-14(c)(1) and is willing to accept a perpetual conservation and open-space easement over the Property as herein set forth; and

R4. WHEREAS, Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia (1950), as amended (the “Open-Space Land Act”), declares that the preservation of open-space land serves a public purpose by curbing urban sprawl, preventing the spread of urban blight and deterioration and encouraging more economic and desirable urban development, and conserving land and other natural resources, and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land; and

R5. WHEREAS, pursuant to Sections 10.1-1700 and 10.1-1703 of the Open-Space Land Act, the purposes of this Easement include retaining and protecting open-space and natural resource values of the Property, and the limitation on division, residential construction and commercial and industrial uses contained in Section II ensures that the Property will remain perpetually available for agricultural, forestal and open-space use, protecting natural resources, and maintaining and enhancing air and water quality, all as more particularly set forth below; and

R6. WHEREAS, as required under Section 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the County of Roanoke Comprehensive Plan as confirmed by Philip Thompson, Deputy Director of Planning for Roanoke County, in an email dated April 16, 2012, a copy of which is in the Grantees files;

R7. WHEREAS, this Easement is intended to constitute (i) a “qualified conservation contribution” as defined in IRC Section 170(h)(1) as more particularly explained below, and (ii) a qualifying “interest in land” under the Virginia Land Conservation Incentives Act of 1999 (Section 58.1-510 et seq. of the Code of Virginia (1950), as amended); and

R8. WHEREAS, this Easement is granted “exclusively for conservation purposes” under IRC §170(h)(1)(C) because it effects “the preservation of certain open-space (including farmland and forest land) under IRC Section 170(h)(4)(A)(iii). Specifically, the preservation of open-space on the Property is pursuant to clearly delineated state and local governmental conservation policies, as more particularly described herein below, and will yield a significant public benefit; and

R9. WHEREAS, this open-space easement in gross constitutes a restriction granted in perpetuity on the use which may be made of the Property, and is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below:

(i) Land conservation policies of the Commonwealth of Virginia as set forth in:

a. Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth’s policy “to protect its atmosphere, lands and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth”;

b. The Open-Space Land Act cited above, which in Section 10.1-1700 authorizes the acquisition of non-possessory interests in real property by Grantee for the purposes of “retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, [..]” and that open-space land means, among other lands, land which is provided or preserved for “agricultural and forestal production”. Section 10.1-1703 of said Act further states that “[w]henver practicable in the judgment of the public body, real property acquired pursuant to this chapter shall be made available for agricultural and timbering uses which are compatible with the purposes of this chapter”;

c. Chapter 11 of Title 10.1 of the Code of Virginia (1950), as amended, which establishes the Virginia Department of Forestry and sets forth its powers and authority;

d. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, §§ 58.1-510 through 58.1-513 of the Code of Virginia (1950), as amended, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth’s unique natural resources, wildlife habitats, open spaces and forest resources;

e. The Agricultural and Forestal Districts Act, Sections 1.52-4300 through 4314 of the Code of Virginia, which states that: “It is the policy of the Commonwealth to conserve and protect and to

encourage the development and improvement of the Commonwealth's agricultural and forestal lands for the production of food and other agricultural and forestal products. It is also the policy of the Commonwealth to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes";

f. Chapter 10.2 Virginia Land Conservation Foundation of Title 10.1 Conservation Sections 10.1- 1017 *et seq.* of the Code of Virginia, which provides for funding to acquire property interests (including development rights) for the protection and preservation of, among other kinds of land, "agricultural and forest land";

g. Grantee's formal practices in reviewing and accepting this Easement; Grantee has engaged in a rigorous review, considered and evaluated the benefits provided by this Easement to the general public as set forth in these Recitals, and concluded that the protection afforded the open-space character of the Property by this Easement will yield a significant public benefit and further the open-space conservation objectives of Grantee and the Commonwealth of Virginia; such review and acceptance of this Easement by Grantee, a government agency, tends to establish a clearly delineated governmental conservation policy as required under IRC Section 170(h)(4)(A)(iii); and

(ii) Land use policies of the County of Roanoke (the "County") as follows:

a. The County's Comprehensive Plan adopted in 2005 (the "Comprehensive Plan") states:

i. "there is a strong desire on the part of rural residents to maintain the rural environment, the rural life style and the rural quality of life that they have enjoyed and to preserve these things so that future generations can also enjoy them".

ii. [...] "the existence of rural areas, working farms, pastoral views and open space enhance the quality of life of all residents of the Roanoke Valley".

iii. "The citizens of Roanoke County have a strong desire to preserve the quality of the county's natural, scenic and historic resources.

iv. Roanoke County citizens recognize that the beauty of the existing natural environment attracts not only businesses and residents to our community but also tourists and sports enthusiasts. County citizens believe that it is essential to maintain the high quality of Roanoke County's environment while accommodating the pressures for future growth and development."

