

Receipt : 1700002345

COURT ADDRESS:
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WARM SPRINGS, VA 24484
PHONE # :540-839-7226



OFFICIAL RECEIPT
BATH COUNTY CIRCUIT COURT
DEED RECEIPT

DATE : 12/28/2017 TIME : 15:03:07
RECEIPT # : 1700002345 TRANSACTION # : 17122800007
CASHIER : DRW REGISTER # : B070
INSTRUMENT : 170000828 BOOK : PAGE :
GRANTOR : MTGDS, LLC
GRANTEE : COMMONWEALTH OF VIRGINIA
RECEIVED OF : BOTKIN, MARK
ADDRESS : 900 NATURAL RESOURCE DR CHARLOTTESVILLE, VA 22903
DATE OF DEED : 12/20/2017
CASH : \$0.00
DESCRIPTION 1 : DEED OF GIFT OF EASEMENT
NAMES : 0
CONSIDERATION : \$0.00

CASE # : 017CLR170000828

FILING TYPE : DG
RECORDED : 12/28/2017
EX : Y
EX : Y

PAYMENT : FULL PAYMENT
AT : 14:41
LOC : CO
PCT : 100%

PAGES : 028

OP : 0

MAP :

PIN :

A/VAL : \$0.00

ACCOUNT CODE	DESCRIPTION	PAID
145	VSLF	\$0.00

TENDERED : \$ 0.00
AMOUNT PAID : \$ 0.00

Instrument No.

17-828

Date: 12/28/17

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:

Mark W. Botkin, Esq., VSB #35780

BotkinRose PLC

3190 Peoples Drive

Harrisonburg, Virginia 22801

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

PARCEL ID NO. 39-1 and 39-1G

Consideration: \$0.00

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 is made and entered into this 20th day of December, 2017 (the "Effective Date"), by and between MTGDS, LLC, a Virginia limited liability company, whose address is 301 E. Progress Lane, Madison Heights, Virginia 24572 ("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 Route (SR) 39, Mountain Valley Road, in Bath County, Virginia, containing approximately 306.106 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 (the "Easement");

R2. WHEREAS, the specific conservation values of the Property ("Conservation Values") include the following:

A. *FOREST*: Approximately 245 acres of the Property are covered in stands of working forests. According to the Natural Resources Conservation Service of the United States Department of Agriculture ("NRCS") Web Soil Survey, approximately twenty-nine percent (29%) of the soils on the Property are considered highly productive, exhibiting good site indices for white oak. According to the Virginia

Department of Forestry's (VDOP) *Forest Conservation Priority Map* as of the Effective Date, seventy-five percent (75%) of the forestland on the Property has been classified as having a high level of forest conservation value or greater;

B. WATERSHED PROTECTION: The Property contains frontage on approximately 2,400 feet of Little Back Creek, a tributary of the James River, which is protected by existing vegetated and forested buffers. Little Back Creek flows into Back Creek, then the Jackson River, and then the Upper James River. Protection of the Property also contributes to the following Conservation Values related to watershed protection: Approximately twenty (20) acres of the Property are within the 100-year floodplain along Little Back Creek; this area is partially forested, affording flood attenuation benefits by reducing the flow velocity and the amount of debris deposited downstream;

C. NATURAL HABITAT: The Property's forest cover, fields, edge areas, 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. Protection of the Property also contributes to the following Conservation Values related to natural habitat:

1. The Property includes a globally rare natural community called a Central Appalachian Calcareous Shale Barren ("Shale Barren") and additional habitat capable of supporting rare natural species (natural heritage resources) according to a site inspection conducted in 2017 by the Virginia Department of Conservation and Recreation, Natural Heritage Program (DCR-NHP).

2. According to the Natural Resources Conservation Service of the United States Department of Agriculture ("NRCS") Web Soil Survey, approximately forty-four percent (44%) of the soils on the Property exhibit good site indices for table mountain pine, identified by the State Forester as a diminished tree species in Virginia.

3. The Property shares a border with the George Washington National Forest ("National Forest") for 6,800 feet, and protection of the Property provides contiguous habitat with said National Forest;

D. SCENIC: The Property contributes to the scenic views enjoyed by the public from SR 39, a State-designated Virginia Byway;

E. AGRICULTURE: Approximately sixty-eight (68) acres of the Property are open fields used for hay production; the soils present on ten percent (10%) of the Property are considered Farmland of Statewide Importance according to the NRCS Web Soil Survey;

F. HISTORIC: The Property is a portion of the former Gatewood Plantation, which was founded prior to 1814 and at one point encompassed 1,404 acres of land. A former millpond and a sawmill site are located on the Property, and these may correspond to historic records of a gristmill, sawmill and blacksmith shop associated with the plantation;

G. GENERAL OPEN SPACE: The Property is substantially undeveloped, is used primarily for forestal, agricultural, and wildlife habitat purposes, and contains features such as forests, fields, and riparian areas which provide general open space benefits to the public;

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 (as defined below in Section I) 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;

