

12-689

Date: 11/3/12

COPY

This document was prepared by:
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The Nature Conservancy
490 Westfield Road
Charlottesville, Virginia 22901

Exempted from recordation tax and Clerk's fee
under the Code of Virginia (1950 as amended) Section 58.1-811 F.

Tax Map Parcel: 81-1AA (portion)

DEED OF GIFT OF CONSERVATION EASEMENT

This DEED OF GIFT OF CONSERVATION EASEMENT ("Conservation Easement"), exempt from all recordation taxes pursuant to Virginia Code §§ 58.1-811(D) and (F), is made on this 9th day of November, 2012, by and between PHANTOM EAGLE LLC, a Virginia limited liability company, with an address of 9530 Sam Snead Hwy, Hot Springs, VA, 24445 ("Landowner"), index as grantor, and THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, with a local address of 490 Westfield Road, Charlottesville, Virginia 22901 ("Conservancy"), index as grantee.

RECITALS:

A. Landowner is the owner in fee simple of all that certain tract or parcel of land containing 200.49 acres, more or less, together with the improvements thereon and all rights, privileges, appurtenances, easements and rights of way thereunto belonging or in anywise appertaining, and being situate in Cedar Creek Magisterial District, Bath County, Virginia, as shown on that certain plat of survey entitled "Boundary Adjustment Survey for The Nature Conservancy and Phantom Eagle, L.L.C. Cedar Creek Magisterial District, Bath County, Virginia," dated July 23, 2012 and prepared by Gregory E. Vess, L.S., of Vess Surveying, Inc., which plat is of record in the Clerk's Office of the Circuit Court of Bath County, Virginia (the "Clerk's Office") in Plat Cabinet 2, Slide 23 (the "Property") and being the same real estate conveyed to Phantom Eagle LLC, a Virginia limited liability company, by deed dated November 9, 2012 from The Nature Conservancy, a District of Columbia non-profit corporation, of record in the Clerk's Office immediately prior hereto.

B. The Property is a natural habitat of fish, wildlife, plants and ecological communities. The specific conservation values of the Property are set forth in a Conservation Easement Documentation Report (the "Report") of even date herewith, prepared by Conservancy and signed and acknowledged by Landowner. Conservancy and Landowner have the common desire and purpose to protect the conservation values of the Property described in the Report and wish to create this Conservation Easement in favor of the Conservancy.

C. The Commonwealth of Virginia has authorized the creation of conservation easements pursuant to the Virginia Conservation Easement Act, Virginia Code § 10.1-1009 *et seq.* (the "Act"), and the Conservancy and Landowner wish to avail themselves of the provisions of the Act. The conservation values of the Property are further described below:

1. Conservancy and Landowner have the common purpose of conserving in perpetuity the Property's conservation values as natural habitat in the public interest.

2. Conservancy is a qualified holder under the Act, to-wit: the Conservancy is a national non-profit corporation exempt from taxation under §501(c)(3) of the Internal Revenue Code of 1986, as amended (the "IRC"), organized and existing under the laws of the District of Columbia; Conservancy has had a principal office in Virginia for more than five years; Conservancy is organized and operated primarily for the purposes of protecting natural resources and the natural values of real property, especially the natural habitat of fish, wildlife, and plants. Conservancy has the resources to enforce the restrictions in this Conservation Easement.

3. The Property is located within the 70,000-acre Meadow Creek Mountain matrix forest block, identified by the Conservancy as a high conservation priority in its Central Appalachian Forest Ecoregional Plan, and contains mixed pine-hardwood forest and pine-oak-heath woodlands - both focal conservation targets for the Conservancy. The mature forest communities support wide-ranging species such as black bear (*Ursus americanus*) and bobcat (*Lynx rufus*) in addition to breeding and stopover habitat for forest interior neotropical migratory birds. The Property is adjacent to the T. M. Gathright Wildlife Management Area owned by the Virginia Department of Game and Inland Fisheries, which is managed primarily for its natural habitat and biological diversity. Protection of the Property will complement such protected land.

4. The Property contains approximately 3,500 linear feet of frontage along three intermittent stream tributaries of Cedar Creek, a major tributary of the Jackson River. The Conservancy has identified the upper Jackson River watershed as a freshwater priority conservation area in the Central Appalachians because of its relatively unaltered condition that provides extensive, high quality habitat for a diversity of cold and warm water fishes. Notably, the Jackson River supports viable populations of the globally rare roughhead shiner (*Notropis semperasper*), which is endemic to the Upper James River Basin. Healthy and abundant wild brook trout (*Salvelinus fontinalis*) populations occur throughout the cold water, high gradient tributaries of the upper Jackson as well.

5. Protection of the Property provides significant public benefit by contributing to protection of the Chesapeake Bay. The Property contains approximately 3,500 linear feet of frontage on three tributaries to Cedar Creek, a major tributary of the Jackson River which flows into the James River and the Chesapeake Bay. In the Chesapeake 2000 Agreement, the Governor of the Commonwealth of Virginia and the Administrator of the United States Environmental Protection Agency acknowledged "that future development will be sustainable only if we protect our natural and rural resource land, limit impervious surfaces and concentrate new growth in existing population centers." A goal of the Chesapeake 2000 Agreement is to "expand the use of voluntary and market-based mechanisms such as easements...to protect and preserve natural resource lands."

