

190003503

2019 JUN 17 PM 1:11

BK 1123PG0152

Tax Map Nos. Franklin County: 1190006401, 1190006500, 1190006400

Henry County: 6.5(000)000 /029, 33, 35 (Pin 075870005)

190002038

SUBSTITUTION OF TRUSTEE

WHEREAS, Danny Thompson and Martha Thompson, did, by a Purchase Money Deed of Trust dated August 26, 2011, of record in Franklin County, Virginia in Deed Book 1002 at Page 00011 and of record in the Clerk's Office of the Circuit Court of Henry County, Virginia at Instrument No. 110003065 (hereinafter referred to as "Deed of Trust"), convey unto Scot Davis and Michael Jonas, Trustees for the benefit of the Beneficiary, Farm Credit of the Virginias, ACA, in trust, to secure the payment of a Deed of Trust Note, also dated August 26, 2011 (hereinafter referred to as "Note"), certain property located in Franklin County, Virginia and Henry County, Virginia and as more particularly described as follows:

358.867 acres located in Snow Creek Magisterial District, Franklin County, and Reed Creek Magisterial District, Henry County, Virginia, near Oak Level, fronting on State Routes 608 and 657 to-wit:

437.052 acres, lying and being in the Snow Creek Magisterial District of Franklin County, Virginia, and in the Reed Creek Magisterial District of Henry County, Virginia, as shown on survey in Deed Book 631, Page 1662, Clerk's Office of Franklin County, Virginia, and on survey in Map Book 89, Page 820, Clerk's Office, Circuit Court of Henry County, Virginia;

LESS, HOWEVER:

- (1) 2.104 acres conveyed to Earl Newth, of record in Deed Book 703, Page 1058, Clerk's Office, Circuit Court of Franklin County, Virginia;
- (2) 4.677 acres conveyed to Larry Bray, Jr. and Elisa P. Clark, of record in Deed Book 678, Page 511, Clerk's Office, Circuit Court of Franklin County, Virginia;
- (3) 3.627 acres conveyed to Ronald R. and Donna D. Hill, of record in Deed Book 677, Page 1380, Clerk's Office, Circuit Court of Franklin County, Virginia;

*James W. Shortt & Associates, P.C.
Attorneys and Counsellors at Law
108 South Locust Street • P.O. Box 900 • Floyd, Virginia 24091
Tel (540) 745-3131 • Fax (540) 745-2999*

BK 1123PG0153

- (4) 2.836 acres conveyed to Frans C. Delpont, et ux., of record in Deed Book 673, Page 1452, Clerk's Office, Circuit Court of Franklin County, Virginia;
- (5) 5.116 acres conveyed to Jeffrey S. Dykstra, et ux., of record in Deed Book 667, Page 1393 and re-recorded in Deed Book 667, page 1399, Clerk's Office, Circuit Court of Franklin County, Virginia;
- (6) 1.057 acres and 0.550 acre conveyed to Donna K. Atkins, et ux., of record in Deed Book 649, Page 1125, Clerk's Office, Circuit Court of Franklin County, Virginia;
- (7) 5.963 acres conveyed to Alan L. Sink, et ux., of record in Deed Book 637, Page 1323, Clerk's Office, Circuit Court of Franklin County, Virginia;
- (8) 0.890 acre conveyed to Bradley A. Jeffries, et ux., of record in Deed Book 868, Page 396, Clerk's Office, Circuit Court of Henry County, Virginia;
- (9) 9.662 acres conveyed to James Edward Mason, et ux., of record in Deed Book 647, Page 210, Clerk's Office, Circuit Court of Franklin County, Virginia, and in Deed Book 829, Page 1, Clerk's Office, Circuit Court of Henry County, Virginia;
- (10) 3.032 acres conveyed to Bradley A. Jeffries, et ux., of record in Deed Book 810, Page 698, Clerk's Office, Circuit Court of Henry County, Virginia;
- (11) 3.969 acres conveyed to Bradley A. Jeffries, et ux., by Deed of record in the Clerk's Office, Circuit Court of Henry County, Virginia, as Instrument No. 020001178;
- (12) 22.736 acres, conveyed to Bradley A. Jeffries, et ux., by Deed of record in the Clerk's Office, Circuit Court of Henry County, Virginia, as Instrument No. 040006157;
- (13) Parcel 1 of 3.639 acres and Parcel 2 of 3.933 acres conveyed to Patrick J. Quinn, et ux., by Deed of record in the Clerk's Office, Circuit Court of Franklin County, Virginia, in Deed Book 889, Page 1343, as Instrument No. 060008320, and as Instrument No. 060004289, of record in the Clerk's Office, Circuit Court of Henry County, Virginia;
- (14) 4.394 acres conveyed to Patrick J. Quinn, et ux., by Deed of record in the Clerk's Office, Circuit Court of Henry County, Virginia, as Instrument No. 060004390.

BEING all of the same property conveyed unto Danny L. Thompson and Martha H. Thompson, husband and wife, by Deed dated August 28, 1996 from Charles M. Aaron, Executor of the Estate of Jesse B. Gilley, deceased; said Deed recorded in the Clerk's Office of the Circuit Court of Franklin County Virginia, in Deed Book 631, at Page 1658, and recorded in the Clerk's Office of the Circuit Court of Henry County, Virginia, in Deed Book 800, at Page 580; and

James W. Shortt & Associates, P.C.

Attorneys and Counsellors at Law

108 South Locust Street • P.O. Box 900 • Floyd, Virginia 24091

Tel (540) 745-3131 • Fax (540) 745-2999

BK 1123PG0154

WHEREAS, the aforesaid Deed of Trust provided that the holder of the Note secured by the Deed of Trust shall have the power to appoint substitute trustee (s) for any reason whatsoever by executing and acknowledging a document appointing substitute trustee (s); and

WHEREAS, Farm Credit of the Virginias, ACA is the legal holder and owner of the Note secured by the Deed of Trust and is desirous of exercising the power of substitution granted the Noteholder.

NOW, THEREFORE, in consideration of the premises and acting under the power conferred upon in the aforesaid Deed of Trust, Farm Credit of the Virginias, ACA hereby nominates and appoints Teresa A. Harris and Al P. Saufley, II, either or both of whom may act, to act as Substitute Trustees in the place of the original Trustees, the said Teresa A. Harris and Al P. Saufley, II, either or both of whom may act, to have all powers, authority and discretion granted by the Deed of Trust to the original Trustees.

In all other respects the Note and Deed of Trust shall be and remain the same.

WITNESS the following signature and seal:

NOTEHOLDER
Farm Credit of the Virginias, ACA

By: Teresa A. Harris (SEAL)

State of Virginia
City/County of Orange, to wit:

The foregoing instrument was acknowledged before me this 3rd day of June, 2019, by Farm Credit of the Virginias, ACA.