R4. WHEREAS, Section I of Article XI of the 1971 Constitution of the Commonwealth of Virginia provides that “[I]t shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be 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.”;

R5. WHEREAS, Chapter 461 of the Acts of 1966, codified in part in Chapter 17, Title 10.1, Sections 10.1-1700 through 10.1-1705 of the Code of Virginia (1950), as amended (the “Open-Space Land Act”) provides “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;

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 Comprehensive Plan (as defined in R10 below) as confirmed by email from Sherry Ryder for Bath County, dated December 11, 2017, a copy of which is retained in the Grantee’s permanent files;

R7. WHEREAS, pursuant to 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;

R8. WHEREAS, this Easement constitutes (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);

R9. WHEREAS, this Easement is granted “exclusively for conservation purposes” under IRC §170(h)(1)(C) because 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, as more particularly described herein below and “for the scenic enjoyment of the general public”, and will yield a significant public benefit;

R10. 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:

A. Land conservation policies of the Commonwealth of Virginia as set forth in:

1. Section 1 of Article XI of the Constitution of Virginia;

2. 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”;

3. 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;

4. 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 (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;

5. The Agricultural and Forestal Districts Act, Sections 15.2-4300 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”;

6. The 2014 Chesapeake Bay Watershed Agreement, dated June 16, 2014, in which the Governor of the Commonwealth of Virginia and the Administrator of the United States Environmental Protection Agency on behalf of the United States of America agree “...collectively to advance restoration and protection of the Chesapeake Bay ecosystem and its watershed...”, and “commit to achieving the restoration and protection of the Chesapeake Bay watershed and its living resources.” The 2014 Chesapeake Bay Watershed Agreement includes ten conservation goals, including the land conservation goal of conserving two million acres of lands throughout the watershed by 2025, to include 695,000 acres of forestland of highest value for conserving water quality;

7. Grantee’s practices in reviewing and accepting this Easement, which practices include a Forestland Conservation staff review and evaluation of the Property using its Forest Conservation Value

criteria, which is a geographic information system analysis that assesses the Property's forestal, water quality protection, and terrestrial and aquatic habitat attributes, and relative threat of conversion;

B. Land use policies of the County of Bath (the "County") as follows:

1. The County's Comprehensive Plan adopted on December 9, 2014 (the "Comprehensive Plan")

- a) The Comprehensive Plan recognizes that "[a]griculture and forestry management are the County's traditional land uses. As the County starts to experience more growth, there may be less understanding of these mainstays of the rural economy. These important uses will need to be protected and supported."
- b) The Comprehensive Plan states that among the "[i]mmediate land use challenges facing Bath County include the following:"
 - "To protect the County's significant natural and historic resources."
 - "To support the County's traditional rural lifestyle, including productive farming and forestry."
- c) The Comprehensive Plan contains the following goals, objectives, and smart growth principles:

For rural conservation in future land use:

- "New growth should complement the County's natural, historical, and cultural setting"; and
- "Preserve and protect the water quality, scenic beauty, and natural character of the Cowpasture and Jackson Rivers, as well as Back Creek, by using established Best Management Practices"; and
- "Develop and support the incentives and techniques described herein to preserve Bath County's rural and historic character (conservation easements, land use taxation, historical landmarks designation, Virginia Byway designation, and cluster development)".

For natural resource protection in future land use:

- "Preserve and protect air quality in Bath County and the surrounding vicinity"; and
- "Conserve the County's soil resources and protect prime soils"; and
- "Protect local water resources and unique aquatic habitats"; and
- "Adhere to the Virginia Department of Forestry's Code of Silviculture [sic] Best Management Practices".

For preserving "Open Space, Farmland, Scenic Views, and Critical Environmental Areas":

- "Use land management techniques and acquisition to protect drinking water sources"; and

- “Provide mechanisms for preserving working lands”; and
- “Invest in the rural economy to preserve working lands”; and
- “Establish priority-setting criteria for open space acquisition”.

2. According to the County's zoning classification for the Property, most of the Property is located in the "Agricultural Limited District A-1 ;" a portion of the Property is located in the "Agricultural General District A-2;" and a portion of the Property is located in the "Flood Hazard District FH-1."

a) According to the statement of intent for A-1 districts that is set forth in Section 602.01 of the County's zoning regulations, "[t]he intent of the [A-1] district is to retain major areas of natural ground cover for conservation purposes and retaining of public forest and preserves." Among the permitted uses in the A-1 District are "nursery or tree farms" and "wildlife areas, game refuges, and forest preserves."

b) According to the statement of intent for A-2 districts that is set forth in Section 603.01 of the County's zoning regulations, the "[A-2] district covers the portion of the County which contains the most productive agricultural and forest lands which lie on slopes of less than twenty-five percent (25%) and represent the most valuable agricultural operations, forest production, conservation of water and other natural resources, reducing soil erosion and protecting watersheds." Among the permitted uses within the A-2 district are forestry, nurseries, and tree farms.

c) Section 613.00 of the County's zoning regulations provides that real property located in an FH-1 district shall comply with the flood protection provisions of the County Code. Chapter 12 of the County Code contains the flood protection provisions. Section 12-1 of the County Code states that the purpose of Chapter 12 "is to prevent the loss of life and property [and] the creation of health and safety hazards...by [r]estricting or prohibiting certain uses, activities, and development from locating within the areas subject to flooding."