6. As required under § 10.1-1010(E) of the Act, the protection of the Property conforms to the Bath County Comprehensive Plan, adopted July 10, 2007, which

articulates "Natural Environment Goals" to conserve the County's soil resources and protect local water resources and unique aquatic habitats. Further, protection of the Property is consistent with the Bath County Comprehensive Plan's "Land Use Goals" to ensure that growth management schemes complement the County's natural, historical and cultural settings. It is consistent with recommendations from that plan to "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", to "avoid developing on steep slopes (greater than 25%) due to potential problems with erosion, sedimentation and water pollution", to "discourage or carefully regulate development of land areas within the 100-year floodplain of any river or stream", and to "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)."

D. The Property is subject to: (a) that certain Amended and Restated Trails Easement dated March 8, 2002 (the "Trails Easement") among Virginia Hot Springs, Incorporated, a Virginia corporation ("VHS"), The Homestead, L.C., a Virginia limited liability company ("Homestead"), the Conservancy, The Owners Club at the Homestead, Inc., a Delaware corporation ("Owners Club"), and The Owners Club at the Homestead, L.P., a Virginia limited partnership ("Owners Club LP") of record in the Clerk's Office of the Circuit Court of Bath County, Virginia (the "Clerk's Office") in Deed Book 182, Page 134; (b) that certain Mutual Easement Agreement for Roadways, Utilities and Stormwater Drainage dated March 8, 2002 (the "Roadways Agreement") among VHS, Homestead, the Conservancy, Owners Club, Owners Club LP, and The Homestead Water Company, L.C., a Virginia limited liability company, of record in the Clerk's Office in Deed Book 182, Page 210, and (c) that certain Declaration of Restrictive Covenants dated October 4, 1993 made by VHS, of record in the Clerk's Office in Deed Book 139, Page 362, and as amended by the First Amendment to Declaration of Restrictive Covenants dated March 8, 1993 among VHS, Homestead, the Conservancy, Owners Club and Owners Club LP, of record in the Clerk's Office in Deed Book 182, Page 281 (collectively, the "Declaration"). Notwithstanding the foregoing, there are no primary or secondary trails located on the Property pursuant to that certain Amendment to Amended and Restated Trails Easement dated November 9, 2012 entered into by the Conservancy and recorded in the Clerk's Office prior hereto.

E. The characteristics and condition of the Property as of the date of this Conservation Easement, the Property's current uses, and the current state of improvements on the Property are described in the Report. Landowner and Conservancy hereby acknowledge that the Report is a complete and accurate representation of the Property as of the date of this Conservation Easement. The Report will be used by Landowner and Conservancy to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement. However, the Report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

NOW, THEREFORE, the Landowner, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein and as an absolute and unconditional gift, hereby gives, grants, and conveys unto the Conservancy a Conservation Easement in perpetuity over the Property of the nature and character as follows:

1. **PURPOSES.** The purposes of this Conservation Easement are as follows: to ensure that the Property will be retained forever predominantly in its natural, scenic, and forested condition; to protect water quality within the upper Jackson River watershed; to protect native plants, animals, or plant communities on the Property; to protect steep slopes; and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property described above, while allowing for uses on the Property that are compatible with and not destructive of the conservation values of the Property such as limited construction and residential improvements, forest management, and compatible outdoor recreation.

Landowner will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the purposes of this Conservation Easement. Nothing in this Conservation Easement shall require Landowner to take any action to restore the condition of the Property after any act of God or other event over which Landowner had no control. Landowner understands that nothing in this Conservation Easement relieves them of any obligation or restriction on the use of the Property imposed by law.

2. **PROPERTY USES.** Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following is an enumeration of those activities and uses which are either expressly prohibited or expressly allowed. The Conservation Easement divides the Property into three (3) areas: Building Envelopes, Forested Areas and Buffer Areas, which are depicted in Exhibit A. Landowner and Conservancy have determined that the activities and uses allowed in each defined area do not impair the conservation values of the Property. Additional rights of Landowner are set forth in Paragraph 4 below.

2.1 Subdivision.

The Property shall not be further divided, subdivided, or partitioned, nor conveyed or pledged for a debt except in its current configuration as a single entity.

2.2 Building Envelopes.

(a) Building Envelopes, as defined in Paragraph 3 (C) below, are areas in which Landowner has the right to construct, repair, renovate and maintain Improvements, subject to the limitation contained in Paragraph 2.2 (c) below, without the further consent of Conservancy, including the right to build Residences and associated appurtenances such as lawns. There shall be no more than two (2) Building Envelopes located on the Property, and the Building Envelopes shall contain not more than fifteen (15) acres in the aggregate.

(b) Landowner shall have the right to engage in the following activities within the Building Envelopes:

- (i) Construct, repair, renovate or and maintain Improvements. All Residences must be constructed or maintained within the Building Envelopes.
- (ii) Engage in, for commercial purposes or otherwise, agricultural, conservation, equestrian, and silvicultural activities, subject to the following limitations:
 - (A) Landowner may breed, raise and pasture animals provided that the density of livestock does not exceed one (1) Animal Unit for three (3) acres of pasture, such animal pasture is confined to the Building Envelope, a water source in a container separate from the ground is provided, and Landowner constructs and maintains fences or other structures of sufficient height and strength to confine such animals within the boundaries of the Building Envelope.
 - (B) Landowner may breed, raise, and pasture poultry and fowl provided that the numbers of such animals on the Property shall not constitute the operation of a Poultry House.
- (c) Building Envelopes shall be configured in a manner that can be easily located on the ground and shall be located in a manner that causes the least disturbance as practicable to the conservation values of the Property. All Improvements shall be located on slopes equal to or less than twenty-five percent (25%). In no event shall a Building Envelope or portions thereof be located within the Buffer Areas.
- (d) Landowner has the right to construct Improvements such as a Residence and accompanying outbuildings, patios, decks, gardens, yards, barns, sheds, recreational facilities, and new Trails, Roads and Utilities to serve these permitted Improvements. Any Improvements constructed outside of Building Envelopes must have prior written approval from the Conservancy and no Improvements shall be constructed in Buffer Areas.
- (e) The forest management guidelines and restrictions set forth in Section 2.3 hereof shall not be applicable to tree harvesting conducted within Building Envelopes in connection with clearing areas for the construction of allowed Improvements. Accordingly, Landowner and Conservancy agree that the removal, cutting, clearing, and harvesting of trees shall be permitted within the Building Envelopes.