My commission expires: 12/31/2021
Allison Morris
Notary Public

Notary ID: 256068



James W. Shortt & Associates, P.C.
Attorneys and Counsellors at Law

108 South Locust Street • P.O. Box 900 • Floyd, Virginia 24091
Tel (540) 745-3131 • Fax (540) 745-2999

BK 1123PG0155

INSTRUMENT 190003503
RECORDED IN THE CLERK'S OFFICE OF
FRANKLIN COUNTY CIRCUIT ON
JUNE 17, 2019 AT 01:11 PM
TERESA J. BROWN, CLERK
RECORDED BY: AMT

INSTRUMENT 190002038
RECORDED IN THE CLERK'S OFFICE OF
HENRY COUNTY CIRCUIT COURT ON
JUNE 17, 2019 AT 02:39 PM
JENNIFER R. ASHWORTH, CLERK
RECORDED BY: TKP

JUN17 2019 PG0081

BK1123PG0156

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

Prepared by: James W. Shortt, Esquire
Virginia State Bar #29187

190002039

Return to: Virginia Outdoors Foundation
900 South Main Street
Blacksburg, VA 24060

PINs (Franklin County): 1190001901 (39.95 ac), 1190003000 (97.702 ac), 1190002900 (143 ac),
1190006401 (51.65 ac), 1190006700 (197.0273 ac), 1190006500 (52 ac),
1190006400 (20.05 ac)

PINs (Henry County): 6.5(000)000/035A (0.126 ac), 6.5(000)000/029, 33, 35 (233.565 ac)
Account# 242655000 Account# 075870005
Exempt from recordation tax
under the Code of Virginia (1950), as amended,
Sections 58.1-811 (A) (3), 58.1-811 (D) and 10.1-1803
and from Circuit Court Clerk's fee under Section 17.1-266

2019 JUN 17 PM 1:11

190003504

THIS AMENDED AND RESTATED DEED OF GIFT OF EASEMENT (this "Easement"), made this 6th day of June, 2019, among DANNY L. THOMPSON and MARTHA H. THOMPSON, husband and wife, (together "Grantor"); the VIRGINIA OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA, ("Grantee") (the designations "Grantor" and "Grantee" refer to Grantor and Grantee and their respective successors and assigns); FARM CREDIT OF THE VIRGINIAS, ACA ("Lender 1") to be indexed as Grantor; and Teresa A. Harris and Al P. Sanfley, II, either or both of whom may act ("Trustees") to be indexed as Grantor; and THE LYONS STATE BANK ("Lender 2") to be indexed as Grantor; and Dale Proffitt, ("Trustee") to be indexed as Grantor, witnesseth:

WHEREAS, by Deed of Gift of Easement (the "Original Easement") made the 29th day of August, 2007 among Danny L. Thompson and Martha H. Thompson, husband and wife, Michaux Raine, III and T. C. Beasley, Trustees for Roanoke Farm Credit, and Dale Proffitt, Trustee for Southwest Virginia Farm Credit, ACA, and Grantee, recorded in the Clerk's Office of the Circuit Court of Franklin County, Virginia, as Instrument No. 070606375, and recorded in the Clerk's Office of the Circuit Court of Henry County as Instrument No. 70606375, Danny L. Thompson and Martha H. Thompson conveyed an open-space easement on 358.867 acres (the "Original Property") to Grantee. [As a matter of information, the legal description in the Original Easement stated that the amount being placed under easement was 437.052 acres, but the difference (78.185) was property that had been previously conveyed off from the 437.052 acres, so that 358.867 was the correct amount placed under the Original Easement]; and

JUN17 2019 PG0082

BK 1123PG0157

WHEREAS, by amended deed of gift of easement (the "Amended Easement") dated July 16, 2014 and recorded in the Clerk's Office of the Circuit Court of Franklin County, Virginia, as Instrument No. 140004293 and recorded in the Clerk's Office of the Circuit Court of Henry County as Instrument No. 140002640, Danny L. Thompson and Martha H. Thompson conveyed an additional 437.7293 acres, more or less, to Grantee to be held subject to the terms of the Original Easement, as amended therein, for a total of 796.6 acres, more or less; and

WHEREAS, by Deed dated December 21, 2017 and recorded in the Clerk's Office of the Circuit Court of Franklin County, Virginia, as Instrument No. 170008171, Grantor acquired an adjoining parcel of land containing 39.95 acres, more or less; and

WHEREAS, Grantor desires to amend the Original Easement, as amended by the Amended Easement, by:

- (i) adding the adjoining 39.95-acre, more or less, parcel under easement, so that the aggregate acreage under easement will be 837 acres, more or less;
- (ii) permitting the acquisition and use of a *de minimis* portion of the Property adjacent to public roads adjacent to the Property for minor road improvements, which acquisition and use would not be considered a division or divisions of the Property,
- (iii) adding restriction for an aggregate square footage ceiling for the above-ground enclosed living area of all dwellings on the Property,
- (iv) clarifying that private roads or driveways and access easements over the Property to serve adjacent properties are permitted,
- (v) requiring forestry pre-harvest plan, and eliminating requirement for forest stewardship management plans; and
- (vi) making several *de minimis* revisions to various provisions of Section II below; and

WHEREAS, a further purpose of this Amended and Restated Deed of Gift of Easement is to bring the language hereof into conformity with the language in the current deed template of Grantee, as set forth throughout the text below, in part to minimize the cost to Grantee of enforcing the restrictions herein.

WHEREUPON, the parties hereto do hereby agree to amend and restate the Original Easement, as amended by the Amended Easement, with the modifications indicated above, as more specifically set forth below.

RECITALS:

R-1 Grantor is the owner in fee simple of real property situated in Franklin and Henry counties, Virginia, containing in the aggregate 837 acres, more or less, as further described below (the "Property"), and desires to give, grant, and convey to Grantee a perpetual open-space easement over the Property as herein set forth.

R-2 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 provisions of any subsequent federal tax laws and regulations) (the "IRC")

JUN 7 2019 PG0093

BK 1123PG0158

and Treasury Regulation Section 1.170A-14(c)(1) and is willing to accept a perpetual open-space easement over the Property as herein set forth.

R-3 Chapter 461 of the Virginia Acts of 1966 provides in part "that the provision and preservation of permanent open-space land are necessary to help curb urban sprawl, to prevent the spread of urban blight and deterioration, to encourage and assist more economic and desirable urban development, to help provide or preserve necessary park, recreational, historic, and scenic areas, and to conserve 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. The balance of the Chapter is codified in Chapter 17, Title 10.1, Sections 10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the "Open-Space Land Act").

R-4 Pursuant to the Open-Space Land Act, the purposes of this Easement (as defined below in Section D) 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, or open-space use, all as more particularly set forth below.

R-5 Chapter 525 of the Virginia Acts of 1966, Chapter 18, Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia, declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Virginia Outdoors Foundation to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space, and recreational lands of the Commonwealth.

R-6 As required under Section 10.1-1701 of the Open-Space Land Act, the use of the portion of the Property located in Franklin County for open-space land conforms to the County of Franklin Comprehensive Plan adopted on May 22, 2007, and is located within an area that is designated as Agriculture/Rural Residential or Conservation Areas/Steep Slopes (25%) on the county's future land use map.

R-7 As required under Section 10.1-1701 of the Open-Space Land Act, the use of the portion of the Property located in Henry County for open-space land conforms to the County of Henry Comprehensive Plan adopted on June 25, 1995, and is located within an area that is located outside designated growth areas on the county's future land use map.

R-8 This Easement is intended to constitute (i) a "qualified conservation contribution" as defined in IRC Section 170(h)(1) and as more particularly explained below, and (ii) a qualifying "interest in land" under the Virginia Land Conservation Incentives Act of 1999 (Section 58.1-510 *et seq.* of the Code of Virginia (1950), as amended).

R-9 This Easement is intended to be a grant "exclusively for conservation purposes" under IRC Section 170(h)(1)(C), because (i) it effects "the preservation of 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, is for the scenic enjoyment of the general public, and will yield a significant public benefit

JUN17 2019 PG0084

BK 1123PG0159

R-10 This open-space easement in gross constitutes a restriction granted in perpetuity on the use that may be made of the Property and is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below.

(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;

c. Chapter 18, of Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia cited above;

d. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, Sections 58.1-510 through 58.1-513 of the Code of Virginia cited above, 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 forested resources;

e. 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 has concluded that the protection afforded the open-space character of the Property by this Easement will yield a significant public benefit and further the open-space conservation objectives of Grantee and the Commonwealth of Virginia. Treasury Regulation Section 1.170A-14(d)(4)(iii)(B) states that such review and acceptance of a conservation easement by a governmental entity 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 Franklin as delineated in:

a. its comprehensive plan adopted on May 22, 2007, to which plan the restrictions set forth in this Easement conform and which contains the following:

GOALS, OBJECTIVES, AND STRATEGIES

Environment

Goal: Preserve and promote forests, farmland, open space, viewsheds, wildlife corridors, greenways and rural roadscapes.