3. The County has determined that it is desirable to encourage the continued preservation of agricultural land by providing for preferential use value taxation under Section 15-50 through 15-59 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;

R11. WHEREAS, Grantee has engaged in the review described above, 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 and Conservation Values by this Easement will yield a significant public benefit and further the conservation objectives of Grantee and the Commonwealth of Virginia;

R12. 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 would lead to or contribute to the degradation of the natural, rural, scenic, 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:

1. The potential for continuous supplies of forest products;
2. Natural benefits such as clean air and water, wildlife habitat, and biodiversity;
3. Opportunity for natural resource-based educational, scientific, and recreational pursuits;

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 Upper James River watershed and protecting aquatic and riparian habitat downstream;

D. The preservation of the Property as open space, working forest and agricultural land will:

1. Allow the Property to continue functioning as an effective buffer for the adjacent National Forest;
2. Protect crucial elements of interrelated ecosystems present on both the Property and National Forest, thereby protecting the public's manifest interest in the continued ecological viability of the National Forest;

E. The preservation of the open-space character of the Property will protect the public viewshed from SR 39, a Virginia Byway as designated by the Virginia Department of Transportation, which provides opportunities for the public to appreciate the Property's scenic values;

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;

R13. WHEREAS, Grantor and Grantee desire to protect in perpetuity the Conservation Values as specified in Section I and R2 by restricting the use of the Property as set forth in Section II;

R14. WHEREAS, Grantee has determined that the restrictions set forth in Section II (the "Restrictions") will preserve and protect in perpetuity the Conservation Values, which values are reflected in Section I and R2;

R15. 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 and the governmental conservation policies furthered by the Easement;

R16. 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.

NOW, THEREFORE, in consideration of the foregoing Recitals 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 over, and the right in perpetuity to restrict the use of, the Property which is described below, and consists of approximately 306.106 acres in gross located in Warm Springs Magisterial District, Bath County, Virginia, fronting on both the north and south sides of SR 39, Mountain Valley Road, to-wit:

All of those two (2) tracts of real property described as follows:

FIRST (Tax Map No. 39-1):

That certain tract or parcel of real property containing 230.790 acres, more or less, as more particularly described and shown on that plat of survey titled "Compiled Plat of Boundary Adjustment for MTGDS, LLC" dated August 29, 2017 (the "Plat"), Sheets 1 and 2 of 3, of record in the Clerk's Office of the Circuit Court of Bath County, Virginia (the "Clerk's Office") in Plat Cabinet 2, Slide 42. The metes and bounds description of Tract FIRST from which that portion of the Plat showing Tract First was produced is of record in the Clerk's Office as Instrument Number 170000541.

SECOND (Tax Map No. 39-1G):

That certain tract or parcel of real property containing 75.316 acres, more or less, as more particularly described and shown on the Plat, Sheet 3 of 3. The metes and bounds description of Tract SECOND from which that portion of the Plat showing Tract Second was produced is of record in the Clerk's Office as Instrument Number 170000538.

The Property is a portion of that real property conveyed to MTGDS, LLC, a Virginia limited liability company, by that deed dated August 25, 2014, from Darrell L. Kershner, and Darrell L. Hiner and Franklin D. Chestnut, Co-Executors of the Estate of Lena Foster Bonner, which deed is of record in the Clerk's Office as Instrument Number 140000470.

The Property is shown as Tax Map Nos. 39-1 and 39-1G among the land records of the County of Bath, Virginia. Even if the Property consists of more than one parcel for real estate tax or any other purpose, or has been acquired previously as separate parcels, 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 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:

1. That sustainable forest management practices will be observed, operating as a covenant that will run with the Property, thus making available continuous supplies of forest products and natural benefits such as clean air and water and wildlife habitat.
2. That productive forest resources will be established and maintained on the Property.
3. 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.

B. The additional objectives of this Easement are to encourage sustainable management of soil and water resources and to conserve the watershed, natural habitat, scenic, agricultural, historic, and open space Conservation Values as described in the above Recitals and documented in the Baseline Documentation Report (the "BDR") described in Section IV below.

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. **DIVISIONS:** The Property shall not be divided or subdivided into, or separately conveyed as, more than two (2) parcels. For purposes of this Easement, division of the Property includes, but shall not be limited to, creating a subdivision plat, judicial partitioning of the Property, testamentary partitioning of the Property, or pledging for debt of a portion of the Property. Grantor shall give Grantee written notice prior to making any division of the Property.