2.3 Forested Areas.

- (a) Forest Management. Landowner shall have the right, subject to the terms of the Declaration and this Conservation Easement, to conduct forest management activities in Forested Areas, for commercial purposes or otherwise, including all activities related to the establishment, growth, maintenance, cutting, destruction

and removal (including the use of biocides) of trees, shrubs, or plants on the Property and primary processing of trees, shrubs, or plants harvested on the Property.

- (b) Forest Management Objectives. All forest management activities undertaken on the Property, including the provisions of the written Forest Management Plan, shall be guided by all of the following objectives:
- (i) Maintain biological diversity, native plant and animal species, and the ecological processes that support them.
 - (ii) Promote the recruitment and retention of a forest canopy and understory of native tree species and species composition (i.e., forest community type) that is likely to occur on the site under natural biological and physiological processes.
 - (iii) Maintain soil productivity and prevent erosion.
 - (iv) Enhance and protect water quality.
 - (v) Prevent and/or control the infestation of Invasive Plants and Invasive Animals that threaten the health of the forest.
- (c) For this Conservation Easement to meet its stated purpose of maintaining the unfragmented condition and natural habitat of the Forested Areas, activities in the Forested Areas shall be subject to the following limitations:
- (i) The existing forested acreage shall remain in forest and shall not be converted to other uses.
 - (ii) Forest management activities must be conducted in accordance with a valid, approved Forest Management Plan and under the supervision of a professional forester or Conservancy. The Plan shall remain valid for ten (10) years from the date of approval, with interim updates permitted. Ten-Year or interim updates shall be subject to approval under the provisions of this paragraph. Conservancy shall have the right to waive, in writing, the required Forest Management Plan or portions thereof if Conservancy determines that the proposed forest management activity does not warrant development of a complete plan.
 - (iii) Notwithstanding the foregoing, Landowner shall have the right to engage in the following activities within the Forested Areas created under this paragraph without a Forest Management Plan:

- (A) *De minimis* harvesting of timber solely to provide firewood for Residences allowed on the Property;
 - (B) Cutting of emergency firebreaks;
 - (C) Removal of dead, damaged or diseased trees that pose a safety hazard; and
 - (D) Cutting and removal of trees, shrubs or plants to accommodate the activities expressly permitted under this Conservation Easement.
- (iv) All forest management and harvesting activities on the Property must meet or exceed currently accepted best management practices, as set forth in "Virginia's Forestry Best Management Practices for Water Quality (Virginia Department of Forestry, 2002)" and its successors.
 - (v) Highgrading harvest practices are prohibited.
 - (vi) A Harvest Plan must be submitted to Conservancy for its written consent prior to any harvest of timber in the Forested Areas. No commercial forest management activity may occur until the Forest Management Plan and a more specific Harvest Plan have been approved by Conservancy.
 - (vii) There shall be no livestock within the Forested Areas, except that horses may be ridden on permitted Roads or Trails as expressly permitted herein. If livestock are kept or maintained on the Property, they shall be excluded from the Forested Areas by fencing to be installed and maintained by Landowner.
 - (viii) Except as provided in Paragraph 2.5(c), the construction of Roads and Stream Crossings, including location, design, and width, requires the written consent of Conservancy or must be contained in an approved Forest Management Plan.
 - (ix) The construction of Utilities in the Forested Areas requires the written consent of Conservancy.

2.4 Buffer Areas.

- (a) Protection of Buffer Areas. In order to protect aquatic habitats and water quality, within the Buffer Areas, activities in the Buffer Areas shall be subject to the following limitations:
 - (i) There shall be no Building Envelopes within Buffer Areas.

- (ii) There shall be no constructing or placing of any Improvements or, except as provided in Paragraph 2.4(b)(iv). Existing Improvements, Constructed Features and Roads (including Stream Crossings) that exist within the Buffer Areas as of the date of execution of this Conservation Easement may be maintained, repaired and replaced, but not enlarged.
- (iii) There shall be no livestock within the Buffer Areas, except that horses may be ridden on permitted Roads or Trails as expressly permitted herein. If livestock are kept or maintained on the Property, they shall be excluded from the Buffer Areas by fencing to be installed and maintained by Landowner.
- (iv) There shall be no removal, destruction, or cutting of trees, shrubs, or plants.
- (v) There shall be no use of fertilizers or biocides.
- (vi) There shall be no use of motorized vehicles except on permitted Roads or Trails as expressly permitted herein.

