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

Deed Prepared By:

Derrick P. Fellows, VSB #82094 Hawthorne & Hawthorne, P. C. P. O. Box 931 1805 Main Street Victoria, Virginia 23974 434-696-2139 Parcel Record Numbers: 7905, 17162, 23170, and 24710

Title Insurance Underwriter: n/a

Consideration: n/a

Exempted from recordation tax under Sections 58.1-811(A)(3), 58.1-811(D), and 10.1-1803 of the Code of Virginia of 1950, as amended, and from Circuit Court Clerk's fee under Section 17.1-266.

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made this 21st day of November, 2013, between STUART E. <u>BUCHANAN</u>, divorced ("Grantor"); and the VIRGINIA OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA ("Grantee") (the designations "Grantor" and "Grantee" referring to Grantor and Grantee and their respective successors and assigns), witnesseth:

RECITALS

- R-1 Grantor is the owner in fee simple of real property situate in Halifax County, Virginia, containing in the aggregate 183.94 acres, more or less, as further described below (the "Property"), and desires to give, grant, and convey to Grantee a perpetual open-space easement over the Property as herein set forth.
- R-2 Grantee is a governmental agency of the Commonwealth of Virginia and is further a "qualified organization" and "eligible donee" under Section 170(h)(3) of the Internal Revenue Code and Treasury Regulation Section 1.170A-14(c)(1). (References to the "Internal Revenue Code" in this Easement shall be to the United States Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings issued thereunder, or the corresponding provisions of any subsequent federal tax laws and regulations.) Grantee is willing to accept a perpetual open-space easement over the Property as herein set forth.
- R-3 Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, Sections 10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the "Open-Space Land Act"), 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." The Open-Space Land Act further authorizes the acquisition of

Page 1 of 24

BK 1 1 4 5 PG 2 4 2

interests in real property, including easements in gross, as a means of preserving openspace land.

- R-4 Pursuant to Sections 10.1-1700 and 10.1-1703 of the Open-Space Land Act, the purposes of this Easement (as defined below in Section I) include retaining and protecting open-space and natural resource values of the Property. The limitation on division, residential construction, and commercial and industrial uses contained in Section II ensures that the Property will remain perpetually available for agriculture, livestock production, forest, or open-space use, all as more particularly set forth below.
- R-5 Chapter 525 of the Acts of 1966, Chapter 18, Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia, declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Virginia Outdoors Foundation to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space, and recreational lands of the Commonwealth.
- R-6 As required under Section 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the Halifax County Comprehensive Plan adopted on September 24, 2007. The Property is located within an area that is designated as "Agricultural, Forested, or Open Space" under the Comprehensive Plan. The Comprehensive Plan explains that the primary purpose of this designation is "to facilitate existing and future farming operations, reduce the effects of soil erosion, and protect watersheds, in order to promote the continuation of farming as one of the most active sectors of the economy and to protect forested area and open [s] paces for the benefits they offer."
- R-7 This Easement is intended to constitute (i) a "qualified conservation contribution" as defined in IRC Section 170(h)(1) and as more particularly explained below, and (ii) a qualifying "interest in land" under the Virginia Land Conservation Incentives Act of 1999 (Section 58.1-510 et seq. of the Code of Virginia of 1950, as amended).
- R-8 This Easement is intended to be a grant "exclusively for conservation purposes" under IRC Section 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). More specifically, the preservation of open space on the Property is pursuant to clearly delineated state governmental conservation policies, is for the scenic enjoyment of the general public and the protection of a relatively natural habitat of fish, wildlife, or plants or similar ecosystem, and will yield a significant public benefit.
- **R-9** This open-space easement in gross constitutes a restriction granted in perpetuity on the use that may be made of the Property and is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below:
- (i) Land conservation policies of the Commonwealth of Virginia as set forth in:
 - (a) Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth's policy to protect its atmosphere, lands, and waters from

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pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

- (b) The Open-Space Land Act cited above;
- (c) Chapter 18, of Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia cited above;
- (d) The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, Sections 58.1-510 through 58.1-513 of the Code of Virginia cited above, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth's unique natural resources, wildlife habitats, open spaces, and forest resources;
- (e) Governor McDonnell's stated policy goal to preserve an additional 400,000 acres in open space by 2014;
- (f) Grantee's formal practices in reviewing and accepting this Easement. Grantee has engaged in a rigorous review, considered and evaluated the benefits provided by this Easement to the general public as set forth in these recitals, and concluded that the protection afforded the open-space character of the Property by this Easement will yield a significant public benefit and will further the open-space conservation objectives of Grantee and the Commonwealth of Virginia. Treasury Regulation Section 1.170A–14(d)(4)(iii)(B) states that such review and acceptance of a conservation easement by a governmental entity tends to establish a clearly delineated governmental conservation policy as required under IRC Section 170(h)(4)(A)(iii);
- (ii) Land use policies of Halifax County as delineated in its comprehensive plan adopted on September 24, 2007, to which plan the restrictions set forth in this Easement conform and which contains the following:

B. Future Land Use and Development ...

a. Agricultural, Forested, or Open Space

Agricultural, forested, or open space lands are the most valuable of all natural resources. Of major importance, and an objective of land use planning in Halifax County, is to identify prime agricultural land and prevent it from being developed for residential or other land uses. Once developed, it cannot easily be restored to its original condition.

c. Conservation

Halifax County's natural environment is one of its most valuable assets, and at the same time one of its most vulnerable. There are extensive watersheds, areas subject to flooding, wetlands, unsuitable soils, wildlife, and woodland areas located throughout the County.

Page 3 of 24

Primary environmental concerns arising from this combination of circumstances include deforestation, surface and ground water impacts, soil erosion, storm water runoff from built surfaces, destruction of wildlife habitat, loss of agricultural acreage, and destruction of property and loss of life due to flood waters. ...

B. County-wide Goals and Implementation Strategies

1. Agriculture and Forestry

GOAL: Ensure the preservation and development of progressive, alternative, and environmentally compatible agriculture, forestry, and related industries as important economic components of Halifax County.

IMPLEMENTATION STRATEGIES: ...

- e. Support and expand voluntary incentive-based programs to encourage reforestation efforts and conservation of agricultural lands.
- r. Support programs and initiatives to protect fragile ecological and environmentally sensitive areas for open space, forestry, and agricultural uses. ...
- ii. Encourage the donation of conservation easements and communicate the benefits to landowners. ...
- tt. Encourage the use of conservation easements in urban, suburban, and rural areas. ...

13. Natural Environment and Resources

GOAL: Ensure the wise use of Halifax County's earth and mineral resources and the preservation of open spaces and the natural environment.

IMPLEMENTATION STRATEGIES: ...

- k. Support programs and initiatives that protect the beauty of the countryside from needless damage and defacement. ...
- r. Encourage the management of forests so as to provide the best combination of recreation uses, wildlife habitat, and forest products production.
- R-10 In 1987, Congress amended the Clean Water Act to authorize the United States Environmental Protection Agency (EPA) to establish the National Estuary Program with the purpose of protecting estuaries of "national significance." Congress specifically directed

Page 4 of 24

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the EPA to give "priority consideration" to the Albemarle Sound in the establishment of the program, giving rise to the present-day Albemarle—Pamlico National Estuary Program (APNEP). In its 2012–2022 Comprehensive Conservation and Management Plan, the Policy Board of the APNEP stated:

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

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

- R-11 The Property lies on Difficult Creek and Ashcake Creek within the Difficult Creek—Partridge Branch Stream Conservation Unit, as designated by the Natural Heritage Division of the Virginia Department of Conservation and Recreation. These creeks currently support occurrences of a rare fish known as the speckled killfish (Fundulus rathbuni) and a rare mussel known as the Roanoke slabshell (Elliptio roanokensis). Additionally, a portion of the Property lies within the Inundation Easement for the John H. Kerr Reservoir, the waters from which flow to Lake Gaston; both the John H. Kerr Reservoir and Lake Gaston are sources of public water for the City of Virginia Beach. The Property is thus within the watershed of the Albemarle—Pamlico Estuarine System. The provisions of this Easement, which restrict development of the land and further require riparian buffers along Difficult Creek and Ashcake Creek, will contribute to the maintenance of water quality in these two creeks and waters downstream to the Albemarle—Pamlico Estuary, including the John H. Kerr Reservoir and Lake Gaston.
- R-12 The Property is located within 2,000 feet of another open-space easement containing approximately 347.532 acres also donated by Grantor contemporaneously herewith. Both of these easements lie in close proximity to the Difficult Creek Natural Area Preserve, part of the system of state Natural Area Preserves, managed by the Natural Heritage Division of the Virginia Department of Conservation and Recreation. The Difficult Creek Natural Area Preserve is an important habitat for numerous rare terrestrial species. Because of their proximity to Difficult Creek, both of these easements are also included in The Nature Conservancy's terrestrial portfolio of Priority Conservation Areas. Together, these two easements will provide an important buffer preventing development in and near this area of natural and ecological importance.
- **R-13** The Property fronts on both sides of State Route 721 (Ashcake Creek Road) for a distance of approximately 1,000 feet on the north side and 1,200 feet on the south side. The Property also fronts on State Route 720 (Green Level Road) for a distance of approximately 4,200 feet. Because of the relatively undeveloped state of the portion of the Property fronting on this road, the Property provides scenic enjoyment to the general public traveling along this road. The restricted-build area described herein will further protect and contribute to this scenic enjoyment.