Objective:

23.0 Develop an effective public education program to improve and encourage conservation of the County's farm, forest, and wildlife resources.

Strategies:

23.0a Public outreach programs to include:

BK 1123PG0160

6 Educate the public on available options for conservation easements through land trusts and environmental advocacy organizations

Objective:

19.0 Develop incentives, ordinances, and programs to encourage the preservation of farmland and forestland.

- b. its recognition of the rural character of the Property and support for its continued use as agricultural, forest or open space land by providing "Land Use" or use value taxation for the Property under the authority provided by Section 20-31 of the Code of the County of Franklin, Virginia; and

(iii) Land use policies of the County of Henry as delineated in:

- a. its comprehensive plan adopted by the Henry County Board of Supervisors on June 26, 1995, to which plan the restrictions set forth in this Easement conform and which contains the following goals, objectives and strategies:

Natural and Historic Resources Goal: Preserve and Protect the County's Natural Resources and Historic Heritage.

Objective: Recognize and encourage historic preservation in the County.

Strategy: Promote voluntary techniques such as conservation easements which serve to protect historic settings.

Objective: Protect the County's surface water and groundwater supplies.

Strategy: Protect the quality of groundwater resources, especially in Rural Areas where public water is not expected to be available.

Strategy: Minimize runoff and sedimentation associated with development, agricultural, and forestal activities, particularly in areas with steep slopes.

Strategy: Inform and encourage property owners to take advantage of available preservation and conservation measures.

Objective: Reduce flooding and flood-related problems through proactive land use planning.

Strategy: Protect the important natural function of floodplains within the County by limiting disturbance and development activity.

Objective: Preserve important scenic resources and open space to help maintain rural character and improve the quality of life.

BK 1123PG0161

Strategy: Promote preservation of these areas through non-regulatory approaches such as conservation easements, purchase of development rights (PDG), and density bonuses.

Objective: Establish programs, and support existing programs, to help stop the decline of agriculture as a viable sector of the County economy. Ensure that the forestal industry remains strong.

Strategy: Discourage the conversion of prime and important farmlands to other land uses.

Land Use Goal: To Guide Development in Order to Protect the Public Interest, Enhance Quality of Life, and Increase the Efficiency of Service Provision.

Objective: Limit development in rural areas to low density residential uses to allow for efficient service delivery, protection of rural character, and preservation of natural resources.

Objective: Discourage growth in environmentally sensitive areas, such as steep slopes, floodplains, and wetlands.

Strategy: Mitigate development impacts on water quality by establishing setbacks or buffers from water bodies.

b. Section Sec. 8-601 of the Henry County Code that provides for use value assessment of certain property in the county to encourage its preservation as real estate devoted to agricultural, forestal, horticultural or open-space uses, which ordinance was enacted pursuant to Virginia Code Section 58.1-3231, the Property having been approved for use value assessment; and

(iv) Land conservation policies of the United States as set forth in:

The Albemarle-Pamlico National Estuary Partnership, formerly known as the Albemarle-Pamlico Estuarine Study. The Albemarle-Pamlico National Estuary Partnership (APNEP) and its predecessor were established pursuant to the 1987 amendments to the Clean Water Act, in which Congress authorized the United States Environmental Protection Agency (EPA) to establish the National Estuary Program with the purpose of protecting estuaries of "national significance" and specifically directed the EPA to give "priority consideration" to the Albemarle Sound in the establishment of the program. The present-day APNEP is a cooperative effort between the EPA, the Virginia Department of Conservation and Recreation, and the North Carolina Department of Environmental Quality and has the goals of identifying, restoring, and protecting the significant resources of the Albemarle-Pamlico Estuarine System and encouraging local communities to take responsibility for managing the resources in their respective jurisdictions. In its

BK 1123PG0162

2012-2022 Comprehensive Conservation and Management Plan, the APNEP Policy Board stated:

Protection of existing land cover is critical for making improvements in water quality, and the survival of important species will depend on our ability to preserve critical and connected habitats along estuarine, riverine, and upland systems. ...

Riparian buffers trap and filter polluted runoff, preventing sediments, nitrogen, phosphorus, pesticides, and other substances from entering the sounds. APNEP will support the purchase of land or conservation easements to protect buffers. APNEP will promote and endorse policies that encourage leaving riparian zones in a natural state.

R-11 A large portion of the Property contains a working beef cattle farm, and the preservation of the Property in a relatively undeveloped state hereunder will protect agricultural lands for future generations.

R-12 The Property contains productive forestland in a rural and scenic area of Franklin and Henry Counties, and preventing intensive development of the Property hereunder provides wildlife habitat, contributes to water quality protection and enhances the natural resources and protects the rural character of the surrounding area.

R-13 The entire Property has been given a ranking of "Very High" in the 2011 Watershed Integrity Model from Virginia Commonwealth University Center for Environmental Studies (VCU-CES), conducted in cooperation with state agencies. Preventing intensive development and limiting impervious surfaces hereunder contributes to protecting watershed integrity.

R-14 Approximately 200 acres on the eastern side of the Property is classified as having a high Forest Conservation Value (FCV) by the Virginia Department of Forestry, and preservation of the Property in a relatively undeveloped state hereunder assures its availability for timber production and other forest uses.

R-15 The Property fronts on State Routes 608 (Fork Mountain Road) and 657 (Old Quarry Road), providing pastoral views of the rural countryside and, as restricted hereunder, affording scenic enjoyment to the public traveling these roads.

R-16 This Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in these recitals and in Section I below.

R-17 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.

R-18 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 and will limit use of the

JUN17 2019 PG0088

BK 1123PG0163

Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by this Easement.

R-19 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.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein and made a part hereof, and in consideration of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant, and convey to Grantee for the public purposes set forth in Section I below an open-space easement in gross (this "Easement") over, and the right in perpetuity to restrict the use of, the Property, which is described in SCHEDULE A, attached hereto and made a part hereof, and consists of 837 acres, more or less, located in Franklin and Henry counties, Virginia, fronting on State Routes 608 (Fork Mountain Road) and 657 (Old Quarry Road).

The Property is shown as among the land records of the Counties of Franklin and Henry, Virginia with the following PINs:

Franklin County: 1190001901, 1190003000, 1190002900, 1190006401,
1190006700, 1190006500, 1190006400
Henry County: 6.5(000)000 /035A, 6.5(000)000 /029, 33, 35

Even though the Property consists of eleven parcels for real estate tax purposes and it may have been acquired previously as separate parcels, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

SECTION I - PURPOSES

The conservation purpose of this Easement is to preserve and protect the conservation values of the Property in perpetuity by imposing the restrictions on the use of the Property set forth in Section II and providing for their enforcement in Section III. The conservation values of the Property are described in the above recitals, are documented in the Baseline Documentation Report described in Section IV below and include the Property's open-space, natural, and scenic values and its value as land preserved for rural uses such as forestry and agriculture (including livestock production).

Pursuant to the Virginia Land Conservation Foundation's Conservation Value Review Criteria, the further conservation purpose of this Easement is preservation of land for agricultural use and forestal use.

Grantor covenants that no acts or uses are currently being conducted or will be conducted on the Property which are: (i) inconsistent with the conservation purposes of the donation or (ii) consistent with the conservation purposes of the donation, but are destructive of other significant

BK 1123PG0164

conservation interests unless such acts or uses are necessary for the protection of the conservation interests that are the subject of the donation.

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.

(i) The Property shall not be divided into, or separately conveyed as, more than three parcels (two divisions permitted). For purposes of this Easement, division of the Property includes, but is not limited to, recordation of a subdivision plat, judicial partitioning of the Property, testamentary partitioning of the Property, or pledging for debt of a portion of the Property.