b. According to the County's zoning classification for the Property, "AG-3" or "AGRICULTURAL/RURAL PRESERVE DISTRICT", which consists of land primarily used as farmland, woodlands, and widely scattered residential development located within the rural service area. Also found in these areas are lands with steep slopes, and groundwater recharge areas. Many of the county's unique natural and scenic resources are found in this district. The purpose of this district is to maintain these areas essentially in their rural state, and attempt to protect sensitive and unique land resources from degradation by maintaining the existing agricultural lands and preventing the encroachment of incompatible land uses.

c. The Property is further designated on the County's Future Land Use Map of the Comprehensive Plan as RURAL PRESERVE, a future land use area of stable and mostly undeveloped,

outlying lands requiring a high degree of protection to preserve agricultural, forestal, recreational, and remote rural residential areas.

d. The County has determined that it is desirable to encourage the continued preservation of the Property as open space and agricultural/forest land by providing for preferential use value taxation of the Property under Sections 21-51 through 21-60 of the County Code, and Sections 58.1-3230 through 58.1-3244 of the Code of Virginia (1950), as amended, which authorize special use-value tax assessments for real estate devoted to agricultural, forestal, horticultural and open-space use; and

R10. WHEREAS, the Property fronts on Mason Creek, and includes several tributaries of Mason Creek; and

R11. WHEREAS, Mason Creek is a principal tributary of the Roanoke River, and the Roanoke River is a source of public water for downstream communities, and preservation of the Property in a relatively undeveloped state will serve to protect the quality of water in the public system; and

R12. WHEREAS, the Department of Conservation and Recreation, Natural Heritage Program (DCR-NH) has confirmed the Property supports a rare forest community known as Central Appalachian Xeric Chestnut Oak – Virginia Pine Woodland, and preservation of the Property in a relatively undeveloped state will further protect the viability of this natural heritage resource; and

R13. WHEREAS, the Property shares a border with the Havens Wildlife Management Area (WMA) for approximately 1500 feet, and protection of the Property contributes to the preservation of said WMA; and

R14. WHEREAS, this Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in the Recitals above and, more particularly, as set forth below:

a. The preservation of the open space character of the Property prevents development of the Property which existing and foreseeable trends in the vicinity of the Property indicate is increasing rapidly and which would lead to or contribute to the degradation of the scenic, natural, or historic character of the area;

b. This Easement will operate as a covenant to assure that sustainable forest management practices are observed, which covenant will run with the Property in perpetuity, thus providing continuous supplies of forest products and environmental services such as clean air and water, wildlife habitat, and a potential resource land base for educational, scientific, and private recreational activities that retains and enhances quality habitat and biodiversity;

c. The preservation of the open space character of the Property prevents excessive development, soil disturbance, and pollution on the Property, thus enhancing water quality in the Roanoke River watershed and (i) improving the public drinking water for various communities that use the Roanoke River as a potable water supply and (ii) improving aquatic and riparian habitat downstream;

d. This Easement (i) ensures the Property will continue to serve as an effective buffer for the adjacent Havens WMA and (ii) protects crucial elements of interrelated ecosystems

present on both the Property and such WMA, thereby protecting the public's manifest interest in the continued ecological viability of the Havens WMA; and

e. The preservation of the open space character of the Property is consistent with existing conservation programs in the area, as the Property adjoins other tracts of land protected by open-space easements held by an eligible donee within the meaning of IRC Section 170(h)(3), and this Easement will further the open-space protection of such tracts;

f. The preservation of the open space character of the Property preserves a local or regional landscape or resource that attracts tourism and commerce to the area and enhances the quality of life for area residents; and

R15. WHEREAS, Grantor and Grantee desire to protect in perpetuity the conservation values of the Property as specified in Section I by restricting the use of the Property as set forth in Section II; and

R16. WHEREAS, Grantee has determined that the restrictions set forth in Section II (the "Restrictions") will preserve and protect in perpetuity the conservation values of the Property, which values are reflected in Section I; and

R17. WHEREAS, Grantee has determined that the Restrictions will limit use of the Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by the Easement; and

R18. WHEREAS, Grantee, by acceptance of this Easement, designates the Property as property to be retained and used in perpetuity for the preservation and provision of open-space land pursuant to the Open-Space Land Act; and

NOW, THEREFORE, in consideration of the foregoing recitals incorporated herein and made a part hereof and of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant and convey to Grantee a conservation and open-space easement in gross (Easement) over, and the right in perpetuity to restrict the use of, the Property, which is described below, and consists of approximately 163.415 acres in gross located in Catawba Magisterial District, Roanoke County, Virginia, fronting on Bradshaw Road (SR622), to-wit:

BEGINNING at two small spruce pines on the north bank of Mason's Creek at 14, corner to No. 9; thence with the big survey up the creek as it meanders the general course, S. 85° W. 35 poles, S. 47-1/2° W. 113 poles to two spruce pines on the north bank of the creek at 16, corner of No. 11; thence with No. 11, N. 26-3/4° W. 145 poles passing a blazed chestnut oak at a cliff of rock to the top of the mountain at 24; thence along the top of the mountain, N. 57-1/4° E. 143 poles to 25, corner to No. 9; thence with No. 9, S. 29-3/4° E. 156-1/2 poles to the place of BEGINNING, and containing 126 acres; and

BEGINNING at a stake in the south edge of Mason's Creek at 12, corner to lot No. 8; thence with the big survey, S. 63-3/8° W. 18 poles to a poplar

stump on the north side of the creek at 13; thence up the creek as it meanders, the general course being S. 47-1/2° W. 107 poles to two small spruce pines on the north bank of the creek at 14, corner to No. 10; thence with No. 10, N. 26-3/4° W. 156-1/2 poles passing a black oak at a cliff on the top of the mountain at 25; thence along the top of the mountain, N. 51-1/4° E. 123 poles to 26, corner to No. 8; thence with same, S. 26-3/4° E. 150 poles to the BEGINNING, and containing 116 acres;

Said tract or parcel of land described first being known as lot No. 10 and said second described tract or parcel of land being known as lot No. 9 in the plat and survey returned in the suit of John W. Woods v. William Woods, Administrator, said survey being of record in Surveyors Record Book 3, page 307, in the Clerk's Office of the Circuit Court of Roanoke County, Virginia, and also being that tract of land described and mentioned in Deed Book 42, page 343, of record in the aforesaid Clerk's Office;

EXCEPTING from the above conveyance, however, are the following parcels or tracts of land:

Three (3) acres, more or less, conveyed to Hughes T. Angell, by Harman L. Smith and Tennie Smith by deed dated April 14, 1932, of record in Deed Book 211, page 568, in the aforesaid Clerk's Office;

Sixty-three (63) acres conveyed to E. L. Rowell and E. L. Rowell, Jr., by Tennie A. Smith and Harman L. Smith, her husband, by Deed dated June 8, 1936, of record in Deed Book 237, page 574, in the aforesaid Clerk's Office;

A tract of land [estimated to be 2.9 acres by calculation] conveyed to T. C. Preston, Jr., by Tennie A. Smith and Harman L. Smith, her husband, by Deed dated March 15, 1935, of record in Deed Book 259, page 145, in the aforesaid Clerk's Office;

3.88 acres conveyed to Ruby K. Caldwell by Tennie A. Smith and Harman L. Smith, her husband, by Deed dated June 3, 1959, of record in Deed Book 619, page 280, of record in the aforesaid Clerk's Office;

Any portion of the subject property [estimated to be .9 acres by calculation] conveyed to the Commonwealth of Virginia for improvements to State Route 622 by Deed dated September 25, 1970, of record in Deed Book 907, page 33;

BEING the same and identical tracts or parcels of real property conveyed to Conner Family Roanoke County Property LLC, a Virginia limited liability company, by Deed from John G. Conner dated March 19, 2010, recorded in the aforesaid Clerk's Office as Instrument Number 201002734.

LESS AND EXCEPT that certain tract or parcel of land shown and designated as "Tract A" containing 4.9051 acres on that certain plat of survey entitled "Plat of Minor Subdivision for Conner Family Roanoke County Property LLC", prepared by John D. Lewis, L.S., of Fork Mountain Surveying and Mapping, Inc., dated September 6, 2012, signed October 3, 2012, as Job No. 119-12, recorded in the aforesaid Clerk's Office as Instrument Number 2012-11030.

The Property is shown as Tax Map Nos. 022.00-01-02.00-0000 [111.095 acres] and 022.00-01-05.00-0000 [52.32 acres] among the land records of the County of Roanoke, Virginia. Even if the Property consists of more than one parcel for real estate tax or any other purpose, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

### **SECTION I - PURPOSE**

The purpose of this Easement is to preserve and protect the conservation values of the Property in perpetuity by imposing the Restrictions on the use of the Property set forth in Section II and providing for their enforcement in Section III. More specifically, Grantor and Grantee acknowledge that the purpose of this Easement is to apply the following principal and secondary objectives to the Property:

- a. The principal objectives of this Easement are to assure in perpetuity:
  - i. that sustainable forest management practices will run with the Property, thus providing continuous supplies of forest products and environmental services such as clean air and water and wildlife habitat, and;
  - ii. that productive forest resources will be established and maintained on the Property, and;
  - iii. the long-term, silviculturally-sound management of those resources in a manner that minimizes negative impact and the duration of impact on surface water quality, wildlife habitat, and the other conservation values of the Property.

b. The secondary objectives of this Easement are to encourage sustainable management of soil and water resources and to conserve the forestal, watershed, natural habitat, and general open space conservation values associated with the Property as described in the above recitals and documented in the Baseline Documentation Report (the "BDR") described in Section IV below.