- R-14 The Property contains extensive timberland, including approximately 50 acres of United States Department of Agriculture—designated Prime Soils and approximately 82 acres of Soils of Statewide Importance. Approximately 98 acres have independently been designated as being areas of high Forest Conservation Value by the Virginia Department of Forestry. The provisions of this Easement, which prevent intensive development of the land and further require adherence to the Virginia Department of Forestry's Best Management Practices (BMPs), will ensure that land with productive soils will be available for the production of food and fiber for the future.
- R-15 This Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in these recitals and in Section I below.
- **R-16** Grantor and Grantee desire to protect in perpetuity the conservation values of the Property as specified in Section I by restricting the use of the Property as set forth in Section II.
- **R-17** Grantee has determined that the restrictions set forth in Section II (the Restrictions) will preserve and protect in perpetuity the conservation values of the Property and will limit use of the Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by the Easement.
- R-18 Grantee, by acceptance of this Easement, designates the Property as property to be retained and used in perpetuity for the preservation and provision of open-space land pursuant to the Open-Space Land Act.

NOW THEREFORE, in consideration of the foregoing recitals incorporated herein and made a part hereof and in consideration of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant, and convey to Grantee an open-space easement in gross (this "Easement") over, and the right in perpetuity to restrict the use of, the Property, which is described hereinbelow and consists of 183.94 acres, more or less, located in Halifax County, Virginia, fronting on State Route 720 (Green Level Road) and on both sides of State Route 721 (Ashcake Creek Road), to-wit:

TRACT I: All that certain tract or parcel of land, with improvements thereon and appurtenances thereunto belonging, situate in Roanoke District, Halifax County, Virginia, containing 32 acres, more or less, lying on the waters of Ashcake Creek and Vassar Spring Branch, adjoining the lands now or formerly owned by Barnes, Guill, and Powell. For more information regarding the boundaries of said tract or parcel of land, see the plats of the adjoining properties recorded in the Clerk's Office of the Circuit Court of Halifax County, Virginia in Deed Book 395, page 11; Deed Book 426, page 603; Deed Book 1054, page 602; Plat Book 6, page 29; and Plat Book 20, page 244.

LESS AND EXCEPT a certain tract of land containing **two**(2) acres, more or less, conveyed unto Larry J. Tucker by deed dated
April 14, 1982 and recorded in the aforesaid Clerk's Office in Deed

Book 460, page 467, the remainder of which tract of land is the same property conveyed herein as Tract III.

LESS AND EXCEPT a strip or parcel of land, estimated to contain 1.47 acres, more or less, but conveyed in the gross and not by the acre unto the Commonwealth of Virginia for the improvement of State Route No. 721 by deed dated April 18, 1989 and recorded in the Clerk's Office of the Circuit Court of Halifax County, Virginia, in Deed Book 535, page 799.

Being the remainder of that property conveyed unto Stuart E. Buchanan by deed dated December 23, 1975 and recorded in the aforesaid Clerk's Office in Deed Book 400, page 679. Being also a portion of that property conveyed unto Stuart E. Buchanan and Valarie J. Buchanan by deed dated August 15, 1979 and recorded in the aforesaid Clerk's Office in Deed Book 437, page 339, and further being a corrected description of the property conveyed unto Stuart E. Buchanan from Valarie J. Buchanan, divorced, by deed of gift dated March 11, 2013 and recorded in the aforesaid Clerk's Office in Deed Book 1129, page 815.

TRACT II: All that certain tract or parcel of land with improvements thereon, situate in Roanoke District, Halifax County, Virginia, containing 100 acres, more or less, being located on the East side of State Route No. 720 and being bounded on the South by Difficult Creek, on the East by the lands now or formerly of John Powell Estate and Clyde Scott Estate, on the North by lands now or formerly of Luther Guill, and on the West by State Route No. 720.

For further information, reference is made to the plat of survey of the lands of C. R., E.A., and L. H. Guill made by Alfred H. Carter in May 1957 and of record in the Clerk's Office of the Circuit Court of Halifax County, Virginia, in Plat Book 6, page 29.

LESS AND EXCEPT a tract of land containing **0.36 acres** conveyed unto the Commonwealth of Virginia for the improvement of State Route No. 720 by deed dated January 19, 2001 and recorded in the aforesaid Clerk's Office in Deed Book 773, page 246.

