

Prepared By:  
Mann & Vito, P.C.  
5 West Washington Street  
Lexington, VA 24450

TAX MAP NO: 73-4 & 5 and 58-7 and 59-29

Exempted 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

THIS DEED OF GIFT OF EASEMENT, made this 22<sup>nd</sup> day of December, 2004, between MIDDLE MOUNTAIN, L.L.C., a Virginia Limited Liability Company, Grantor, the VIRGINIA OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA, whose address is 203 Governor Street, Suite 302, Richmond, Virginia 23219, herein called the Grantee, and SECOND BANK & TRUST, "the Bank," and Button, Yeaman & Associates, P.C., Trustee, herein called Trustee,

WITNESSETH:

WHEREAS, the Open Space Land Act of 1966, Chapter 461 of the 1966 Acts of the Assembly, (Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as amended) (the "Open-Space Act") declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth by curbing urban sprawl and encouraging more desirable and economical development of natural resources, and authorizes the use of easements in gross to maintain the character of open-space land; and

WHEREAS, Chapter 18, Title 10.1 §§ 10.1-1800 through 10.1-1804, of the Code of Virginia (1950), as amended, (the "VOF Statutes"), 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; and

WHEREAS, Grantee is a "qualified organization" as defined in § 170 (h) (3) of the IRC, and Grantee is a qualified public body under the Open-Space Act, as follows: Grantee is an agency for the Commonwealth of Virginia authorized under the VOF Statute to acquire land for a public use; the gift of this Easement is made for exclusively public purposes; Grantee is organized and operated according to the VOF Statute primarily for the purposes of promoting "the preservation of open-space lands and .... [preserving] the natural, scenic, historic, scientific, open-space and recreational areas of the Commonwealth;" and Grantee, as an agency of the Commonwealth of Virginia, has the resources to enforce the restrictions in this Easement; and

WHEREAS, the Grantor is the owner in fee simple of the real property hereinafter described (the "Property"); and

WHEREAS, the Property possesses significant natural, scenic, and open-space values as hereinafter described, the preservation of which will benefit the citizens of the Commonwealth; Grantor and Grantee desire to protect in perpetuity such values of the Property and Grantor and Grantee intend to accomplish such protection by restricting the use of the Property through conveyance and acceptance of this "open-space easement" under the Open-Space Act as hereinafter set forth; and

WHEREAS, the Property comprises productive farm and forestland and is located in a pristine, predominantly forested area of Alleghany County; and

WHEREAS, the Property consists of a mountain ridge that is part of the viewshed of U.S. Interstate 64 and contributes to the scenic views enjoyed by the public therefrom; and

WHEREAS, the Property fronts on Va. State Route 616, Rich Patch Road, a designated Virginia Scenic By-way, and contributes to the scenic views enjoyed by the public therefrom; and

WHEREAS, the Property is primarily deciduous multi-aged forest land, lies contiguous with portions of the George Washington National Forest, comprises most of Horse Mountain, and includes diverse wildlife habitat; and

WHEREAS, the Property enlarges and provides a buffer for the wildlife and plant habitat of the National Forest and helps preserve the scenic and regional landscape along the I-64 corridor just east of the City of Covington; and

WHEREAS, the preservation of the Property furthers the objectives of the 2002 Alleghany County Comprehensive Plan which includes: (i) "encourage desirable development and growth, while protecting the rural character of the County;" and (ii) "protect and preserve areas of unique scenic beauty and environmentally sensitive areas;" and

WHEREAS, the Grantor and the Grantee desire to protect in perpetuity the open-space values herein specified; and

WHEREAS, the Grantor and the Grantee intend to accomplish such protection by restricting the use of the Property as hereinafter set forth; and

WHEREAS, as required under § 10.1-1700 of the Open Space-Act, the purposes of this Easement include retaining and protecting the natural and open-space values of the Property, assuring its availability for agricultural, forestal, and open-space use, protecting natural resources, and maintaining or enhancing water quality, all as more particularly set forth below; and

WHEREAS, this Easement is intended to constitute "a restriction (granted in perpetuity) on the use which may be made of real property," which is "a qualified real property interest" under §170 (h) (2) (C) of the IRC; and

WHEREAS, this easement is intended to constitute a "qualified conservation contribution" as the term is defined in § 170 (h) (1) 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, or the

corresponding provisions of any subsequent Federal tax laws, and the applicable regulations and rulings issued thereunder) (the "IRC"), as more particularly explained below; and