(ii) Grantor shall give Grantee written notice prior to making a division of the Property. In the event of a division and conveyance of a portion of the Property as provided in this Paragraph 1, the grantor making the conveyance retains the right to make the further permitted division of the remainder of the Property not so conveyed, except to the extent the permitted division is allocated by that grantor in the instrument creating the division or another recorded instrument.

(iii) The acquisition of a *de minimis* portion of the Property adjacent to State Routes 608 (Fork Mountain Road) and 657 (Old Quarry Road) for minor road improvements shall not be considered a division of the Property, and neither the acquisition of such a *de minimis* portion of the Property nor the use of the portion of the Property so acquired shall be prohibited by this Easement, provided that Grantee approves such conveyance or taking, which approval shall be contingent upon the project including all reasonable actions, such as making landscaping or topographic improvements, to minimize the project's impact on the Property and prevent harm to its conservation values. Grantor reserves its separate right to approve such acquisition. Use of the Property for such a project is limited to minor improvements to State Routes 608 (Fork Mountain Road) and 657 (Old Quarry Road) in their present alignments, including, but not limited to, maintenance, correction, repair, or upgrading of the existing public roads. Such improvements could include, but are not limited to, the addition or renovation of ditches, box culverts, drainage swales, side slopes, curbing, re-grading, or enhancements, such as pull-offs, bike lanes, and restoration projects. For the purpose of this paragraph, "minor road improvements" does not include the addition of new travel lanes, except bike lanes. Any portion of the Property acquired from Grantor pursuant to this paragraph shall remain subject to the terms and restrictions of this Easement.

(iv) In the event that a permitted division of the Property requires a road or street dedication, such dedication shall not be considered a separate conveyance of a portion of

BK 1123PG0165

the Property or a division of the Property, and this Easement shall remain in force with respect to the dedicated portion.

2. BUILDINGS, STRUCTURES, ROADS, AND UTILITIES.

(i) **Buildings, structures, roads, and utilities.** No buildings, structures, roads, or utilities, other than the following, are permitted on the Property, provided, however, that certain permitted buildings and structures are subject to the siting restrictions set forth in Section II Paragraph 2(iii) below:

(a) **Dwelling units and non-residential outbuildings and structures.** Six dwelling units ("dwellings"), such as detached or attached dwellings, barn or garage apartments, or cabins, each of which may be used by one or more persons or families.

(1) The above-ground enclosed living area of such dwellings shall be as follows:

One dwelling: less than 5,500 square feet

Two dwellings: less than 4,500 square feet

Three dwellings: less than 2,000 square feet

(2) Notwithstanding the permitted size of individual dwellings set forth above, the six dwellings shall not exceed an aggregate of 20,500 square feet of above-ground enclosed living area.

(3) Grantor shall give Grantee 30 days' written notice before beginning construction or enlargement of a dwelling on the Property.

(3) 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 such rights are allocated among the parcels in the instrument creating the division or another recorded instrument. If permitted dwelling rights are allocated among the parcels, the square footage of above-ground enclosed living area should also be so allocated.

(4) Non-residential outbuildings and structures commonly and appropriately incidental to such dwellings sized appropriately to serve as amenities to residential use are permitted;

(b) **Farm buildings and structures.** Farm buildings and structures, except that a new 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. Approval shall be limited to consideration of the impact of the size, height, and siting of the proposed building or structure on the conservation values of the Property. For purposes of this paragraph (b), a farm building or structure shall mean a building or structure

BK 1123PG0166

originally constructed and used for the activities specified in Section II, Paragraph 3(i)(a) below. The parties hereto recognize that two barns and one covered cattle corral are located within 100 feet of the tributary to Reed Creek as shown in the Present Conditions Report dated December 18, 2018 in the files of Grantee. Any or all of these three buildings may be maintained or replaced, but shall not be enlarged.

(c) Roads, driveways, and trails.

(1) Private roads and driveways to serve permitted buildings and structures and roads with permeable surfaces for permitted uses and activities, such as farming or forestry.

(2) Private roads or driveways and access easements over same to serve adjacent properties, provided that such roads or driveways have the prior written approval of Grantee, which approval shall take into consideration the impact of the roads or driveways on the conservation values of the Property.

(3) Public roads required to be constructed and dedicated in conjunction with permitted divisions of the Property, provided that Grantee determines that the construction, maintenance, and dedication of such public roads will not impair the conservation values of the Property and gives prior written approval of such construction. Any such dedication shall not be considered a separate conveyance of a portion of the Property or an additional division of the Property, and this Easement shall remain in effect with respect to the portion of the Property so dedicated.

(4) Trails, including, but not limited to, hiking, biking, and equestrian trails;

(d) Utilities.

(1) Public or private utilities within existing rights-of-way therefor, consistent with any recorded instrument granting such rights-of-way.

(2) Public or private utilities to serve permitted buildings, structures, or activities on the Property. In addition, public or private utilities to be constructed in whole or in part to serve other properties, provided Grantee determines that the construction and maintenance of such utilities will cause no impairment of the conservation values of the Property and gives its prior written approval for such construction and maintenance. Approval of such construction and maintenance shall take into consideration the visibility and any other possible adverse impact of such utilities on the conservation values of the Property. Grantor reserves its separate right to approve any public or private utilities.

BK 1123PG0167

(e) **Small-scale miscellaneous buildings and structures.** Small-scale miscellaneous buildings and 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 and fences.

(f) **Signs.** Signs (but not billboards or other signs larger than 32 square feet in area).

(ii) **Construct, use and maintain.** Grantor shall have the right to construct and use any dwellings, other buildings, structures, roads, driveways, trails, and utilities permitted in Section II, Paragraph 2(i) above and to repair, maintain, renovate, expand, and replace any permitted dwellings, other buildings, structures, roads, driveways, trails, and utilities on the Property, within the limitations set forth in this Easement.

(iii) To protect the scenic values of the Property, no dwellings shall be constructed within the Restricted Build Area shown on Exhibit A, attached hereto and recorded herewith.

(iv) **Collective footprint limitation.** 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 Section II, Paragraph 2(i)(a), (b), and (e) above and all other impervious surfaces, excluding linear surfaces, such as roads, driveways, walls, fences, and boardwalks. The collective footprint shall not exceed one percent (1%) of the total area of the Property, 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. In the event of division of the Property, the collective footprint of each created parcel shall not exceed one percent (1%) of the total area of such parcel unless otherwise allocated in the instrument of transfer or another recorded instrument or allocated de facto by conveyance of a parcel with existing structures.

3. **INDUSTRIAL AND COMMERCIAL ACTIVITIES ON THE PROPERTY.**

(i) Industrial or commercial activities on the Property are limited to the following:

(a) agriculture (including livestock production), equine activities, or forestry;

(b) small-scale commercial or industrial operations incidental to and compatible with activities set forth in (a) above that Grantee approves in writing as being consistent with the conservation purposes of this Easement;

(c) activities, other than those already permitted in (a) above, that can be, and in fact are, conducted within permitted buildings without material alteration to their external appearance, provided that such activities to be conducted in buildings exceeding 10,000 square feet in ground area are subject to the written approval of Grantee, which approval shall take into consideration the impact of the activities and any proposed associated infrastructure improvements on the conservation values of the Property;

BK 1123 PG 0168

(d) outdoor activities that do not permanently alter the physical appearance of the Property and that do not impair the conservation values of the Property herein protected; and

(e) natural resource-based educational, scientific, or recreational activities, provided that they are consistent with the conservation purposes of this Easement and do not impair the conservation values protected herein.

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

4. MANAGEMENT OF FOREST.

(i) Best Management Practices (BMPs), as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material timber harvest (whether of healthy or diseased trees) or land-clearing activity is undertaken. A pre-harvest plan shall be submitted to Grantee for approval no later than fourteen (14) days before the proposed date of a material timber harvest, which approval shall take into consideration whether the pre-harvest plan is consistent with the terms of this Easement. The pre-harvest plan shall describe the BMPs to be used in sufficient detail to ensure that water quality will be protected.