(b) Permitted Activities. Notwithstanding the foregoing, the following activities are permitted within the Buffer Areas:

- (i) Landowner shall have the right to construct, repair and maintain Trails in the Buffer Areas, provided Trails are no more than four (4) feet in width and no trees (other than Invasive Plants) over two (2) inches in diameter at breast height ("dbh") are to be removed to construct Trails.
- (ii) Landowner shall have the right to remove dead, damaged or diseased trees that pose a safety hazard.
- (iii) Landowner shall have the right to install Utilities in the Buffer Areas with prior written consent of Conservancy. Utilities shall be located in a manner that causes the least disturbance as practicable to the conservation values of the Property.
- (iv) Landowner shall have the right to construct and maintain Stream Crossings and associated Roads as required for permitted residential or forest management activities with prior written consent of Conservancy. Stream Crossings shall be located and constructed in a manner that promotes fish and wildlife passage and stream continuity and causes the least disturbance as practicable to the conservation values of the Property. Stream Crossings should consist of open bottom structures or culverts that span the stream channel and contain natural stream bottom substrates. Stream depth and velocities in the crossing during low-flow conditions

should approximate those in the natural stream channel. Crossings shall be installed at as close to ninety degrees (90°) of stream flow as is feasible.

2.5 General Requirements. The following requirements apply to all activities and uses of the Property unless an exception or further restriction is specifically provided in this Conservation Easement.

(a) Existing Improvements and Constructed Features. Landowner shall have the right to maintain, remodel, repair, and enlarge in accordance with the limitations of Paragraph 2.2 Existing Improvements and Constructed Features on the Property (as described and detailed in the Baseline Report), and in the event of their destruction, to reconstruct any such Existing Improvement or Constructed Feature with another of similar size, function, capacity, location and material.

(b) Utilities. Landowner shall have the right to install Utilities necessary to accommodate permitted Improvements on the Property except that there shall be no new underground fuel tanks other than one underground propane gas tank per Residence. Landowner may not consent to the construction or placement of Utilities on the Property that serve entities and/or users located off the Property (a communications tower for example) without the prior written consent of Conservancy. Conservancy's consent shall only be granted if the construction or placement of such Utilities would not undermine the conservation values of the Property or would produce a smaller impact than if those Utilities were located on an adjoining or nearby property.

(c) Roads. Landowner shall have the right to construct Roads and install associated culverts necessary to accommodate permitted activities in those locations as depicted on Exhibit A attached hereto and incorporated herein by reference, together with such Roads as necessary for access to other lands owned by Grantor as of the date of this Conservation Easement. Roads shall be no more than twelve (12) feet in width, and an area of no more than thirty (30) feet in width may be cleared of natural vegetation in the construction of Roads. Land cleared in the construction of the Road (excluding the road itself) shall be re-forested or re-vegetated as soon as possible following construction.

(d) Trails. Landowner shall have the right to construct Trails to provide non-motorized access to areas of the Property and/or to accommodate recreational activities.

(e) Recreational Uses. Landowner shall have the right to engage in and permit others to engage in recreational uses of the Property, including, without limitation, hunting, fishing, hiking, biking and equestrian activities, provided that these activities do not directly harm the conservation purposes of this Conservation Easement, including but not limited to, water quality protection and prevention of soil erosion.

(f) Home Business. Persons residing on the Property may conduct a home business in a Residence in accordance with applicable laws, regulations and ordinances, provided

that the home business does not directly harm the conservation values protected by this Conservation Easement.

(g) Commercial Use and Development. Unless otherwise provided for herein, any commercial or industrial use of, or activity on, the Property is prohibited.

(h) Invasive Plants and Invasive Animals. Landowner may not introduce Invasive Plants or Invasive Animals to the Property or water bodies occurring on the Property. However, Conservancy may give consent for such introduction of a non-native, non-invasive plant species to address a defined land management concern, such as short-term erosion mitigation using annual grasses.

(i) Land Disturbance. Except as necessary to accommodate the activities expressly permitted under this Conservation Easement, there shall be no change in the topography of the Property, or disturbance of the soil in any manner. In no event shall mining or hydrocarbon extraction be permitted on the Property.

(j) Water Management. There shall be no alteration or pollution of surface or subsurface water, including wetlands. Landowner shall have the right to extract subsurface water necessary to accommodate permitted activities.

(k) No Dumping. There shall be no dumping of trash, garbage, or other unsightly or offensive material, hazardous substances, or toxic waste on the Property. Nothing in this Paragraph shall prevent the storage (in reasonable quantities, solely for use on the Property) and use of hazardous materials for agricultural and domestic purposes, the creation of brush piles, composting, or the storage of operable farm machinery, organic matter, agricultural products or byproducts as long as such practices are conducted in accordance with applicable laws and regulations.

(l) Ecological Restoration Activities. If Conservancy reasonably determines that such activities are consistent with the purposes of this Conservation Easement, Conservancy or Landowner may, subject in any event to mutual prior written consent, engage, and permit others to engage, in restoration activities, pertaining to, without limitation, wetlands, stream banks, riparian areas, ponds and other impoundments, Invasive Plant or Invasive Animal infestations, or fire regime

(m) Signage. No signs or billboards or other advertising displays are allowed on the Property, except that signs whose placement, number and design do not significantly diminish the scenic character of the Property may be displayed to state the name and address of the Property and the names of persons living on the Property, to advertise or regulate permitted on-site activities, to advertise the Property for sale or rent, and to post the Property to control unauthorized entry or use.