WHEREAS, the Grantee has determined that the restrictions hereinafter set forth (the "Restrictions") will preserve and protect in perpetuity the open-space values (the "Open Space Values") of the Property, which values are reflected in the preceding paragraphs, the Grantee's evaluation of the Property, and the documentation of the condition of the Property as contained in its files and records; and

WHEREAS, the conservation purpose of this easement is to preserve and protect in perpetuity the Open-Space Values of the Property; and

WHEREAS, Grantor intends that this Easement will limit the use of the Property to such activities as are not inconsistent with the purpose of this Easement, and Grantee has determined that the restrictions hereinafter set forth will limit the uses of the Property to those uses consistent with, and not adversely affecting the Open Space Values of the Property, the scenic values enjoyed by the general public, or the governmental conservation policies furthered by this easement.

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by the Grantee, the Grantor does hereby give, grant and convey to the Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of, the real estate consisting of 3,114.19 acres described in SCHEDULE "A" attached hereto, located in the Jackson River Magisterial District of Alleghany County, Virginia, near the City of Covington, fronting on State Route 616 (Rich Patch Road), and hereinafter referred to as the "Property:"

The tracts described in Schedule "A", are shown as tax parcels 2A, 4 and 5 on Tax Map 73, tax parcel 7 on Tax Map 58, and tax parcel 29 on Tax Map 59 among the land records of Alleghany County and total 3,114.19 acres in the aggregate. The Property shall be considered to be one parcel for the purposes of this easement, and the restrictions and covenants of this easement shall apply to the Property as a whole.

AND SUBJECT, HOWEVER, to the restriction that the Grantee may not transfer or convey the open-space easement herein conveyed to the Grantee unless the Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in the conveyance accomplished by this deed are to be continued in perpetuity, and (2) the transferee is an organization then qualifying as an eligible donee as defined by section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated there under.

Restrictions are hereby imposed on use of the Property pursuant to the public policies set forth above. The Grantor covenants that no acts or uses that are inconsistent with the conservation purposes of this easement shall be conducted or undertaken on the Property. The acts that the Grantor covenants to do and not to do upon the Property, and the Restrictions that the Grantee is hereby entitled to enforce, are and shall be as follows:

1. **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 laws and regulations.

2. **SIGNS.** Display of billboards, signs, or other advertisements that are visible from outside the Property is not permitted on or over the Property except to state the name and/or address of the owners or Property, to advertise the sale or lease of the Property, to advertise the sale of goods or services produced incidentally to a permitted use of the Property, to provide notice necessary for the protection of the Property or to give directions to visitors. No such sign shall exceed nine square feet in size.
  
3. **DIVISION.** The Property shall not be not be divided or subdivided into, or separately conveyed as more than twenty (20) parcels. Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered a prohibited division of the Property, provided that the Grantee is made party to the deed creating the boundary line adjustment and at least one of the following conditions is met:
  - 1) The entire adjacent parcel is subject to an existing, recorded open-space easement conveyed to the Grantee, its successor, assigns, or any other "qualified organization" under Section 170 (h), (g) (3).
  - 2) The proposed boundary line adjustment is reviewed and approved in advance by the Board of Trustees of the Grantee, its successor or assigns.
  
4. **MANAGEMENT OF FOREST.** Commercial timber harvesting shall be in accord with a forest stewardship plan approved by the Virginia Outdoors Foundation. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when commercial forestry activity is undertaken. A pre-harvest plan consistent with the forest stewardship plan shall be submitted to Virginia Outdoors Foundation at least 30 days prior to beginning such commercial timber harvesting.
  
5. **GRADING, BLASTING, MINING.** Grading, blasting or earth removal shall not materially alter the topography of the Property except for construction to create private ponds, or as required in the construction of permitted buildings, structures, private multi-purpose roads, power lines, water lines, septic systems, farm and forest roads, erosion control structures (including, but not limited to: water breaks, culverts, side ditches, water course crossings and other erosion control structures) and utilities as described in Paragraph 6. Generally accepted agricultural activities shall not constitute any such material alteration. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in the construction of permitted buildings and private roads. Notwithstanding the foregoing, no grading, blasting, or earth removal is permitted on the Property if it will materially diminish or impair the Open-Space Values of the Property. Mining on the Property is prohibited with the exception that the removal of surface rock is permitted on the Property.
  
6. **BUILDINGS AND STRUCTURES.** No permanent or temporary building or structure may be built or maintained on the Property other than:
  - (i) twenty (20) single family dwellings and non-residential outbuildings or structures commonly and appropriately incidental thereto;

- (ii) ten (10) secondary dwellings not to exceed 2,500 square feet each of livable space and non-residential outbuildings commonly and appropriately incidental thereto;
- (iii) farm buildings or structures, except that a farm building or 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 is obtained from the Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the Open-Space Values of the Property; for the purposes of this subparagraph a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in paragraph 7(i); and
- (iv) private roads and utilities that serve permitted buildings or structures.