(ii) The cutting, clearing, or removal of trees on less than ten (10) acres of the Property at any one time does not constitute material timber harvesting or land clearing, and does not require the use of BMPs or a pre-harvest plan, if:

(a) the cutting, clearing or removal trees is necessary for the construction or maintenance of permitted roads, driveways, trails, utilities, buildings, structures, food plots, or ponds;

(b) the trees are used for firewood for Grantor's domestic use;

(c) the trees are invasive species;

(d) the trees pose a threat to the health or safety of persons, property or livestock;

(e) the trees are dead, diseased, or dying; or

(f) the cutting, clearing, or removal of trees is necessary for other permitted activities on the Property, except timber harvesting or land clearing, provided that the clearing of land to preserve or reclaim fields is permitted.

5. RIPARIAN BUFFERS.

To protect water quality and natural habitat, there shall be no plowing, cultivation, or other earth-disturbing activity in a 100-foot buffer along the edges of the perennial streams on the Property, as measured from the tops of the banks of the streams and as shown on the

BK 1123PG0169

sketch attached hereto as Exhibit A, except as may be reasonably necessary for (i) wetland or stream bank restoration, or erosion control pursuant to a government permit, (ii) fencing along or within the buffer area, (iii) construction and maintenance of stream crossings for pedestrians, livestock, and vehicles that do not obstruct water flow, and (iv) creation and maintenance of foot or horse trails with unimproved surfaces. Except for the existing farm buildings located within one of the buffer strips or their replacements, there shall be no buildings or other substantial structures constructed within the buffer strips. Within 50 feet of the streams, there shall be no storage of compost, manure, fertilizer, chemicals, machinery, or equipment.

6. GRADING, BLASTING, FILLING AND MINING.

(i) Grading, blasting, filling, or earth removal shall not materially alter the topography of the Property except (a) for clearing, grading, and dam construction to create and maintain ponds (but not storm water retention or detention ponds to serve other properties), (b) for erosion and sediment control pursuant to an erosion and sediment control plan, or (c) as required in the construction of permitted buildings, structures, roads, driveways, trails, and utilities. Grantee may require appropriate sediment and erosion control practices to be undertaken for buildings, structures, roads, driveways, trails, or utilities that require Grantee's approval in Section II, Paragraph 2(i) above, as a condition of such approval.

(ii) Grading, blasting, filling, or earth removal in excess of one acre for the purposes set forth in subparagraphs (a) through (c) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities, including the conversion of forest land into farmland, shall not constitute a material alteration of the topography. Surface mining on the Property, subsurface mining from the surface of the Property, and drilling for oil or gas or other minerals on the Property are prohibited. Dredging on or from the Property is prohibited, except for maintenance of any ponds on the Property.

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.

(i) Grantee, in accepting this Easement, commits to protecting the conservation purposes of the Easement and has the resources necessary to enforce the restrictions set forth herein. Grantee has the right to bring a judicial proceeding to enforce the restrictions, which right specifically includes the right (a) to require restoration of the Property to its condition on the Effective Date or to require restoration of the Property to its condition prior to a

BK 1123PG0170

violation hereof, provided that such prior condition was in compliance with the provisions of this Easement; (b) to recover any damages arising from non-compliance; (c) to compel Grantor to disgorge to Grantee any proceeds received in activities undertaken in violation of the restrictions set forth herein; (d) to require Grantor to replant or pay for the replanting of trees on the Property in the event that Grantor harvests timber in violation of any restrictions set forth in Section II above; (e) to enjoin non-compliance by temporary or permanent injunction; and (f) to pursue any other appropriate remedy in equity or at law. 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, expert-witness 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 defense of waiver, estoppel, or laches with respect to any failure to act by Grantee.

(ii) 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 (a) caused by fire, flood, storm, Act of God, governmental act, or other cause outside of Grantor's control or (b) 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.

(iii) Nothing in this Easement shall create any right in the public or any third party to maintain any judicial proceeding against Grantor or Grantee.

SECTION IV – DOCUMENTATION

Grantor has made available to Grantee, prior to conveyance of this Easement, documentation sufficient to establish the condition of the Property at the time of the conveyance, and documentation retained in the office of Grantee, including, but not limited to, the Baseline Documentation Report (BDR), describes the condition and character of the Property at the time of the conveyance. 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. The parties hereby acknowledge that the BDR contained in the files of Grantee is an accurate representation of the Property and contains a statement signed by Grantor and a representative of Grantee as required by Treasury Regulation Section 1.170A-14(g)(5)(i).

SECTION V – GENERAL PROVISIONS

1. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions, and restrictions contained in this Easement are binding upon, and inure to the benefit of, Grantor and its successors in title to the Property, or any portion thereof or interest therein, and Grantee and its successors or assigns, and shall continue as a servitude running in

BK 1123PG0171

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 AND GRANTOR'S RETENTION OF USE.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to or use of the Property. Subject to the terms hereof, Grantor retains the exclusive right to such access and use including, but not limited to, the right to hunt, fish, or trap on the Property.
3. **GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor represents, covenants, and warrants that (i) Grantor has good fee simple title to the Property (including the mineral rights located under the surface of the Property), (ii) Grantor has all right and authority to give, grant and convey this Easement, (iii) 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 leases, option contracts, mortgage liens, deeds of trust liens, or other liens not subordinated to this Easement, and (iv) no consent of any third party is required for Grantor to enter into this Easement.
4. **ACCEPTANCE.** Grantee accepts this conveyance pursuant to Virginia Code Section 10.1-1801, which acceptance is evidenced by the signature of a Deputy Director or Staff Attorney by authority granted by Grantee's Board of Trustees.
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 proffered or dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; proffered or dedicated as open space in, or as part of, any real estate development plan; or proffered 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.** Pursuant to the public policy of the Commonwealth of Virginia 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 the parties hereto that this 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 Easement is found to be ambiguous, an interpretation that is consistent with the purposes of this Easement (to protect the conservation values of the Property and prevent the exercise of reserved rights in a way that would impair such values) and 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 purposes of and not expressly prohibited by this Easement are permitted on the Property. Grantor

BK 1123PG0172

and Grantee intend that the grant of this Easement qualify as a "qualified conservation contribution" as that term is defined in IRC Section 170(h)(1) and Treasury Regulation Section 1.170A-14, and the restrictions and other provisions of this Easement shall be construed and applied in a manner that will not prevent it 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. Failure of Grantor to comply with this requirement shall not impair the validity of the Easement or the conveyance or limit the Easement's enforceability in any way.
8. **NOTICE TO GRANTEE AND GRANTOR.** For the purpose of giving notices hereunder the current address of Grantee is Main Street Centre, 600 East Main Street, Suite 402, Richmond, Virginia 23219, and any notice to Grantor shall be given to the recipient at the address at which the real estate tax bill is mailed for the Property or portion thereof that is the subject of the notice and which is currently 8591 Floyd Highway North, Copper Hill, VA 24079.

Grantor shall notify Grantee in writing 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.

In addition, Grantor agrees to notify Grantee in writing before exercising any reserved right, which may have an adverse effect on the conservation interests associated with the Property as encumbered by this Easement. (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 purposes 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 purposes of this Easement.)

Failure of Grantor to comply with these requirements shall not impair the validity of the Easement or limit its enforceability in any way.

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 Treasury Regulation 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 conveyance of this Easement, that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable.
10. **GOODS AND SERVICES.** 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.