The parties acknowledge that widening or improvement to SR 39 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 right of way for minor road improvements by either voluntary conveyance or eminent domain 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 in writing 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. If not approved,

then the conveyance or taking shall be subject to the provisions of Section 10.1-1704 of the Open-Space Land Act. 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 twenty-five (25) feet on either side of the road, as measured from the edge of the existing right-of-way. 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 road. "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. DWELLINGS, STRUCTURES, ROADS, AND UTILITIES:** No buildings, structures, roads or utilities other than those specified in this Paragraph 2 are permitted on the Property. For the purpose of this Paragraph, a "Dwelling" shall be defined as a building or structure, or a portion of a building or structure, such as a residence, cottage, cabin (improved or unimproved), or barn or garage apartment, used or intended to be used for permanent, temporary, seasonal, or periodic human habitation by one or more persons or families. "Above-ground footprint" shall be defined as the total area occupied by a Dwelling or structure at the ground level or above, including but not limited to porches, decks, patios, attached garages, overhangs, or other impervious surface.

A. DWELLINGS AND STRUCTURES

(i) Two (2) "Dwellings", neither of which exist as of the Effective Date. Such Dwellings shall not individually exceed 4,000 square feet of above-ground footprint or forty (40) feet in height as measured from lowest point of final grade to highest ridge of roof without Grantee's prior review and written approval, which approval shall take into consideration the impact of the size, height and siting of the proposed Dwelling on the scenic and other Conservation Values.

In the event of division of the Property as provided in Section II, Paragraph 1, one (1) Dwelling shall be allocated to each permitted parcel in the instrument creating the division or other recorded instrument. Only one (1) Dwelling shall be allowed per parcel.

(ii) Outbuildings and structures commonly and appropriately incidental to the Dwellings permitted in subparagraph (i) of this paragraph, and sized appropriately to serve as amenities to residential use, provided that the non-residential outbuildings and structures for each permitted Dwelling shall be located within 200 feet of the Dwelling, and the aggregate footprint of the non-residential outbuildings 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. 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, subparagraph A or B.

(iv) 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, 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.

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

Nothing contained in this Section II(2)(A) shall obviate the requirements of Grantor, its successors or assigns to comply with applicable local land use and zoning requirements for the construction of any improvements.

B. ROADS

- (i) Private roads and access easements to parcels created by or in conjunction with permitted division of the Property.
- (ii) Private roads or driveways to serve permitted Dwellings or structures.
- (iii) Roads with permeable surfaces for other permitted uses, such as farming or forestry.

The Grantor may not construct any roads with a non-permeable surface or improve any existing roads by placement of a non-permeable surface without the written approval of Grantee.

Construction of any new roads must be done in accordance with either: (i) an approved Plan (defined in Paragraph 5A below); (ii) an approved pre-harvest plan (defined in Paragraph 5B below); or (iii) otherwise upon written approval of Grantee, which approval shall not be unreasonably withheld, conditioned, or delayed. Construction of any new roads and maintenance of existing roads must be done in accordance with applicable Best Management Practices for water quality.

C. UTILITIES

(i) Energy structures used to harness natural renewable energy sources such as sunlight, 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 in writing by Grantee, to provide electrical energy to neighboring properties; and

(ii) Public or private utilities to serve permitted Dwellings or structures only and public or private utilities to serve parcels created by permitted divisions of the Property. New 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 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. Grantor reserves its separate rights to approve such public or private utilities.

D. LOCATION RESTRICTIONS

(i) The Dwellings, outbuildings and incidental structures, and farm buildings permitted in Paragraph 2 subparagraphs A(i) through A(iii) above shall not be located outside the "Allowable Building Areas" as shown on Exhibit A, attached hereto and made part hereof, without the prior, written approval of Grantee, which approval shall be limited to consideration of the impact of the siting and other attributes of the proposed Dwellings, structures, or farm buildings on the Conservation Values, particularly, but not limited to preservation of large and contiguous forest blocks, forest fragmentation and edge effect, impact to sustainable forest management, protection of water quality, and impact to natural heritage resources and wildlife habitat.

Exhibit A shows four (4) numbered locations as Allowable Building Areas. The Dwellings, outbuildings and incidental structures, and farm buildings shall be located in no more than two (2) of these numbered locations without the prior, written approval of Grantee.

(ii) No Dwelling or structures permitted in Paragraph 2, subparagraphs A(i) through A(iv) above shall be located within the Habitat Protection Area shown on Exhibit A, unless Grantee approves the location in writing upon demonstration by the Grantor that the natural heritage resources no longer exist on the Property.

(iii) Subject to Grantee's prior review and written approval, the Allowable Building Areas as shown on Exhibit A may be moved if such Allowable Building Areas are found to be unsuitable for septic system and/or private drinking water well, which approval by the Grantee of an alternate site shall be subject to the Grantee's consideration of the impact of such alternate Allowable Building Areas on the Conservation Values.

E. COLLECTIVE FOOTPRINT

(i) The collective footprint of impervious surfaces on the Property is limited by this Easement. For the purpose of this Paragraph, the collective footprint is the ground area measured in square feet of the Dwellings, buildings, and other structures set forth in Section II, Subparagraphs 2A(i) through 2A(v) above and all other impervious surfaces (i.e. patios, swimming pools, tennis courts, basketball courts, etc.) located on the Property, excluding roads.