Grantor covenants that no acts or uses that are inconsistent with the purpose of this Easement shall be conducted on the Property.

### **SECTION II – RESTRICTIONS**

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

1. **DIVISION.** The Property shall not be divided or subdivided into, or separately conveyed as more than two (2) parcels, one (1) of which shall not be less than one hundred (100) acres. Grantor shall give Grantee written notice prior to making any division of the Property.

Boundary line adjustments with adjoining parcels of land not covered by this Easement shall not be permitted unless;

(i) the entire adjacent parcel is subject to a recorded open-space easement owned by Grantee or another agency of the Commonwealth, and

(ii) Grantee is made a party to the deed creating the boundary line adjustment.

Boundary line adjustments meeting the criteria above shall not be considered a division of the Property.

The parties acknowledge that widening or improvement to Bradshaw Road (SR622) may be necessary and may require expansion of the current right of way. The acquisition of a *de minimis* portion of the Property adjacent to said public thoroughfare for minor road improvements shall not be considered a division or subdivision of the Property, and neither the acquisition of such a *de minimis* portion of the Property nor the use of the portion of the Property so acquired shall be prohibited by this Easement, provided that Grantee approves such conveyance or taking, which approval shall be contingent upon the project including all reasonable actions, such as landscaping or topographic improvements, to minimize the project's impact on the Property and prevent harm to its conservation values. Grantor reserves its separate rights to approve such acquisition. Use of the Property for such a project is limited to the widening or minor improvement of the aforementioned road in its present alignment, by a maximum additional width of fifty (50) feet of the Property. For the purpose of this paragraph "minor road improvements" include, but may not be limited to, maintenance, correction, repair, or upgrading of the existing public roads. "Minor road improvements" does not include the addition of new travel lanes or relocation of the roadbed. Any portion of the Property acquired from Grantor pursuant to this paragraph shall remain subject to the terms and restrictions of this Easement.

2. **BUILDINGS AND STRUCTURES.** No buildings or structures other than the following are permitted on the Property:

(i) Four (4) single-family dwellings or dwelling units such as barn or garage apartments, provided that not more than three (3) dwellings shall be permitted on any permitted or exercised parcel. The dwellings shall not collectively exceed 12,000 square feet of above-ground footprint and shall not individually exceed 4,000 square feet of above-ground footprint, without Grantee's prior review and written approval. Such dwellings shall not exceed 40 feet in height measured from lowest point of final grade to highest ridge of roof without Grantee's prior review and written approval. Such approval shall take into consideration the impact of the size, height and siting of the proposed dwelling(s) on the scenic and other conservation values of the Property. For the purpose of this Paragraph, the above-ground footprint means the total land area occupied by

the structure at the ground level or above including porches, decks, and attached garages. In the event of division of the Property as provided in Section II, Paragraph 1, the grantor making the division retains all permitted dwelling rights unless permitted dwellings are allocated between the parcels in the instrument creating the division or other recorded instrument.

(ii) Non-residential outbuildings and structures commonly and appropriately incidental to dwellings permitted in subparagraph (i) of this paragraph, and sized appropriately to serve as amenities to single-family residential use, Provided that the aggregate footprint of such non-residential outbuildings and structures for each permitted dwelling shall not exceed 2,000 square feet in ground area unless prior written approval shall have been obtained from Grantee that a larger footprint is permitted considering the purpose of this Easement and the scale of the proposed outbuilding or structure in relation to the surrounding area.

(iii) Farm buildings or structures, except that a farm building or farm structure exceeding 4,500 square feet in ground area may not be constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the conservation values of the Property. For purposes of this subparagraph, a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in Section II Paragraph 3(i) or (ii).

(iv) Energy structures used to harness natural renewable energy sources such as the sun, wind, water, or biomass and scaled to provide electrical energy or pump water for permitted dwellings, structures, and activities on the Property, which limitation shall not be deemed to prohibit the sale of excess power generated incidentally in the operation of such structures and associated equipment including, but not limited to, solar panels, wind turbines, and micro-hydro installations and such structures, if approved by Grantee, to provide electrical energy to neighboring properties; and

(v) Small-scale miscellaneous structures, the existence of which is consistent with the conservation purposes of this Easement and which will not impair the conservation values protected herein, such as hunting stands, wildlife observation structures, fences, boardwalks, or structures for crossing of streams or wetlands. Any such structure shall not exceed 150 square feet in ground area unless prior written approval shall have been obtained from the Grantee;

(vi) Private roads to serve permitted buildings or structures only (if applicable: private roads to parcels created by permitted divisions of the Property), (if applicable: private roads required to be constructed in conjunction with permitted subdivisions of the Property) and roads with permeable surfaces for other permitted uses, such as farming or forestry, may be constructed and maintained.