JUN17 2019 PG0098

BK 1123PG0173

11. **NO MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.
12. **ASSIGNMENT BY GRANTEE.** Assignment of this Easement is permitted by Virginia Code Section 10.1-1801, but Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (i) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity, (ii) the transferee then qualifies as an eligible donee as defined in IRC Section 170(h)(3) and the applicable Treasury Regulations, and (iii) the transferee is a public body as defined in Section 10.1-1700 of the Open-Space Land Act.
13. **GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the conveyance of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that this Easement on the Effective Date bears to the value of the Property as a whole at that time.
14. **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.
15. **EXTINGUISHMENT.** If any unexpected change in the conditions surrounding the Property can make impossible or impractical the continued use of the Property for the conservation purposes of this Easement, the provisions of this Easement can be extinguished through a judicial proceeding. In such case, on a sale or exchange of the Property subsequent to and resulting from such 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 Section V, Paragraph 13 above. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purposes of this Easement and the Open-Space Land Act.
16. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property by an amended deed of easement, provided that no amendment shall (i) affect this Easement's perpetual duration, (ii) conflict with or be contrary to or inconsistent with the conservation purposes 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", (v) affect the status of Grantee as a "qualified organization" or "eligible donee", or (vi) create an impermissible private benefit or private inurement in violation of federal tax law. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded in the Clerk's Office of the Circuit Court of Franklin County, Virginia and in the Clerk's Office of the Circuit Court of Henry County, Virginia.
17. **COST RECOVERY CHARGES.** Grantee reserves the right to recover its costs incurred in responding to requests initiated by Grantor involving matters such as easement

amendments, project reviews for ecosystem services, preparation of reports to facilitate sales, and access or utility easements over the Property. Such cost recovery charges shall be determined and periodically adjusted by its Board of Trustees, as set forth in a published fee schedule.

18. **JOINT OWNERSHIP.** If Grantor at any time owns the Property or any portion of or interest therein in joint tenancy, tenancy by the entirety, or tenancy in common, all such tenants shall be jointly and severally liable for all obligations of Grantor set forth herein.
19. **SEVERABILITY.** It is the express intent of the parties hereto that all provisions of this Easement be considered and construed as part of the whole and that no provision shall be applied in isolation without consideration of the overall purposes of this Easement. Nevertheless, if any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.
20. **ENTIRE AGREEMENT.** This instrument, Schedule A, and Exhibit A set forth the entire agreement of the parties with respect to this Easement and supersede all prior discussions, negotiations, understandings, or agreements relating to the Easement.
21. **CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia and the United States, resolving any ambiguities or questions of the validity of specific provisions in a manner consistent with the provisions of Section V, Paragraph 6 above in order to give maximum effect to its conservation purposes.
22. **RECODIFICATION AND AMENDMENT OF STATUTES AND REGULATIONS**
This Easement cites various federal and state statutes and regulations applicable to open-space easements. In the event that such statutes or regulations are re-codified or amended, this 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.
23. **RECORDING.** This Easement shall be recorded in the land records in the Clerk's Office of the Circuit Court of Franklin County, Virginia and in the Clerk's Office of the Circuit Court of Henry County, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.
24. **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.
25. **DEFINITIONS.** For purposes of this Easement, the phrase "Effective Date" shall mean the later of the dates upon which this Easement was first put to record in the Office of the in the Clerk's Office of the Circuit Court of Franklin County, Virginia and in the Clerk's

BK 1123PG0175

Office of the Circuit Court of Henry County, Virginia. The words "currently" or "existing" shall mean currently or existing on the Effective Date. Time shall be calculated in calendar days, not business days.

Farm Credit of the Virginias, ACA, herein Lender 1, is the note holder under a certain deed of trust dated August 26, 2011, and recorded in the Clerk's Office of the Circuit Court of Franklin County, Virginia in Deed Book 1002 at Page 00011 and recorded in the Clerk's Office of the Circuit Court of Henry County, Virginia at Instrument No. 110003065, which subjects a portion of the Property to the Lender's lien. The Lender hereby consents to the terms, conditions, and restrictions of this Easement, agrees that the lien represented by said deed of trust shall be held subject to this Easement, and joins in this Easement to reflect its direction to the Trustees to execute this Easement to give effect to the subordination of such deed of trust to this Easement. The Trustees join in the execution of this Easement to confirm that in the event of foreclosure under the deed of trust or other sale of the property described in the deed of trust under judicial or non-judicial proceedings, the property will be sold subject to this Easement; Notwithstanding the foregoing provisions, for so long as any Deed of Trust in favor of farm credit of the Virginias, ACA, its successors or assigns, as described above, or any modification or extension thereof, constitutes a lien on a portion of the property (or permanently in the event that the portion of the Property under the Farm Credit lien is sold at foreclosure or is conveyed to Farm Credit by deed in lieu of foreclosure), the Deed of Trust in favor of Farm Credit shall be considered a division of the Property for the purposes of this Conservation Easement, with one (1) of the permitted dwelling units up to 4,500 square feet in size and one (1) of the permitted dwelling units up to 2,000 square feet in size, as referenced in Section II, Paragraph 2.(i)(a)(1)) hereof, and one-third (1/3) of the collective footprint limitation referenced in Section II.2.(iv) hereof allocated to the property encumbered by the Farm Credit Deed of Trust.

The Lyons State Bank, herein Lender 2, is the note holder under a certain deed of trust dated March 26, 2019 and recorded in the Clerk's Office of the Circuit Court of Franklin County, Virginia in Deed Book 1119 at Page 2479 and recorded in the Clerk's Office of the Circuit Court of Henry County, Virginia at Instrument No. 190000977, which subjects a portion of the Property to the Lender's lien. The Lender hereby consents to the terms, conditions, and restrictions of this Easement, agrees that the lien represented by said deed of trust shall be held subject to this Easement, and joins in this Easement to reflect its direction to the Trustee to execute this Easement to give effect to the subordination of such deed of trust to this Easement. The Trustee joins in the execution of this Easement to confirm that in the event of foreclosure under the deed of trust or other sale of the property described in the deed of trust under judicial or non-judicial proceedings, the property will be sold subject to this Easement. provided, however, that if a foreclosure or other sale of the property described in the deed of trust takes place, under judicial or non-judicial proceedings, then such property shall have the right to have built on it two (2) of the permitted dwelling units referenced in Section II.2.(i) hereof, and enjoy one-third (1/3) of the collective footprint limitation referenced in Section II.2.(iv) hereof. It is understood by the parties hereto that the granting of the deed of trust/deed on a portion of the Property constitutes a division of the Property unless and until such deed of trust has been released of record.

WITNESS the following signatures and seals: [Counterpart signature pages follow.]

JUN17 2019 PG0101

BK 1123PG0176

[Counterpart signature page 1 of 6 of deed of open-space easement]

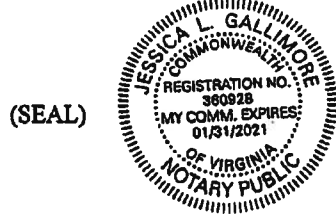
Danny L. Thompson
Grantor

Martha H. Thompson
Grantor

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

The foregoing instrument was acknowledged before me this 6 day of June, 2019 by Danny L. Thompson.

Jessica L. Gallimore
Notary Public

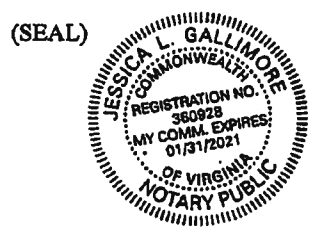


My commission expires: 1/31/2021
Registration No. 360928

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

The foregoing instrument was acknowledged before me this 6 day of June, 2019 by Martha H. Thompson.

Jessica L. Gallimore
Notary Public



My commission expires: 1/31/2021
Registration No. 360928

BK1123PG0177

[Counterpart signature page 2 of 6 of deed of open-space easement]

Accepted:
VIRGINIA OUTDOORS FOUNDATION,

By: Tamara A. Vance

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

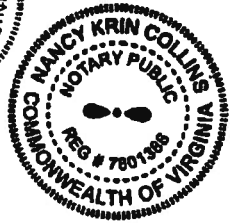
The foregoing instrument was acknowledged before me this 12th day of June, 2019 by Tamara A. Vance, a Deputy Director/Staff Attorney of the Virginia Outdoors Foundation.