(ii) The collective footprint on the Property shall not exceed 24,000 square feet, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the Conservation Values, Grantee may approve such increase.

(iii) In the event of division of the Property, the collective footprint on each separate parcel shall not exceed 12,000 square feet per parcel unless otherwise allocated in the instrument of transfer or other recorded instrument.

F. DEVELOPED AREAS

(i) The amount of developed area on the Property is limited by this Easement. "Developed Area" is defined as the combined acreage of the collective footprint described above and associated clearings maintained as yard, gardens, landscaping, or other open space other than in forestry, agriculture, or wildlife habitat, excluding roads and driveways.

(ii) The combined Developed Area shall not exceed five (5) acres per permitted parcel, provided that if Grantor can demonstrate that an increase in the Developed Area would result in increased protection of the Conservation Values, Grantee may approve such increase.

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

A. Agriculture (including livestock production), equine activities, and forestry.

B. Small-scale incidental commercial or industrial operations related to activities set forth in (A) 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.

C. Temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property and that do not diminish the Conservation Values.

D. Activities that can be and in fact are conducted within permitted buildings without material alteration to their external appearance.

E. Hunting and fishing, including membership-based hunting and/or fishing clubs, and the sale of permits to guests for hunting and/or fishing.

F. 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 written approval, Grantor is free to participate in same at Grantor's sole discretion and to retain any remuneration derived therefrom.

4. PRESERVATION OF FOREST ACREAGE: The forested area of the Property shall not be converted to another land cover, 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(A) above.
- C. For providing or improving wildlife habitat.

Notwithstanding the foregoing, in each instance where more than three (3) acres of forest is converted to another use in any ninety (90)-day period, a written forest conversion plan approved in advance, in writing by Grantee, is required. 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.

In any event and notwithstanding anything contained herein to the contrary or any other provision in this Easement, at least 230 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 that shall remain as forestland in perpetuity on each resulting parcel shall be allocated in the instrument creating the division or other recorded instrument.

No forest within the Habitat Protection Area (HPA), hereinafter defined in Paragraph 6 below, or the Riparian Buffers hereinafter defined in Paragraph 8 below shall be converted, provided that if Grantor can demonstrate that converting forests within the HPA or Riparian Buffers would result in increased protection of the Conservation Values, Grantee may approve such conversion.

5. FOREST MANAGEMENT:

- A. **FOREST STEWARDSHIP MANAGEMENT PLAN.** All forest management activities conducted on the Property shall be in accordance with an approved Forest Stewardship or multiple resource forest management plan (the "Plan").

(i) The Plan shall be prepared, and reviewed and approved by Grantee as set forth in subparagraphs (ii) and (iii) below, within one (1) year of the Effective Date.

(ii) 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.

(iii) 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.

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

(v) The Plan shall acknowledge the globally rare Shale Barren natural community and the Habitat Protection Area shown on Exhibit A and shall provide guidance to avoid or minimize impacts to the Shale Barren and rare species habitat, to include, but not limited to the following: avoid logging and other disturbance within the Shale Barren natural communities, work with DCR-NHP botanists or a qualified consultant to identify and mark locations of rare species prior to timber harvest, minimizing impact to any such locations, and control invasive species after timber harvest.

(vi) The Plan must have been prepared or last updated no more than ten (10) years before any material forest management activity or harvest.

B. PRE-HARVEST PLAN. All material timber harvesting activities, including salvage harvests, conducted on the Property shall be in accordance with an approved pre-harvest plan.

(i) At least thirty (30) days in advance of any material timber harvest or associated activity, a pre-harvest plan consistent with the Plan shall be submitted to Grantee for approval in writing.

(ii) The pre-harvest plan shall be prepared according to Virginia Department of Forestry guidelines, in sufficient detail to protect site, soil, and water quality.

(iii) Upon the approval of the pre-harvest plan by the Grantee, timber harvesting may commence.

(iv) Grantor shall notify Grantee no later than seven (7) days after completion of the harvest.

(v) 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, daylighting of forest roads (not to exceed ten (10) feet on either side of the road), firewood for Grantor's domestic use; removal of trees that pose an imminent hazard to human health or safety; and removal of invasive species.

C. **BEST MANAGEMENT PRACTICES.** 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.

D. **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.

E. **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.

F. **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 the natural heritage resources identified on the Property, a Habitat Protection Area (HPA) is established as shown on Exhibit A attached hereto. The approximate extent of the globally rare Shale Barren natural community is also delineated on Exhibit A.

The following activities are prohibited within both the HPA and shale barren:

- (i) Construction of buildings, structures and utilities, except for tree stands and temporary blinds used for hunting;
- (ii) Soil disturbance, earth moving, and excavation;
- (iii) Broadcast application of pesticides, including herbicides, except hand application of herbicides to control invasive species;
- (iv) Conversion to a non-forest use; and
- (v) Grazing of livestock.