2.6 Consent. For those activities that require the consent or approval of Conservancy, Landowner shall submit plans to the Conservancy for its review. The plans shall be

sufficiently detailed to allow the Conservancy to fully evaluate the activity's conformance to the Conservation Easement, including but not necessarily limited to location and size of the proposed Improvements or Constructed Features. No activity requiring consent or approval may take place until the Conservancy reviews and approves the plans or consents to the activity. Conservancy shall review and act upon the plans in a timely manner, and shall provide Landowner with written notice of Conservancy's decision within thirty (30) days of receipt of the plans. If Conservancy withholds consent or approval, Conservancy's written notice shall set forth its grounds for objection. If Conservancy fails to act within such thirty days, Conservancy shall be deemed to have approved the plans or consented to the activity, and Landowner may proceed with the activities, provided that such activities are not specifically prohibited, inconsistent with the limitations on such activities in this Conservation Easement, or destructive of the conservation values of the Property.

2.7 Density. Neither the Property nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.

3. **DEFINITIONS.** As used in this Conservation Easement:

A. Animal Unit – An Animal Unit (“AU”) equals 1,000 pounds of animal body weight. For purposes of this Conservation Easement, the following Animal Units shall apply to grazing animals: adult beef cattle: 1.0 AU; calves: 0.5 AU; adult horses: 1.5 AU; colts (< 2 years): 0.5 AU; sheep: 0.2 AU; goats: 0.2 AU; pigs: 0.4 AU. Other species of livestock may be kept on the Property only with the Conservancy's prior written approval.

B. Buffer Areas – Those areas of the Property located within one hundred (100) feet of intermittent streams as measured from the centerline of the stream or feature under normal conditions, and including the stream; and additional designated areas of the Property with special conservation significance. Notwithstanding the foregoing, the Buffer Area adjacent to the Building Envelope depicted in the southernmost corner of the Property on Exhibit A shall be fifty (50) feet in width on both sides of the unnamed tributary. The extent and location of Buffer Areas are shown in Exhibit A and are described and depicted graphically in the Baseline Report. Buffer Areas may be expanded as agreed to in writing by the Landowner and Conservancy.

C. Building Envelopes – Those areas not to exceed in the aggregate fifteen (15) acres in size as shown in Exhibit A and as described and depicted graphically in the Baseline Report in which Landowner has specific rights as more fully described in this Conservation Easement, including the right to construct Improvements (defined below).

Building Envelopes may be relocated or reconfigured as agreed to in writing by the Landowner and Conservancy.

D. Emergency Fire Breaks – A trail or clearing created for the direct purpose of protecting the property or portions of the property from an active fire on or adjacent to the Property.

E. Existing Improvements and Constructed Features – Those existing structures, facilities, Utilities (defined below), Roads (defined below), Trails (defined below), and other man-made additions to the natural environment located on the Property as of the date of this Conservation Easement and described and depicted in the Baseline Report.

F. Forest Management Plan – A plan, prepared by Conservancy or a professional forester, approved by Conservancy (and, if required by the Declaration, by VHS and Homestead), including, as a minimum:

- (1) A statement of Landowner's forest management goals and objectives;
- (2) A forest type map showing predominant topographic and hydrographic features, forest stands, existing and proposed Roads, and other Improvements;
- (3) Forest stand descriptions including species composition, stocking levels, age classes, volumes and, where available, soil types;
- (4) A detailed description of forest management activities to be employed to accomplish each of the forest management objectives stated (as enumerated in Paragraph 2.3(b); and
- (5) Appropriate time-of-year restrictions to prevent excessive damage to standing timber and to protect nesting birds.

G. Forested Areas – Those forested or wooded areas of the Property as shown in Exhibit A and as described and depicted in the Baseline Report and any alterations in the area thereof, as agreed to in writing by Landowner and Conservancy.

H. Harvest Plan – A plan approved by Conservancy prior to the removal of timber from the Property that includes the following:

- (1) A statement signed by the forester preparing the Harvest Plan acknowledging that management activities follow the terms of this Conservation Easement and the Forest Management Plan;

- (2) Descriptive map(s) of all management areas, including legal access, logging deck(s), skid trails, Roads, streams, streamside management zones, stream crossings, and areas of special concern;
- (3) Explanation of harvest activities, including an inventory of cut and residual timber, stocking charts, species data, and projected yields;
- (4) An inventory and description of protection methods for rare, threatened or endangered species and other unique natural, geological or historic resources in targeted management areas which may require special treatment;
- (5) Aesthetic and recreational considerations including impacts on views from public roads; and
- (6) Plan for post-cutting treatments, including the re-vegetation of skid Roads and logging decks with non-Invasive Plant seed mixes.

I. Highgrading – A timber harvest practice that results in the removal of only certain species of trees above a certain size or of high value, leaving residual stands composed of trees of poor condition or species composition, through which the forest may become depleted over time of the best genetic growing stock.

J. Improvements – Improvements consist of any building, structure, or man-made addition to the Property, including but not limited to Residences (defined below), out-buildings, sheds, barns, tree-houses, house and office trailers, tennis and other recreation courts, and swimming pools placed, built, or constructed on the Property. For the purposes of this definition, Improvements do not include Roads (defined below), Trails (defined below), Utilities (defined below), fences, signs, or movable items not affixed to real estate that have a *de minimis* impact on ground area.

K. Invasive Animals – Animals, including pests and pathogens, identified on the most current list promulgated by the Commonwealth of Virginia or the federal government, which Conservancy shall notify Landowner is the list that shall be binding on Landowner for purposes of this Conservation Easement.