(vii) Public or private utilities to serve permitted buildings or structures only and public or private utilities to serve parcels created by permitted divisions of the Property may be constructed and maintained. Public or private utilities that do not serve the Property shall not cross the Property unless Grantee determines that the construction and maintenance of such utilities will not impair the conservation values of the Property and gives its prior written approval for such construction and maintenance, which approval shall take into consideration the visibility and other

impact of such utilities on the conservation values of the Property. Grantor reserves its separate rights to approve such public or private utilities.

Grantor shall have the right to construct new dwellings, buildings and structures permitted in this Section II, Paragraph 2 and to repair, maintain, renovate and replace all new and existing permitted dwellings, buildings and structures on the Property, within the limitations set forth in this Easement.

Grantor shall give Grantee 30 days' written notice as provided in Section V, Paragraph 8 before beginning construction or enlargement of any structure permitted by subparagraphs (i) and (iii) on the Property (or, as applicable, before any ground clearing in preparation for such activity).

The collective footprint of all buildings and structures on the Property, excluding roads, shall not exceed 40,000 square feet, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values of the Property, Grantee may approve such increase. For the purpose of this Paragraph the collective footprint is the ground area measured in square feet of the buildings and structures set forth in subparagraphs (i) through (v) above and all other impervious surfaces, excluding roads. In the event of division of the Property, the collective footprint of all structures and all other impervious surfaces on each parcel, excluding roads, shall not exceed 20,000 square feet unless otherwise allocated in the instrument of transfer or other recorded instrument.

The combined acreage of the collective footprint described above and associated clearings maintained as yard, garden, landscape or open space other than forestry or agriculture, excluding roads and driveways ("Developed Areas") shall not exceed eight (8) acres, provided that if Grantor can demonstrate that an increase in the Developed Area would result in increased protection of the conservation values of the Property, Grantee may approve such increase. In the event of division of the Property as provided in Section II, Paragraph 1, the grantor making the division retains all rights with respect to the total Developed Area unless such rights are allocated between the parcels in the instrument creating the division or other recorded instrument.

To protect the conservation values of the Property, all dwellings and structures permitted in Subparagraphs 2(i) through 2(iv) above shall not be located more than 500 feet from Bradshaw Road (SR622) as measured from the centerline of the road.

**3. INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Industrial or commercial activities are prohibited with the exception of the following:

(i) agriculture (including livestock production), equine activities, and forestry;

(ii) small-scale incidental commercial or industrial operations related to activities set forth in (i) above, such as the processing and sale of products produced on the Property, that Grantee approves in writing as being consistent with the purpose of this Easement;

(iii) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property and that do not diminish the conservation values of the Property herein protected; and

(iv) activities that can be and in fact are conducted within permitted buildings without material alteration to their external appearance.

(v) activities to restore or enhance wetlands or streams or restore, enhance, or develop other ecosystem functions on the Property including, but not limited to, stream bank restoration, wetland and stream mitigation, biological carbon sequestration and biodiversity mitigation, provided that such activities are not in conflict or inconsistent with the conservation purpose of or the restrictions set forth in this Easement and that prior written approval for same shall have been obtained from Grantee. Grantee is not responsible for monitoring any such activities and has no obligation to enforce the provisions of any permit(s), restriction(s), or easement(s) therefor. Subject to Grantee's approval, Grantor is free to participate in same at Grantor's sole discretion and to retain any remuneration derived therefrom.

Temporary outdoor activities involving 100 or more people shall not exceed 7 consecutive days in any 90-day period without prior written approval of Grantee.

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

4. **PRESERVATION OF FOREST ACREAGE.** The forested portion of the Property shall not be converted to other uses except in the following cases: (a) to accommodate buildings and structures permitted under Paragraph 2 above, (b) for agricultural or equine uses as provided for in Paragraph 3(i) above, or (c) for providing or improving wildlife habitat.

Notwithstanding the foregoing, no more than a total of three (3) acres of forest shall be converted to another use except in accordance with a written forest conversion plan that is approved in advance, in writing, by Grantee. Such forest conversion plan shall be submitted to the Grantee for approval sixty (60) days before beginning the conversion of any forest in excess of three (3) acres as set forth above and shall provide, at a minimum, a description and map of the area to be converted, a description of the land use to be established, and a description of the Best Management Practices to be implemented in connection with the conversion.

(i) In any event, at least 125 acres of the Property shall remain in forest cover in perpetuity. In the event of a division as provided in Section II, Paragraph 1 described above, the acreage of forest conversion permitted on each resulting parcel must be allocated in the instrument creating the division or other recorded instrument.

(ii) No forest within the Riparian Buffers, hereinafter defined in Paragraph 7 below, shall be converted, provided that if Grantor can demonstrate that converting forests within the riparian buffers would result in increased protection of the conservation values of the Property, Grantee may approve such conversion.

**5. FOREST MANAGEMENT.**

(i) Forest Stewardship Plan. All forest activities conducted on the Property shall be in accordance with an approved Forest Stewardship or multiple resource forest management plan (the "Plan").