If it is determined that the natural heritage resources no longer exist on the Property or that these restrictions are no longer necessary for its protection, subject to consultation and written approval by the Grantee, the restrictions set forth in this paragraph shall no longer be applicable.

7. **HISTORIC AND SCENIC RESOURCES:** To protect the historic resources that are potentially located on the Property, a No Disturbance Area is established as shown on Exhibit A attached hereto.

The following activities are prohibited within the No Disturbance Area:

- (i) Construction of buildings, permanent structures (not including tree stands and temporary blinds used for hunting), subsurface utilities, or new roads; and
- (ii) Soil disturbance, plowing, earth moving, and excavation.

To preserve the scenic qualities of the Property and viewshed from SR 39, the open field located south of SR 39 and north of Little Back Creek, as identified on Exhibit A as "Open Field", shall be maintained as an open field by mowing, grazing, or other means, except that the area extending 150 feet from the top of the bank of Little Back Creek may be reforested or allowed to revert to forest.

8. **RIPARIAN BUFFERS:** To protect water quality, riparian buffer strips ("Riparian Buffers") shall be maintained along all streams, watercourses, and water bodies as follows:

- A. Within the forested portion of the Property, streamside management zones ("SMZs") shall be maintained as described in the BMP Guidelines and as set forth below. The width of the SMZs shall be a minimum of fifty (50) feet, or as defined in the BMP Guidelines, whichever is greater.
- B. Within the non-forested portion of the Property, a vegetated buffer strip shall be maintained as set forth below. The width of the buffer strips shall be a minimum of fifty (50) feet.

Riparian Buffer widths shall be measured on a horizontal plane from the top of the bank.

- C. **PROHIBITED ACTIVITIES.** The following activities are prohibited within the Riparian Buffers:

- (i) Grazing of livestock.
- (ii) Storage of compost, manure, fertilizers, chemicals, machinery or equipment.
- (iii) Application of fertilizers or biosolids.
- (iv) 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, including salvage harvests in response to a natural disaster, such as a tornado, hurricane, wildfire, flood, or other acts of nature, (d) removal of trees posing a human health or safety hazard, and (e) construction of ponds.

(v) 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 as provided for in Paragraph 2B above, (d) creation and maintenance of foot or horse trails with unimproved surfaces, and (e) dam construction to create ponds.

(vi) Building construction.

D. **PERMITTED ACTIVITIES.** The following activities are allowed 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.

E. 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.

9. **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. If used, all biocides shall be applied in accordance with all labeling and appropriate safety measures.

10. **GRADING, BLASTING, MINING:** Grading, blasting or earth removal shall not materially alter the topography of the Property except for:

A. Dam construction, repair, or rehabilitation to create or maintain ponds.

B. Wetlands or stream bank restoration pursuant to a government permit.

C. Erosion and sediment control pursuant to a government-required erosion and sediment control plan.

- D. 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 (A) through (D) above require thirty (30) days' prior notice to Grantee. Generally accepted agricultural activities shall not constitute a material alteration.

- E. PROHIBITED ACTIVITIES. The following activities are prohibited:

- (i) Surface or subsurface mining.

- (ii) Dredging on or from the Property (except for the purpose of pond construction and maintenance).

- (iii) Drilling for oil or gas on the Property.

- 11. **ACCUMULATION OF TRASH:** Accumulation or dumping of trash, refuse, or junk 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.

- 12. **SIGNS:** Display of billboards, signs, or other advertisements is not permitted on or over the Property except to:

- A. State the name and/or address of the owners of the Property.

- B. Advertise the sale or lease of the Property.

- C. Advertise the sale of goods or services produced incidentally by a permitted use of the Property.

- D. Provide notice necessary for the protection of the Property.

- E. Give directions to visitors.

- F. Recognize historic status or participation in a conservation program.

Temporary political signs are allowed. Notwithstanding anything contained herein to the contrary, no single sign, visible from outside the Property, shall exceed thirty-two (32) square feet in size without prior Grantee approval. Total signage, visible from outside the Property, excluding boundary line posting signs, shall not exceed sixty-four (64) square feet.

13. **INCONSISTENT USES:** Notwithstanding the foregoing, no acts or uses that are inconsistent with the purpose of this Easement or the Conservation Values herein protected shall be conducted on the Property.

SECTION III – ENFORCEMENT

1. **RIGHT OF INSPECTION:** Representatives of Grantee may enter the Property from time to time to inspect the Property (including photographic documentation of the condition of the Property) and to enforce 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 includes without limitation the right (i) to require restoration of the Property to its condition as of the Effective Date 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, including but not limited to disgorgement of any monies received by Grantor connected with such non-compliance; and (iii) to enjoin non-compliance by *ex parte* temporary or permanent injunction without the need for bond or other surety. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse to Grantee any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorney and expert 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. 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

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 as of the Effective Date. 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 as of the Effective Date. 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 as of the Effective Date.