No dwellings shall be built in the designated "no residential build area" which is generally from the top of the ridge of Horse Mountain extending northwest to the Property boundary located near Interstate 64 and the City of Covington (see Exhibit A). Buildings or structures visible from Interstate 64 shall be designed with muted colors and sited to minimize their visibility from said location in any season of the year.

In the event of subdivision of the Property as provided in Paragraph 3 above, permitted dwellings shall be allocated among the parcels in the instrument creating the subdivision, and private roads and utilities may be constructed on each parcel.

- 7. INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Industrial or commercial activities other than the following are prohibited: (i) agriculture, viticulture, aquaculture, silviculture, horticulture, and equine activities, (ii) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property, and that are consistent with the conservation values herein protected, and (iii) activities that can be and in fact are conducted within permitted buildings without material alteration to the external appearance thereof. Temporary outdoor activities involving 100 or more people shall not exceed seven days in duration unless approved by the Virginia Outdoors Foundation in advance in writing. Notwithstanding any other provision of this easement, no commercial recreational use (except for *de minimis* commercial recreational uses) shall be allowed on the Property.
- 8. ENFORCEMENT.** Representatives of the Grantee may enter the Property from time to time for purposes of inspection and enforcement of the terms of this easement and/or to prevent any activity on or use of the Property inconsistent with the purpose of this Easement, after permission from or reasonable notice to the owner or the owner's representative. The Grantor hereby grants to the Grantee the right to bring actions at law or in equity to enforce the conservation restrictions contained herein, including, but not limited to (i) when non-compliance with the terms of this Easement causes injury to the Property, the right to require restoration of the Property to its condition at the time of the donation of this Easement or, in Grantee's discretion, to require restoration of the Property to its condition prior to the injury, provided that such prior condition was in compliance with the terms of this Easement, (ii) the right to recover any damages arising from non-compliance, and/or (iii) the right to enjoin non-compliance by *ex parte* temporary or permanent injunction. If the court determines that the Grantor failed to comply with this easement, the Grantor shall reimburse the Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorney's fees, in addition to any other payments

ordered by such court. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this easement by any prior failure to act and the Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by the Grantee.

- 9. NOTIFICATION OF INTENTION TO UNDERTAKE CERTAIN PERMITTED ACTIONS AND OF TRANSFER.** The Grantor agrees to notify Grantee prior to undertaking any activity that may have a material adverse impact on the conservation values of the Property, if there be any such activity, and specifically prior to undertaking such permitted activities, if any, provided for in paragraphs 2, 5, 6, and 7. The Grantor shall notify the Grantee in writing within 60 days following any transfer or sale of the Property or any part thereof. In any deed conveying all or any part of the Property, this easement shall be referenced by Deed Book and Page Number or other appropriate reference. The failure of the Grantor to perform any act required by this Article shall not impair the validity of this Easement or limit its enforceability in any way.
- 10. EXTINGUISHMENT.** The Grantor and the Grantee intend that this easement be perpetual and not be extinguished. Restrictions set forth in the easement can be extinguished only by judicial proceeding and only if such extinguishment also complies with the requirements of section 10.1-1704 of the Virginia Code. In any sale or exchange of the Property subsequent to such extinguishment, the Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of the perpetual conservation restriction computed as set forth below, but not to be less than the proportionate value that the perpetual conservation restriction at the time of the extinguishment bears to the then value of the Property as a whole. The Grantor agrees that the donation of the perpetual conservation restriction in this easement gives rise to a property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time. The Grantee shall use all their share of the proceeds from the sale of the Property in a manner consistent with the conservation purposes of this easement and of the Open-Space Land Act. No part of the Property may be converted or diverted from open-space uses as herein defined except in accordance with Virginia Code Section 10.1-1704.
- 11. DOCUMENTATION.** Documentation retained in the offices of the Grantee describes the condition and character of the Property at the time of the gift. The Documentation may be used to determine compliance with and enforcement of the terms of the easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination.
- 12. SUCCESSORS IN INTEREST.** The covenants, terms, conditions and restrictions contained in this easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

If any provision of this deed 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.