Nancy Krin Collins
Notary Public

(SEAL)



My commission expires: 6-30-2022
Registration No. 7801386



BK 1123 PG 0178

[Counterpart signature page 3 of 6 of deed of open-space easement]

Lender:

By: Anthony Watson

Its: Loan Officer

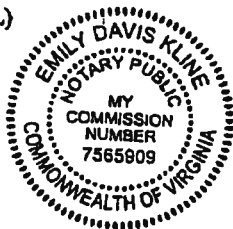
COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF Wythe, TO WIT:

The foregoing instrument was acknowledged before me this 7th day of June, 2019 by Anthony Watson [name of officer], Loan Officer [title of officer] of Farm Credit of the Virginias, ACA [name of corporation], a Virginia [state of incorporation] corporation, on behalf of the corporation.

Emily Davis Kline
Notary Public

My commission expires: 1-31-2021
Registration No. 7565909

(SEAL)



BK 1123 Pg 179

[Counterpart signature page 4 of 6 of deed of open-space easement]

Al P. Saufley II, Trustee
Teresa A. Harris, Trustee

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

The foregoing instrument was acknowledged before me this 6th day of June, 2019 by Teresa A. Harris, Trustee.

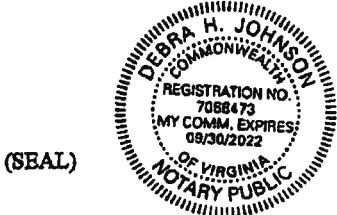


Debra H. Johnson
Notary Public

My commission expires: 09/30/2022
Registration No. 7066473

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

The foregoing instrument was acknowledged before me this 6th day of June, 2019 by Al.P. Saufley, II, Trustee.



Debra H. Johnson
Notary Public

My commission expires: 09/30/2022
Registration No. 7066473

BK1123PG0180

[Counterpart signature page 5 of 6 of deed of open-space easement]

Lender:

By: *John K. Wempe*

Its: PRESIDENT

STATE OF Kansas
CITY/COUNTY OF Rice, TO WIT:

The foregoing instrument was acknowledged before me this 6th day of June, 2019 by John K. Wempe [name of officer], President [title of officer] of The Lyons State Bank, a Kansas corporation, on behalf of the corporation.

Linda K. Friess
Notary Public

(SEAL)

My commission expires: 4-13-21
Registration No. 1391482



BK 1123 PG 0181

[Counterpart signature page 6 of 6 of deed of open-space easement]

[Signature], Trustee

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

The foregoing instrument was acknowledged before me this 7th day of June, 2019 by Dale Proffitt, Trustee.



(SEAL)

[Signature]
Notary Public

My commission expires: 1/31/2021
Registration No. 360928

SCHEDULE A

Property granted by Deed of Gift of Easement dated August 29, 2007 ("Original Property"):

358.867 acres located in Snow Creek Magisterial District, Franklin County, and Reed Creek Magisterial District, Henry County, Virginia, near Oak Level, fronting on State Routes 608 and 657 to-wit:

437.052 acres, lying and being in the Snow Creek Magisterial District of Franklin County, Virginia, and in the Reed Creek Magisterial District of Henry County, Virginia, as shown on survey in Deed Book 631, Page 1662, Clerk's Office of Franklin County, Virginia, and on survey in Map Book 89, Page 820, Clerk's Office, Circuit Court of Henry County, Virginia;

LESS, HOWEVER:

- (1) 2.104 acres conveyed to Earl Newth, of record in Deed Book 703, Page 1058, Clerk's Office, Circuit Court of Franklin County, Virginia;
- (2) 4.677 acres conveyed to Larry Bray, Jr. and Elisa P. Clark, of record in Deed Book 678, Page 511, Clerk's Office, Circuit Court of Franklin County, Virginia;
- (3) 3.627 acres conveyed to Ronald R. and Donna D. Hill, of record in Deed Book 677, Page 1380, Clerk's Office, Circuit Court of Franklin County, Virginia;
- (4) 2.836 acres conveyed to Frans C. Delport, et ux., of record in Deed Book 673, Page 1452, Clerk's Office, Circuit Court of Franklin County, Virginia;
- (5) 5.116 acres conveyed to Jeffrey S. Dykstra, et ux., of record in Deed Book 667, Page 1393 and re-recorded in Deed Book 667, page 1399, Clerk's Office, Circuit Court of Franklin County, Virginia;
- (6) 1.057 acres and 0.550 acre conveyed to Donna K. Atkins, et ux., of record in Deed Book 649, Page 1125, Clerk's Office, Circuit Court of Franklin County, Virginia;
- (7) 5.963 acres conveyed to Alan L. Sink, et ux., of record in Deed Book 637, Page 1323, Clerk's Office, Circuit Court of Franklin County, Virginia;
- (8) 0.890 acre conveyed to Bradley A. Jeffries, et ux., of record in Deed Book 868, Page 396, Clerk's Office, Circuit Court of Henry County, Virginia;
- (9) 9.662 acres conveyed to James Edward Mason, et ux., of record in Deed Book 647, Page 210, Clerk's Office, Circuit Court of Franklin County, Virginia, and in Deed Book 829, Page 1, Clerk's Office, Circuit Court of Henry County, Virginia;
- (10) 3.032 acres conveyed to Bradley A. Jeffries, et ux., of record in Deed Book 810, Page 698, Clerk's Office, Circuit Court of Henry County, Virginia;
- (11) 3.969 acres conveyed to Bradley A. Jeffries, et ux., by Deed of record in the Clerk's Office, Circuit Court of Henry County, Virginia, as Instrument No. 020001178;
- (12) 22.736 acres, conveyed to Bradley A. Jeffries, et ux., by Deed of record in the Clerk's Office, Circuit Court of Henry County, Virginia, as Instrument No. 040006157;

BK 1123PG0183

- (13) Parcel 1 of 3.639 acres and Parcel 2 of 3.933 acres conveyed to Patrick J. Quinn, et ux., by Deed of record in the Clerk's Office, Circuit Court of Franklin County, Virginia, in Deed Book 889, Page 1343, as Instrument No. 060008320, and as Instrument No. 060004289, of record in the Clerk's Office, Circuit Court of Henry County, Virginia;
- (14) 4.394 acres conveyed to Patrick J. Quinn, et ux., by Deed of record in the Clerk's Office, Circuit Court of Henry County, Virginia, as Instrument No. 060004390.

BEING all of the same property conveyed unto Danny L. Thompson and Martha H. Thompson, husband and wife, by Deed dated August 28, 1996 from Charles M. Aaron, Executor of the Estate of Jesse B. Gilley, deceased, said Deed recorded in the Clerk's Office of the Circuit Court of Franklin County Virginia, in Deed Book 631, at Page 1658, and recorded in the Clerk's Office of the Circuit Court of Henry County, Virginia, in Deed Book 800, at Page 580.

The property is shown as Parcel ID 075870005 among the land records of the County of Henry, Virginia, and Tax Map Numbers 119.-64, 119.-64.1, and 119.-65 among the land records of Franklin County, Virginia.

Property granted by Amended Deed of Gift of Easement dated July 16, 2014 ("Additional Property")

TRACT 1

All that parcel of land being 143 acres, more or less, lying and being in Snow Creek District, Franklin County, Virginia, lying near County Route 618, leading from Holcomb's Store to Figsboro, and designated as Parcel No. 119-29;

Together with all and singular the buildings and improvements thereon, rights and privileges, tenements, hereditaments, easements and appurtenances unto the said land belonging or in anywise appertaining;

Being all of the same property which was conveyed to Danny L. Thompson and Martha H. Thompson by Deed dated January 13, 2013, from James W. Elliott, Special Commissioner, on behalf of Washington Nathaniel Martin, Jesse H. Martin, Theron D. Martin, Elease Dawson and Washington Martin, Jr., said Deed recorded in the Clerk's Office of the Circuit Court of Franklin County, Virginia, as Instrument No. 130000522.