L. Invasive Plants – Plants included on the most current list of Virginia Department of Conservation and Recreation's "Invasive Alien Plant Species of Virginia" or, if such list ceases to be published, a similar list promulgated by the Commonwealth of Virginia or the federal government, which Conservancy shall notify Landowner is the list that shall be binding on Landowner for purposes of this Conservation Easement.

M. Poultry House – An enclosed structure or area that regularly houses more than one hundred (100) head of poultry or fowl greater than one (1) month old.

N. Residence – An Improvement used for human habitation regardless of the number of days per year inhabited; a dwelling.

O. Roads – Those access roads, driveways, or improved paths used to provide access to and within the Property by motorized and non-motorized means. The locations of existing Roads are described and depicted graphically in the Baseline Report. The locations of other approved roads are annotated on map in Exhibit A, together with such Roads as necessary for access to other lands owned by Grantor as of the date of this Conservation Easement.

P. Stream Crossing – A structure installed across a stream or watercourse to serve permitted uses on the Property.

Q. Trails – Those trails and paths used to provide access to and within the Property by non-motorized means only. Trails shall be either unimproved paths or shall be constructed of permeable materials and are not to exceed four (4) feet in width.

R. Utilities – Those structures or facilities necessary to supply power, water, sewage disposal, and other amenities. Utilities include but are not necessarily limited to power lines, poles, solar panels, wind turbines, and associated electrical hardware; water tanks, water wells and associated distribution lines; geothermal wells and associated lines; septic tanks, septic fields, and distribution boxes; fuel tanks; and antennas, satellite dishes, security system components and lines, communication lines, and cable lines.

4. **ADDITIONAL RIGHTS RETAINED BY LANDOWNER.** Landowner retains the following additional rights:

4.1 Existing Uses. The right to undertake or continue any activity or use of the Property not prohibited by this Conservation Easement. Prior to making any change in use of the Property, Landowner shall notify Conservancy in writing to allow Conservancy a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement.

4.2 Transfer. The right to sell, give, mortgage, lease, or otherwise convey the Property subject to the terms of this Conservation Easement.

5. **CONSERVANCY'S RIGHTS.** To accomplish the purpose of this Conservation Easement, the following rights are granted to Conservancy by this Conservation Easement:

5.1 Right to Enforce. The right to preserve and protect the conservation values of the Property and enforce the terms of this Conservation Easement.

5.2 Right of Entry. The right of Conservancy's staff, contractors and associated natural resource management professionals to enter the Property after written notice to Landowner, for the purposes of:

- (i) Inspecting the Property to determine if Landowner is complying with the covenants and purposes of this Conservation Easement;
- (ii) Monitoring and research as described below;
- (iii) Management of Invasive Plants and Invasive Animals as described below; and
- (iv) Enforcing the terms of this Conservation Easement.

Prior written notice is not required if Conservancy is entering upon the Property because of an ongoing or imminent violation that could, in the sole discretion of Conservancy, substantially diminish or impair the conservation values of the Property, as described in Paragraph 8 herein. Such right of entry shall include the permanent right to cross other lands of Landowner for access to the Property.

5.3 Monitoring and Research. The right, but not the obligation, to monitor the plant and wildlife populations, plant communities and natural habitats on the Property, which activities shall be subject to the prior approval of the Landowner, which approval shall not be unreasonably withheld. Landowner shall cooperate with Conservancy in establishing, at no expense to Landowner, a written monitoring and research plan to direct the monitoring of and research on plant and wildlife populations, plant communities and natural habitats on the Property. Landowner agrees that all monitoring activity, natural resource inventory and assessment work or other natural resource research, conducted by Landowner or others, shall be reported to Conservancy.

5.4 Management of Invasive Plants and Invasive Animals. The right, but not the obligation, to control, manage or destroy Invasive Plants and Invasive Animals that threaten the conservation values of the Property. Conservancy and Landowner will mutually agree, in writing, to the management activities prior to the commencement of such activities.

6. RESPONSIBILITIES OF LANDOWNER AND CONSERVANCY NOT AFFECTED. Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on Landowner, or in any way to affect any obligation of Landowner as owner of the Property. Among other things, this shall apply to:

- (i) Taxes. Landowner shall be solely responsible for payment of all taxes and assessments levied against the Property.
- (ii) Upkeep and Maintenance. Landowner shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Conservancy shall have no obligation for the upkeep or maintenance of the Property.

7. **ACCESS.** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement. However, the public has the right to view the Property from adjacent publicly accessible areas such as public roads and waterways.

8. **ENFORCEMENT.** If Conservancy becomes aware of a violation of the terms of this Conservation Easement, Conservancy shall give notice to Landowner of such violation and request corrective action sufficient to abate such violation and restore the Property to its condition before the violation occurred, or to a condition otherwise acceptable to Conservancy, in accordance with a plan approved by Conservancy. Landowner agrees that the Report shall be deemed to provide objective information concerning the Property's condition at the time this Conservation Easement was granted. Failure by Landowner to abate the violation and take such other corrective action as may be requested by Conservancy within thirty (30) days after receipt of such notice shall entitle Conservancy to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement; to require the restoration of the Property to a condition of compliance with this Conservation Easement; to enjoin the non-compliance by *ex parte* temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from the noncompliance. Such damages, when recovered, may be applied by Conservancy, in its sole discretion, to corrective action on the Property. If the court determines that Landowner has failed to comply with this Conservation Easement, Landowner shall reimburse Conservancy for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys fees, in addition to any other payments ordered by such court.

8.1 Emergency Enforcement. If Conservancy, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Conservancy may pursue its remedies under this paragraph without prior notice to Landowner or without waiting for the period for cure to expire.