(a) The Plan shall be first prepared or updated within one year of the date of this Easement.

(b) The Plan shall only be prepared or updated by a forester meeting the qualifications specified in Section 10.1-1181.9 of the Code of Virginia (1950), as amended.

(c) The Plan and any updates must be approved in writing by Grantee, which approval shall be limited to consideration of whether (1) the Plan accurately and adequately describes the forest conditions of the Property and (2) the recommendations in the Plan comply with sound silvicultural practices and are consistent with the purpose of this Easement.

(d) The Plan may be updated at any time, and shall be updated within six (6) months after either (1) a significant change in forest conditions as determined by Grantee or (2) the transfer of all or any part of the Property to a new owner.

(e) The Plan must have been prepared or last updated no more than ten years before the submission of any pre-harvest plan as required in subparagraph (ii).

(ii) Harvesting. A pre-harvest plan consistent with the Plan shall be submitted to Grantee for approval no later than 30 days before beginning any material forest management activity or harvest.

(a) The pre-harvest plan shall include at least the following: description of the type of harvest to be conducted and the class(es) of trees to be removed; identification and description of the best management practices to be implemented, in sufficient detail to ensure that water and soil quality will be protected; and a description of the planned method of forest regeneration that is consistent with the purpose of this Easement. Grantor shall also notify Grantee no later than seven (7) days after the completion of any such activity or harvest.

(b) Notwithstanding any other provision of this Easement, the following activities shall be permitted without a pre-harvest plan or further permission from Grantee: non-commercial, *de minimis* harvest of trees for trail clearing, firewood, or Grantor's domestic use; removal of trees that pose an imminent hazard to human health or safety; and removal of invasive species.

(iii) Water Quality. Best Management Practices, as defined by the Virginia Department of Forestry ("BMP Guidelines"), shall be used to control erosion and protect water quality when any forestry activity is undertaken.

(iv) Forest Protection. The Plan shall include reasonable recommendations to prevent wildfires. The Plan shall likewise address and recommend appropriate measures to prevent or treat damage to the forest caused by disease and insects.

(v) Invasive Species. No plant species that is listed as a “Highly Invasive Alien Plant Species” by the Virginia Department of Conservation and Recreation, Division of Natural Heritage (or as a highly invasive alien plant species on any successor list promulgated by the Commonwealth of Virginia) shall be purposely introduced onto the Property. The Plan shall include reasonable recommendations for removing or preventing the establishment of such invasive species.

(vi) Woodland Grazing. The grazing of livestock in the forest shall be prohibited except in areas where Grantee determines that tree growth, water quality, wildlife habitat, and other conservation values are not likely to be damaged by such grazing. Such allowed woodland grazing areas, if any, are designated in the BDR; such areas may be designated and/or revised in subsequent addenda to the BDR as described in Section IV.

6. **HABITAT PROTECTION AREA.** To protect that area where a rare forest community known as Central Appalachian Xeric Chestnut Oak – Virginia Pine Woodland has been identified, a Habitat Protection Area (HPA) has been established above the 1900-foot contour line as shown on Exhibit B of the BDR.

The following activities are prohibited within the HPA:

- (i) Construction of new structures or roads;
- (ii) Timber harvesting. Removal of trees is prohibited except for: (a) removal of invasive species; (b) removal of diseased trees; or (c) removal of those trees posing a hazard to human health or safety as approved by the Grantee;
- (iii) Use of herbicides, except for spot-applications as necessary to control invasive species;
- (iv) Grazing of livestock; and
- (v) Land clearing or conversion to non-forest uses.

7. **RIPARIAN BUFFER.** To protect water quality, riparian buffer strips (“Riparian Buffers”) shall be maintained as follows:

Streamside management zones (“SMZs”) shall be maintained as described in the BMP Guidelines. The width of the SMZs shall be a minimum of 50 feet as measured on a horizontal plane from the top of the bank, or as defined in the BMP Guidelines, whichever is greater.

The following activities are prohibited within the Riparian Buffers:

(i) Grazing of livestock.

(ii) Storage of compost, manure, fertilizers, chemicals, machinery or equipment.

(iii) Removal of trees except (a) as part of a timber harvest in accordance with the aforementioned Plan, (b) removal of invasive species, (c) removal of dead, diseased or dying trees, and (d) removal of trees posing a human health or safety hazard.

(iv) Plowing, cultivation, road-building, grading or other earth-disturbing activity, except as may be reasonably necessary for (a) wetland or stream bank restoration, or erosion control, pursuant to a government permit, (b) establishing or maintaining fencing along or within the buffer area, (c) construction and maintenance of approved stream crossings, (d) creation and maintenance of foot or horse trails with unimproved surfaces, and (e) dam construction to create ponds.

(v) Building construction.