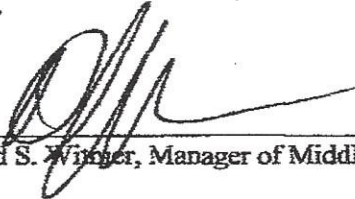
Second Bank & Trust, herein, the Bank, is the Noteholder under a certain Credit Line Deed of Trust dated 2 August 2004, and recorded in the Clerk's Office of the Circuit Court of Alleghany County, Virginia as Instrument No. 0400022520, which subjects the Property to the Bank's lien. The Bank hereby consents to the terms and intent of this easement, and agrees that the lien represented by said Credit Line Deed of Trust shall be held subject to this Deed of Gift of Easement and joins in the Deed to reflect its direction to the Trustee to execute this Deed to give effect to the subordination of such Credit Line Deed of Trust to this Deed of Easement.

Although this easement in gross 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. The Grantor retains the exclusive right to such access and use, subject to the terms hereof.

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, audit and challenge by all appropriate tax authorities. The Virginia Outdoors Foundation makes no express or implied warranties regarding whether any tax benefits will be available to Grantor from donation of this easement, whether any such tax benefits might be transferable, or whether there will be any market for any tax benefits that might be transferable. The parties hereto intend that the easement conveyed herein shall be a qualified conservation contribution within the meaning of Section 170(h) of the Internal Revenue Code of 1986, as amended, 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. By its execution hereof, the Grantee acknowledges and confirms receipt of the Easement and further acknowledge that the Grantee has not provided any goods or services to the Grantor in consideration of the grant of the Easement.

Acceptance of this conveyance by the Grantee is authorized by Sections 10.1-1801 and 10.1-1009 of the Code of Virginia and is evidenced by the signatures of the Executive Director of the Virginia Outdoors Foundation, hereto. Assignment of this easement is governed by Section 10.1-1801 of the Code of Virginia.

Witness the following signatures and seals,

  
\_\_\_\_\_  
David S. Winger, Manager of Middle Mountain, L.L.C., Grantor

PG0051 DEC 29 03

Bank: Second Bank & Trust

Button, Yeaman & Associates, P.C.

By: [Signature]  
J. Robert Yeaman, III

Its: President

By: [Signature]  
Ben Horne

Its: Vice President

Accepted:

VIRGINIA OUTDOORS FOUNDATION,

By: [Signature]  
Tamara A. Vance, Executive Director

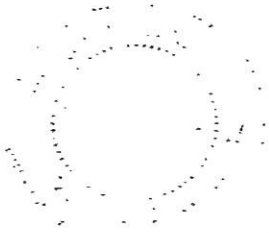
COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF Charlottesville, Va., TO WIT:

I, David M. Payne, a Notary Public for the Commonwealth aforesaid, hereby certify David S. Witmer, Manager of Middle Mountain L.L.C., and known to me to be a member or designated agent of the limited liability company who executed the Deed of Easement and acknowledged the Deed of Easement to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute this Deed of Easement and in fact executed the Deed of Easement on behalf of Middle Mountain, LLC, a Virginia limited liability company.

WITNESS my hand and official seal this 22 day of December, 2004.

[Signature]  
Notary Public

My commission expires: May 31, 2006 (SEAL)





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

I, Anna G. Christolm, a Notary Public for the Commonwealth aforesaid, hereby certify that Tamara A. Vancce, Executive Director of the Virginia Outdoors Foundation, personally appeared before me this day and acknowledged the foregoing instrument on behalf of the Virginia Outdoors Foundation.

WITNESS my hand and official seal this 28<sup>th</sup> day of December, 2004.



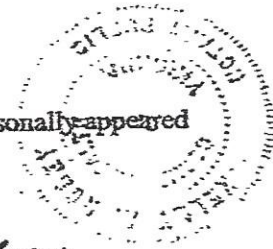
[Signature]  
Notary Public

My commission expires: 31 Oct 2007 (SEAL)

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

I, BEN HORNE, a Notary Public for the Commonwealth aforesaid, hereby certify that Ben Horne, as Vice President of Second Bank and Trust personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 23<sup>rd</sup> day of December, 2004.



[Signature]  
Notary Public

My commission expires: 10-31-08 (SEAL)

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

I, LINDA C. LOHR, a Notary Public for the Commonwealth aforesaid, hereby certify that J. ROBERT YEAMAN, III, President \*, as Trustee, personally appeared before me this day and acknowledged the foregoing instrument. WITNESS my hand and official seal this 27<sup>th</sup> day of December, 2004.

\*OF BUTTON, YEAMAN & ASSOCIATES, P.C.

[Signature]  
Notary Public

My commission expires: 10-31-06 (SEAL)