8.2 Failure to Act or Delay. Conservancy does not waive or forfeit the right to take action as may be necessary to ensure compliance with this Conservation Easement by any prior failure to act and Landowner hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act or delay by Conservancy, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Conservation Easement.

8.3 Violations Due to Causes Beyond Landowner's Control. Nothing herein shall be construed to entitle Conservancy to institute any enforcement proceedings against Landowner for any changes to the Property due to causes beyond Landowner's control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Easement caused by the unauthorized wrongful acts of third persons, Landowner agrees, upon request by Conservancy, to assign its right of action to Conservancy, to join in any suit, or to appoint Conservancy its attorney-in-fact for the purposes of pursuing enforcement action, all at the election of Conservancy.

8.4 Standing. By virtue of Conservancy's acquisition of rights under this Conservation Easement, it shall be entitled, at its option, to standing before appropriate courts of law to

pursue remedies or other matters which are necessary or incidental to the protection of the Property which is subject to this Conservation Easement.

9. **TRANSFER OF CONSERVATION EASEMENT.** The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable. Conservancy shall have the right to transfer or assign this Conservation Easement to an organization that at the time of transfer, is a "qualified organization" under Section 170(h) of the United States Internal Revenue Code of 1986 and any regulations promulgated thereunder (the "IRC"), and the organization expressly agrees to assume the responsibility imposed on Conservancy by this Conservation Easement. If Conservancy ever ceases to exist or no longer qualifies under IRC Section 170(h) or applicable state law, a court with jurisdiction shall transfer this Conservation Easement to another qualified organization having similar purposes that agrees to assume the responsibility.

10. **TRANSFER OF PROPERTY.** Any time the Property, or any interest therein, is transferred by Landowner to any third party, Landowner shall notify Conservancy in writing at least thirty (30) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Conservation Easement.

11. **AMENDMENT OF CONSERVATION EASEMENT.** This Conservation Easement may be amended only with the written consent of Landowner and Conservancy. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with IRC Section 170(h). Any such amendment shall also be consistent with the Virginia Conservation Easement Act, VA Code Ann. § 10.1-1009 *et seq.*, or any regulations promulgated pursuant to that law. Landowner and Conservancy have no right or power to agree to any amendment that would affect the enforceability of this Conservation Easement.

12. **TERMINATION OF CONSERVATION EASEMENT.** Landowner hereby agrees that at the time of the conveyance of this Conservation Easement to the Conservancy, this Conservation Easement gives rise to a real property right, immediately vested in Conservancy, with a fair market value of the Conservation Easement as of the date of the conveyance that is at least equal to the proportionate value that this Conservation Easement at the time of the conveyance hereof bears to the fair market value of the Property as a whole at that time. That proportionate value of Conservancy's property rights shall remain constant.

When a change in conditions takes place which makes impossible or impractical any continued protection of the Property for conservation purposes, and the restrictions contained herein are extinguished by judicial proceeding, Conservancy, upon a subsequent sale, exchange or involuntary conversion of the Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement (minus any amount attributable to new Improvements allowed under this Conservation Easement made as of the date of the sale, exchange or conversion, which amount shall be reserved to Landowner). Conservancy shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

13. **EMINENT DOMAIN.** Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, Landowner and Conservancy shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of Conservancy's and Landowner's interests, and Conservancy's proceeds shall be used as specified above. All expenses incurred by Landowner and Conservancy in such action shall be paid out of the recovered proceeds.

14. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of Virginia, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

15. **INDEMNIFICATION.** Each party agrees to hold harmless, defend and indemnify the other from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees that the indemnified party may suffer or incur as a result of or arising out of the activities of the other party on the Property that causes injury to a person(s) or damage to property.

16. **NOTICES.** Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, or by recognized national overnight courier, to Landowner and Conservancy, respectively, at the following addresses, unless a party has been notified in such manner by the other of a change of address.

To Landowner: Chief Operating Officer Phantom Eagle, Inc. 9530 Sam Snead Hwy Hot Springs, VA, 24445 Fax: 540-839-5180	To Conservancy: Legal Department The Nature Conservancy 490 Westfield Road Charlottesville, VA 22901 Fax: 434-817-9381
With a copy to: Robert J. Donze Phantom Eagle LLC 120 Hedgerow Lane Yorktown, VA, 23693 Fax: 757-926-5656	With a copy to: Allegheny Highlands Program The Nature Conservancy 12181-A Courthouse Hill Road Warm Springs, VA 24484 Fax: 540-839-3599

17. **SEVERABILITY.** If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.

18. **PARTIES.** Every provision of this Conservation Easement that applies to Landowner or Conservancy shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear.

19. **RE-RECORDING.** In order to ensure the perpetual enforceability of the Conservation Easement, Conservancy is authorized to re-record this instrument or any other appropriate notice or instrument.

20. **MERGER.** The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

21. **SUBSEQUENT LIENS ON PROPERTY.** No provisions of this Conservation Easement should be construed as impairing the ability of Landowner to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinate to this Conservation Easement.

22. **ACCEPTANCE & EFFECTIVE DATE.** As attested by the signature of the authorized representative of The Nature Conservancy affixed hereto, Conservancy hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Clerk's Office of the Circuit Court of Bath County, Virginia.

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto Conservancy, its successors and assigns, forever.

IN WITNESS WHEREOF, Conservancy and Landowner, intending to legally bind themselves, have set their hands and seals on the date first written above.