The following activities are permitted within the Riparian Buffers:

(i) Planting of native trees, shrubs, or other vegetation.

(ii) Vegetative pruning to improve health and form of existing trees, maintain horse and hiking trails, or improve sightlines from permitted structures.

Should any of the watercourses meander or change course naturally, the Riparian Buffers shall remain the same width, but move relative to the movement of the watercourse. In such event, any buildings or structures that were outside of the original buffer strip and are determined to be within the new buffer strip shall not be considered in violation of these restrictions and may be maintained at such locations.

8. **BIOCIDES.** Biocides may be used in the course of forest management in accordance with the Plan, to control invasive species, as a part of agricultural operations, around improvements on the Property, or as needed for general maintenance or pest control. Biocides shall not be applied in any manner that is inconsistent with the purpose of this Easement, or that will negatively affect the conservation values of the Property. If used, all biocides shall be applied in accordance with all labeling and appropriate safety measures.
9. **GRADING, BLASTING, MINING.** Grading, blasting or earth removal shall not materially alter the topography of the Property except for (i) dam construction to create ponds, (ii) wetlands or stream bank restoration pursuant to a government permit, (iii) erosion and sediment control pursuant to a government-required erosion and sediment control plan, or (iv) as required in the construction of permitted buildings, structures, roads, and utilities. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality during such construction. Grading, blasting or earth removal in excess of one-half acre for the purposes set forth in subparagraphs (i) through (iv) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities shall not constitute a material

alteration. Surface mining, subsurface mining, dredging on or from the Property, or drilling for oil or gas on the Property is prohibited.

10. **ACCUMULATION OF TRASH.** Accumulation or dumping of trash, refuse, junk or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the Property, as long as such practices are conducted in accordance with applicable government laws and regulations.
11. **SIGNS.** Display of billboards, signs, or other advertisements is not permitted on or over the Property except to: (i) state the name and/or address of the owners of the Property, (ii) advertise the sale or lease of the Property, (iii) advertise the sale of goods or services produced incidentally to a permitted use of the Property, (iv) provide notice necessary for the protection of the Property, (v) give directions to visitors, or (vi) recognize historic status or participation in a conservation program. Temporary political signs are allowed. No single sign, visible from outside the Property, shall exceed 32 square feet in size without prior Grantee approval. Total signage, visible from outside the Property, excluding boundary line posting signs, shall not exceed 64 square feet.

### SECTION III – ENFORCEMENT

1. **RIGHT OF INSPECTION.** Representatives of Grantee may enter the Property from time to time for purposes of inspection (including photographic documentation of the condition of the Property) and enforcement of the terms of this Easement after permission from or reasonable notice to Grantor or Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with notice to Grantor or Grantor's representative being given at the earliest practicable time.
2. **ENFORCEMENT.** Grantee has the right to bring an action at law or in equity to enforce the Restrictions contained herein. This right specifically includes the right (i) to require restoration of the Property to its condition at the time of the donation or, in Grantee's discretion, to require restoration of the Property to its condition prior to the violation, provided that such prior condition was in compliance with the Restrictions and consistent with the purpose of this Easement; (ii) to recover any damages arising from non-compliance; and (iii) to enjoin non-compliance by *ex parte* temporary or permanent injunction. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay shall not waive or forfeit its right to take such action as may be necessary to ensure compliance with this Easement, and Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by Grantee. Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage to the Property or change in the condition of the Property (i) caused by fire, flood, storm, Act of God, governmental act or other cause outside of Grantor's control or (ii) resulting from prudent action taken by Grantor to avoid, abate, prevent or mitigate such damage to or changes in the condition of the Property from such causes.

**SECTION IV – DOCUMENTATION**

1. **BASELINE REPORT.** Documentation retained in the office of Grantee including, but not limited to the BDR describes the condition and character of the Property at the time of the gift. The BDR may be used to determine compliance with and enforcement of the terms of this Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. Grantor has made available to Grantee, prior to donating this Easement, documentation sufficient to establish the condition of the Property at the time of the gift. The parties hereby acknowledge that the BDR contained in the files of Grantee at the time of the gift, an original of which having been provided to Grantor by Grantee, is an accurate representation of the Property at the time of the gift.
2. **MONITORING; ADDENDA TO BASELINE REPORT.** The parties herewith understand and acknowledge that the Grantee will monitor the Property for compliance with this Easement on an annual basis, and Grantee will create addenda to the BDR from time to time to document changes to the Property. Grantee will forward copies of such addenda to Grantor for Grantor's records.