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; SUCCESSORS IN INTEREST:** 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 entire 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. **GRANTOR'S REPRESENTATIONS AND WARRANTIES:** Grantor hereby represents, covenants, and warrants that (a) Grantor has good, fee simple title to the Property (including the mineral rights located under the surface of the Property); (b) the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements recorded in the land records of Bath County, Virginia, prior to the execution of this Easement) and including, but not limited to, any liens, leases, or option contracts not subordinated to this Easement; (c) Grantor has all requisite power and authority to enter into this Easement and to grant and convey this Easement; (d) no consents of any lender or any third party are required for Grantor to enter into this Easement that have not already been obtained and made known to Grantee; (e) Grantor is and shall be duly organized and legally existing under the laws of the Commonwealth of Virginia; and (f) each person and/or entity signing on behalf of Grantor is authorized to do so.
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, it is the intent of the parties hereto that this Easement, and all the language contained herein, 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, or in otherwise evaluating the provisions hereof, an interpretation consistent with the purpose of this Easement (i.e. one that restricts or constrains disruptive land uses in favor of furthering the Conservation Values protected hereunder) and that would find the provision valid and enforceable shall be favored over any interpretation that would render it invalid. 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. Failure of Grantor to comply with this requirement shall not impair the validity of the Easement or limit its enforceability in any way.
8. **NOTICE TO GRANTEE; APPROVALS BY GRANTEE:** For the purpose of giving notices hereunder the current address of Grantee is 900 Natural Resources Drive, Suite 800, Charlottesville, Virginia 22903. 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 301 E. Progress Lane, Madison Heights, Virginia 24572.

Grantor agrees to notify Grantee in writing:

- A. 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.
- B. 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.

Except as otherwise specifically provided herein, any approval, consent or action required or to be made hereunder by the Grantee shall be at the Grantee’s sole and absolute discretion.

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 bears to the value of the Property as a whole as of the Effective Date.
13. **CONVERSION, DIVERSION OR EXTINGUISHMENT; EMINENT DOMAIN:** Should an attempt be made to extinguish any portion of this Easement or convert or divert any portion of the Property subject to this Easement, the same may be carried out only by a judicial proceeding and only if in compliance with the Open Space Land Act and IRC Section 170(h) and applicable Treasury Regulations. Pursuant to Sections 10.1-1704 and 10.1-1705 of the Open Space Land Act as of the Effective Date, no such conversion, diversion or extinguishment may occur unless (i) the same is determined by the Grantee to be (a) essential to the orderly development and growth of the locality and (b) in accordance with the official comprehensive plan for the locality in effect at the time of such conversion, diversion or extinguishment and (ii) there is substituted other real property which is (a) of at least equal fair market value, (b) of greater value as permanent open-space land than the land converted or diverted and (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land subject to diversion, conversion or extinguishment. In any sale or exchange of the Property or a portion of the Property subsequent to or as a part of such a proceeding (including, but not limited to, any such transaction resulting from a party exercising its rights of eminent domain over all or a portion of the Property), 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 these proceeds in a manner consistent with the conservation purpose of this Easement and the Open-Space Land Act.

14. **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", (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 among the land records of the County of Bath, Virginia.
15. **JOINT OWNERSHIP:** If Grantor, or its successors, at any time owns the Property, any portion of the Property 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.
16. **SEVERABILITY:** It is the express intent of the parties 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 regard to the overall purposes of this Easement. However, 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; CHOICE OF VENUE:** 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. Any litigation arising out this Easement shall be brought in the Circuit Court for the County in which the majority of the Property lies (by measure of acreage) and by execution of this Easement, the Grantor and Grantee irrevocably consent to the jurisdiction of such Court and waive, to the extent otherwise available, now or in the future, any defense of inconvenience of forum.
19. **RECORDING:** This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of Bath, 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, provided each appears in its original typewritten form without deletions, strike-throughs or modifications of any type. Execution of this Easement at different times and in different places by the parties hereto shall not affect the validity of the Easement. Any signature page of any such counterpart may be attached or appended to any other counterpart to complete a fully executed counterpart of this Easement; provided, however, a fully-assembled Easement, bearing original, notarized signatures shall be assembled for proper recordation.

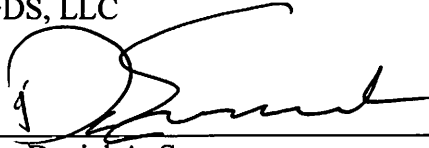
WITNESS the following signatures and seals:

[Counterpart signature pages follow]

GRANTOR:

MTGDS, LLC

By: _____



Daniel A. Summers
Managing Member

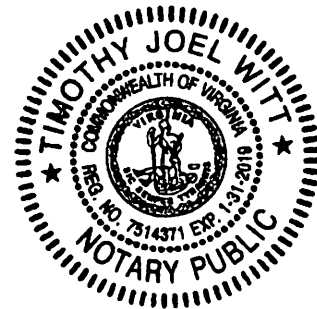
COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF Amherst, TO WIT:

The foregoing instrument was acknowledged before me this 20 day of December, 2017, by Daniel A. Summers, Managing Member, on behalf of MTGDS, LLC, a Virginia limited liability company.