TRACT 2:

All that certain tract or parcel of real estate with all improvements thereon and appurtenances and rights of way thereunto belonging, situate and being mostly in the Snow Creek Magisterial District of Franklin County, Virginia, containing 97.702 acres as shown on that certain plat of survey by J. A. Gustin, L.S., dated April 22, 1985, a copy of said survey recorded in the Clerk's Office of the Circuit Court of Franklin County, Virginia as Instrument No. 130003045; and

BK 1123PG0184

BEING the same property that was conveyed to Danny L. Thompson and Martha H. Thompson, husband and wife, by Deed dated April 12, 2013, from Benton Bray Blackard and Dathne Blackard Barbour, Co-Administrators C.T.A. of the Estate of Benton S. Blackard and Co-Trustees of the Benton S. Blackard Trust, said Deed recorded in the aforesaid Clerk's Office as Instrument No. 130003046.

TRACT 3:

All that certain tract or parcel of real estate with all improvements thereon and appurtenances and rights of way thereunto belonging, situate and being mostly in the Snow Creek Magisterial District of Franklin County, Virginia and partially in the Reed Creek Magisterial District of Henry County, Virginia, containing 197.0273 acres as shown on that certain plat of survey by Larry G. Rakes, L.S. a copy of said survey being of record in the Office of the Clerk of the Circuit Court of Franklin County, Virginia, in Deed Book 1768 at Page 00960; and

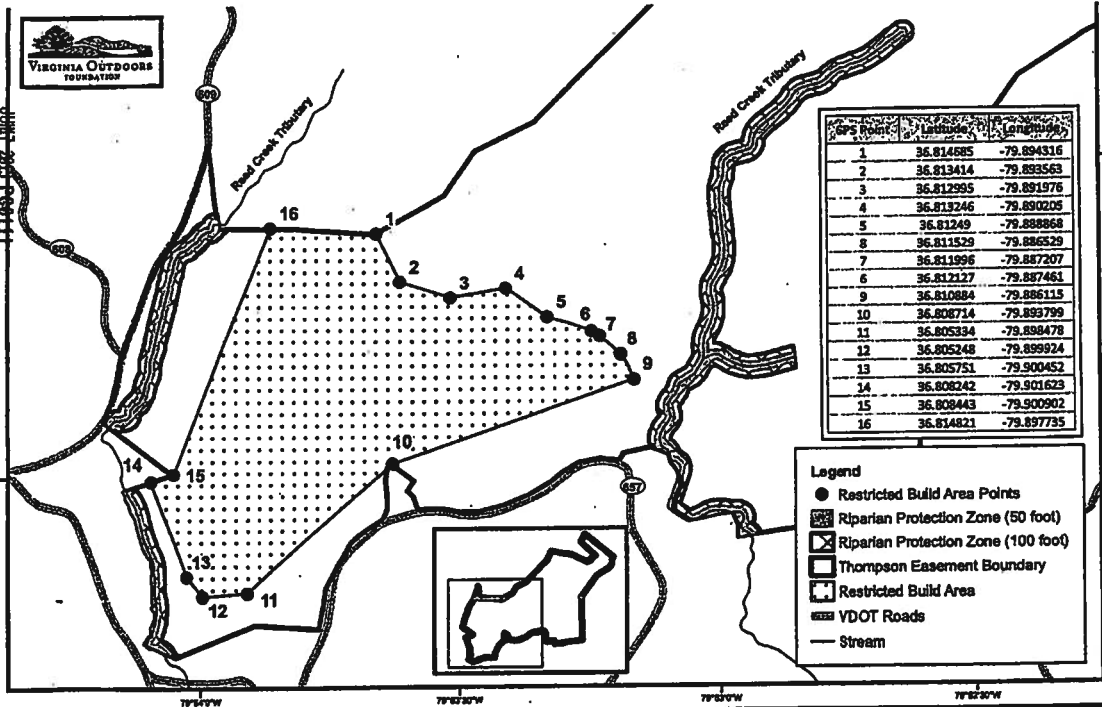
BEING all of the same property which was conveyed to Danny L. Thompson and Martha H. Thompson, husband and wife, by Deed dated February 19, 2013, from Hopkins, L.L.C., a Virginia limited liability company, said Deed recorded in the Clerk's Office of the Circuit Court of Franklin County, Virginia, as Instrument No. 130001394, and recorded in the Clerk's Office of the Circuit Court of Henry County, Virginia, as Instrument No. 130000622.

**Property granted by Amended Deed of Gift of Easement dated December 21, 2018
("Additional Property")**

All that certain tract or parcel of land on the westerly side of a road way leading off the southwest margin of Route 618 on the head waters of Muddy Fork creek in Briar Mountain, adjoining the lands now or formerly owned by Ross Jamison, A. H. Martin, Phyllis Hunter, et al, known as Tract B., containing 39.950 acres, more or less, as shown on pat of survey made by Philip W. Nester, L.S., dated February 4, 2002, recorded in the Clerk's Office of the Circuit Court of Franklin County, Virginia, in Deed Book 732, page 964.

BEING the same property acquired by Danny Thompson and Martha Thompson, husband and wife, by Deed dated December 21, 2017, from Bobby C. Taylor, said Deed recorded in the Clerk's Office of the Circuit Court of Franklin County, Virginia, in Deed Book 1101 at Page 2982.

JUN17 2019 PG0110



GPS Point	Latitude	Longitude
1	36.814885	-79.894316
2	36.813414	-79.893563
3	36.812995	-79.891976
4	36.813246	-79.890205
5	36.81249	-79.888868
8	36.811529	-79.886529
7	36.811996	-79.887207
6	36.812127	-79.887461
9	36.810884	-79.886115
10	36.808714	-79.893799
11	36.805334	-79.898478
12	36.805248	-79.899324
13	36.805751	-79.900452
14	36.806242	-79.901623
15	36.808443	-79.900902
16	36.814821	-79.897735

- Legend**
- Restricted Build Area Points
 - ▨ Riparian Protection Zone (50 foot)
 - ▩ Riparian Protection Zone (100 foot)
 - Thompson Easement Boundary
 - ▭ Restricted Build Area
 - ▬ VDOT Roads
 - Stream

Projection: Lambert Conformal Conic
 GCS North America 1983
 Datum: D North America 1983

Map created 12/14/2018 by Tommy Crowe.
 Source data provided by VDOT, VDF, USGS

This map is for general reference and display
 purposes only.

Exhibit A

0 Feet 500 1000

1:12,000

BK 1123PG0185

BK 1123PG0186

INSTRUMENT 190003504
RECORDED IN THE CLERK'S OFFICE OF
FRANKLIN COUNTY CIRCUIT ON
JUNE 17, 2019 AT 01:11 PM
TERESA J. BROWN, CLERK
RECORDED BY: AMT

INSTRUMENT 190002039
RECORDED IN THE CLERK'S OFFICE OF
HENRY COUNTY CIRCUIT COURT ON
JUNE 17, 2019 AT 02:52 PM
JENNIFER R. ASHWORTH, CLERK
RECORDED BY: TKP

JUN17 2019 PG0112

IN TESTIMONY, that the foregoing is a true copy
taken from the records of said Court, I, Jennifer Ashworth,
Clerk thereof, set my hand and affix
the Seal of said Court.

This the 27th day of June, 2019.

BY Jennifer Ashworth CLERK
Jennifer Ashworth D.C.

CIRCUIT COURT, COUNTY OF HENRY, VA.