**SECTION V – GENERAL PROVISIONS**

1. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions and restrictions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
2. **NO PUBLIC ACCESS.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Grantor retains the exclusive right to such access and use, subject to the terms hereof.
3. **TITLE.** Grantor covenants and warrants that Grantor has good title to the Property, that Grantor has all right and authority to grant and convey this Easement and that the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record) including, but not limited to, any deeds of trust or mortgages not subordinated to this Easement.
4. **ACCEPTANCE.** Acceptance of this conveyance by Grantee is authorized by Virginia Code Sections 10.1-1700 through 10.1-1705 and is evidenced by the signature of the State Forester.
5. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, has been or shall be dedicated as open space within, or as part of, a

residential subdivision or any other type of residential or commercial development; dedicated as open space in, or as part of, any 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 Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.

6. **CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses consistent with the purpose of and not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualifies as a “qualified conservation contribution” as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations §1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.
7. **REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property.
8. **NOTICE TO GRANTEE.** For the purpose of giving notices hereunder the current address of Grantor is 5520 North Fork Road, Elliston, Virginia 24087, and the current address of Grantee is 900 Natural Resources Drive Suite 800, Charlottesville, Virginia 22903.

Grantor agrees to notify Grantee in writing (i) before exercising any reserved right that Grantor believes may have an adverse effect on the conservation or open-space values or interests associated with the Property (the purpose of requiring such notice is to afford Grantee an adequate opportunity to monitor such activities to ensure that they are carried out in a manner consistent with the purpose of this Easement; such notice shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement); and (ii) at or prior to closing on any inter vivos transfer, other than a deed of trust or mortgage, of all or any part of the Property.

9. **TAX MATTERS.** The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations (see Section 1.170A-13(c)(5)), and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from 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.

10. **MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.
11. **ASSIGNMENT BY GRANTEE.** Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity and (2) the transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the IRC as amended and the applicable Treasury Regulations.
12. **GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the donation of this Easement gives rise to a property right, 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 gift bears to the value of the Property as a whole at that time.
13. **CONVERSION OR DIVERSION.** Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Section 10.1-1704 of the Open-Space Land Act which does not permit loss of open space.
14. **EXTINGUISHMENT.** Notwithstanding the provisions of Section 10.1-1704 of the Open-Space Land Act, 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 Section 10.1-1704 and IRC Section 170(h) and applicable Treasury Regulations. In any sale or exchange of the Property subsequent to an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Paragraph 12 above, but not to be less than the proportion that the value of this Easement at the time of extinguishment bears to the then value of the Property as a whole. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this Easement and the Open-Space Land Act.
15. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property, provided that no amendment shall (i) affect this Easement's perpetual duration, (ii) conflict with or be contrary to or inconsistent with the conservation purpose of this Easement, (iii) reduce the protection of the conservation values, (iv) affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land" or (v) affect the status of Grantee as a "qualified organization" or "eligible donee". No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded among the land records of the County of Roanoke, Virginia.
16. **SEVERABILITY.** If any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.

17. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement.
18. **CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia, resolving any ambiguities or questions of the validity of specific provisions in order to give maximum effect to its conservation purpose.
19. **RECORDING.** This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of Roanoke, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.
20. **COUNTERPARTS.** This Easement may be executed in one or more counterpart copies, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto shall not affect the validity of the Easement.

IN WITNESS WHEREOF, the Grantor does cause its name to be signed by John G. Conner, Manager of Conner Family Roanoke County Property, LLC, a Virginia Limited Liability Company, pursuant to and in accordance with its Operating Agreement.

WITNESS the following signatures and seals:

[Counterpart signature pages follow]

[Counterpart signature page 1 of 2]

CONNER FAMILY ROANOKE COUNTY PROPERTY, LLC

By: John G Conner  
John G. Conner, Manager

COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF Floyd, TO WIT:

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of May, 2013, by John G. Conner, Manager of and on behalf of Conner Family Roanoke County Property, LLC, a Virginia Limited Liability Company.

Alice H. Hollandsworth  
Notary Public

My commission expires: July 31, 2016 (SEAL)

Registration No.: 137547

ALICE H. HOLLANDSWORTH  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA  
NOTARY REGISTRATION NUMBER: 137547  
MY COMMISSION EXPIRES JULY 31, 2016

[Counterpart signature page 2 of 2]

By acceptance hereof, Grantee hereby designates the Property as open-space land pursuant to Virginia Code § 10.1-1701.

VIRGINIA DEPARTMENT OF FORESTRY,  
By: Carl E. Garrison  
STATE FORESTER

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Buckingham, TO WIT:

The foregoing instrument was acknowledged before me this 16 day of May, 2013, by Carl E. Garrison, III, the State Forester of the Virginia Department of Forestry.

Jessica A. Carroll  
Notary Public

My commission expires: 5/31/13 (SEAL)

Registration No.: 7233010



Approved as to form:

Brett C. Glymph  
Brett C. Glymph  
Assistant Attorney General

INSTRUMENT #201306498  
RECORDED IN THE CLERK'S OFFICE OF  
ROANOKE COUNTY ON  
MAY 20, 2013 AT 12:18PM

STEVEN A. MCGRAW, CLERK  
RECORDED BY: FRS