Timothy Joel Witt
Notary Public

My commission expires: 01-31-2019 (SEAL)

Registration No.: 7514371



[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.

GRANTEE:

VIRGINIA DEPARTMENT OF FORESTRY,

By: [Signature]
Robert W. Farrell
Deputy State Forester

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

The foregoing instrument was acknowledged before me this 28th day of December, 2017, by Robert W. Farrell, Deputy State Forester, on behalf of the Virginia Department of Forestry.

[Signature]
Notary Public

My commission expires: 11.30.2018 (SEAL)

Registration No.: 7603863



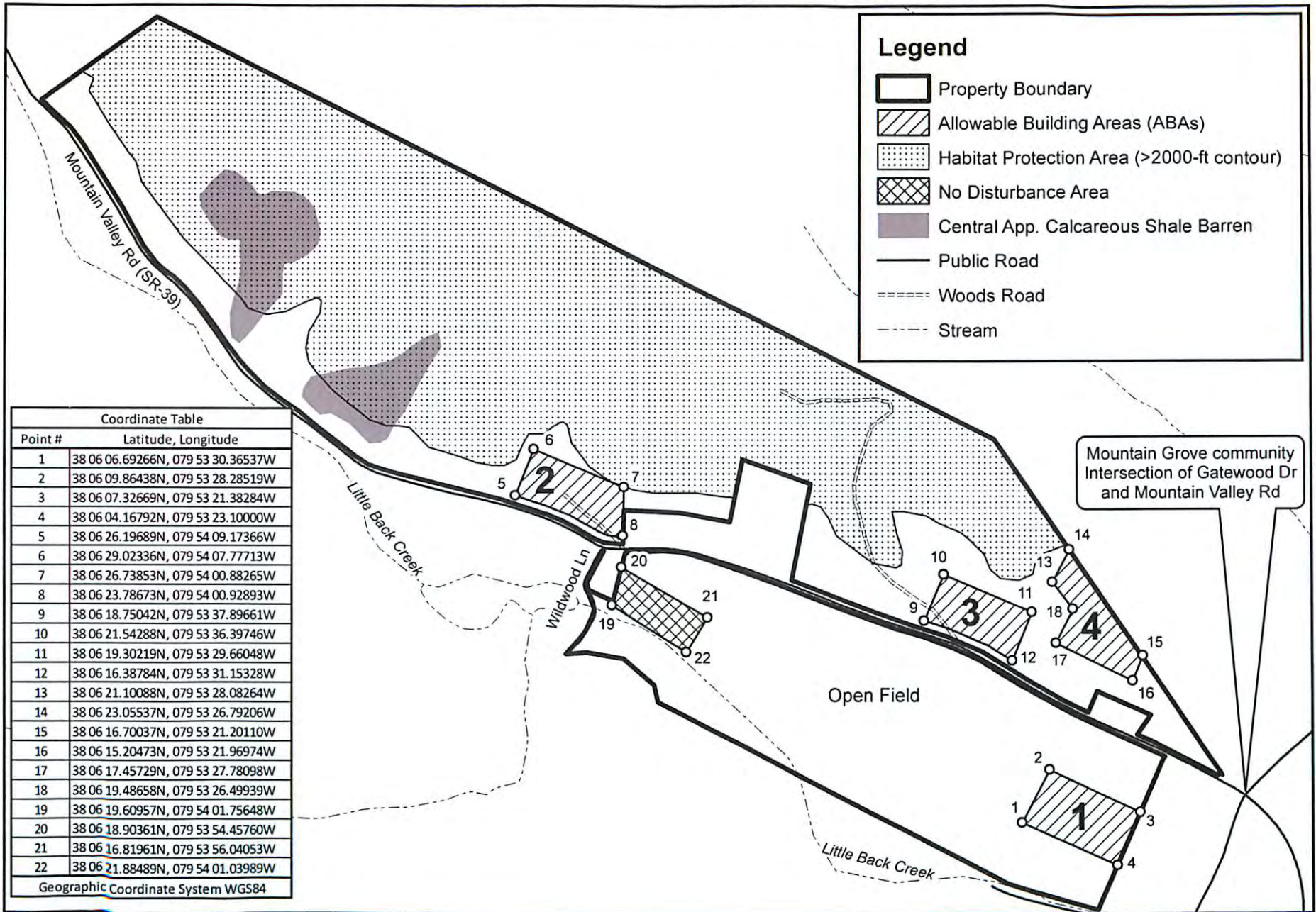
Approved as to form:

[Signature]

J. Duncan Pitchford
Assistant Attorney General



Exhibit A
MTGDS, LLC Open Space Easement / Tax Parcel Nos. 39-1 and 39-1G



This map is for general reference purposes only and is not to be construed as a survey. The omission of any stream on this map shall not invalidate protections in the Deed of Easement afforded every stream.

0 500 1,000 2,000 Feet