LANDOWNER:

PHANTOM EAGLE LLC,
a Virginia limited liability company

By: Robert J. Donze
ROBERT J. DONZE

Its: CHIEF OPERATING OFFICER

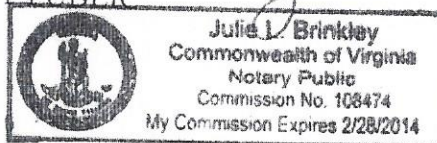
COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Bath

The foregoing instrument was acknowledged before me this 9th day of November, 2012 by Robert J. Donze, who is Chief Operating Officer of PHANTOM EAGLE LLC, a Virginia limited liability company, on behalf of the company.

Registration No.: 108474

My commission expires:
2-28-2014

Julie L. Brinkley
NOTARY PUBLIC



CONSERVANCY:

THE NATURE CONSERVANCY
a District of Columbia non-profit corporation

By: *Marek Smith*
Marek Smith, Director
Allegheny Highlands Program

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Bath

The foregoing instrument was acknowledged before me this 9th day of November, 2012 by Marek Smith, who is Director of the Allegheny Highlands Program of THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, on behalf of said corporation.

Registration No.: 108474

Julie L. Brinkley
NOTARY PUBLIC

My commission expires:
2-28-2014

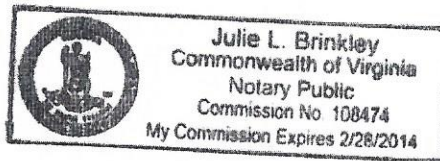
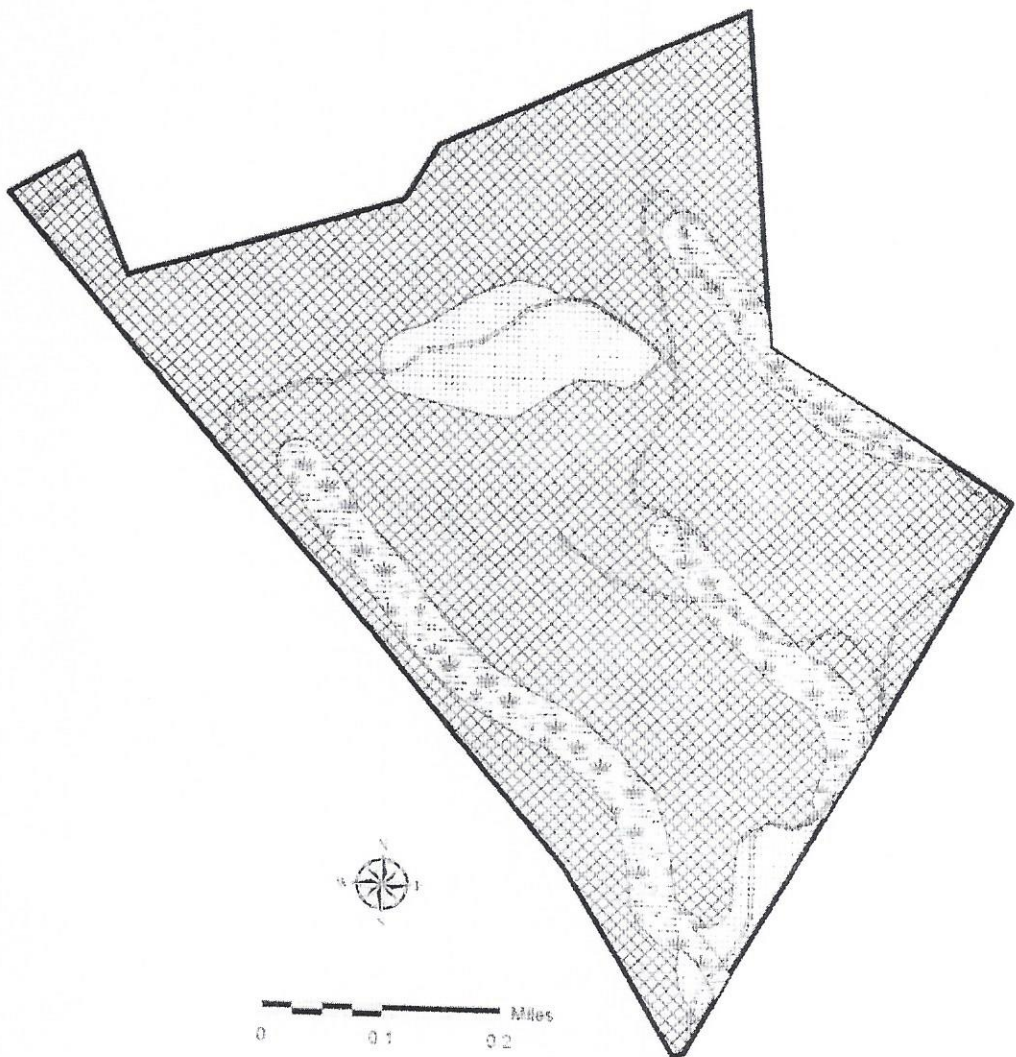


EXHIBIT A

Map depicting various spatial concepts of Conservation Easement



- Property Boundary
- Existing Roads
- Building Envelopes
- Forested Areas
- Buffer Areas

INSTRUMENT #13000029
FILED IN THE CLERK'S OFFICE OF
BATH COUNTY, ME
NOVEMBER 13, 2012 AT 11:22 AM
R. WAYNE WINEBINDER, CLERK
RECORDED BY ATC