Being the identical property conveyed unto Stuart E. Buchanan by deed dated March 11, 2010 and recorded in the aforesaid Clerk's Office in Deed Book 1064, page 793.

TRACT III: All that certain lot or parcel of land, situate in Roanoke District, Halifax County, Virginia, fronting on the southerly side of State Route No. 721, lying on the waters of Ashcake Creek, containing two acres, more or less, and more particularly described as follows: Commencing at the point where the land herein described corners on said highway with said creek; thence as the creek

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meanders in a southerly direction 305 feet, more or less, to the boundary line of lands now or formerly belonging to Powell; thence westerly with Powell's line 290 feet to a stake, thence a new line in a northerly direction 305 feet, more or less, to the right of way edge of said highway; thence easterly 290 feet to the point of beginning.

LESS AND EXCEPT a strip or parcel of land, estimated to contain **0.03 acres**, but conveyed in the gross and not by the acre unto the Commonwealth of Virginia for the improvement of State Route No. 721 by deed dated April 18, 1989 and recorded in the Clerk's Office of the Circuit Court of Halifax County, Virginia, in Deed Book 535, page 799.

Being the identical property acquired by Stuart E. Buchanan from Larry R. Tucker and Gayle Tucker, his wife, by deed dated August 23, 1993 and recorded in the aforesaid Clerk's Office in Deed Book 605, page 14.

TRACT IV: All that certain tract or parcel of land, with improvements thereon and appurtenances thereunto belonging, situate in Roanoke District, Halifax County, Virginia, lying on the waters of Ashcake Creek, shown to contain 116.80 acres, more or less, according to plat of survey by Jones & Associates, dated May 19, 1983 and recorded in the aforesaid Clerk's Office in Plat Book 20, page 107.

Being the same property described as Item No. 2 conveyed unto Stuart E. Buchanan by deed dated January 26, 1999 and recorded in the aforesaid Clerk's Office in Deed Book 715, page 377, therein erroneously being described by its historical property description (and without reference to the aforesaid 1983 survey) as containing ninety-four (94.00) acres, more or less.

LESS AND EXCEPT that certain tract or parcel of land containing **63 acres**, more or less, conveyed unto Dennis Eugene Martin by deed dated December 6, 2012 and recorded in the aforesaid Clerk's Office in Deed Book 1121, page 165.

This conveyance is made subject to any and all covenants, conditions, easements, and restrictions as are of record insofar as they may be applicable to the Property herein conveyed.

The Property is shown as Property Record Nos. (PRN) 7905, 17162, 23170, and 24710 among the land records of Halifax County, Virginia. Even if the Property consists of more than one parcel for real estate tax or any other purpose or if it may have been acquired previously as separate parcels, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

Page 8 of 24

SECTION I - PURPOSE

The purpose of this Easement is to preserve and protect the conservation values of the Property in perpetuity by imposing the restrictions on the use of the Property set forth in Section II and providing for their enforcement in Section III. The conservation values of the Property are described in the above recitals, are documented in the Documentation Report described in Section IV below, and include the Property's open-space, scenic, and natural values and its value as land preserved for rural uses, such as forestry and agriculture. Pursuant to the Virginia Land Conservation Foundation's Conservation Value Review Criteria, the further purposes of this Easement are watershed preservation, preservation of land for agricultural use and forestal use, and preservation of natural habitat and biological diversity.

Grantor covenants that 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 II - RESTRICTIONS

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

1. DIVISION.

- (i) Separate conveyance of a portion of the Property or division of the Property is prohibited.
- (ii) Boundary-line adjustments with adjoining parcels of land are permitted and shall not be considered separate conveyances of portions of the Property or divisions of the Property, provided that Grantee approves such adjustments, is made party to any deed creating a boundary-line adjustment, and at least one of the following conditions is met:
 - (a) The entire adjoining parcel is subject to a recorded open-space easement owned by Grantee; or
 - (b) The proposed boundary-line adjustment shall have been reviewed and approved in advance by the Board of Trustees of Grantee.
- (iii) The acquisition of a de minimis portion of the Property adjacent to State Route 720 (Green Level Road) and State Route 721 (Ashcake Creek Road) for minor road improvements shall not be considered a division of the Property, and neither the acquisition of such a de minimis portion of the Property nor the use of the portion of the Property so acquired shall be prohibited by this Easement, provided that Grantee approves such conveyance or taking. Grantee's 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 to prevent harm to its conservation values. Grantor reserves its separate rights to approve such acquisition. Use of the Property for such a

Page 9 of 24

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project is limited to minor improvements to State Route 720 (Green Level Road) and State Route 721 (Ashcake Creek Road) in their present alignments, including, but not limited to, maintenance, correction, repair, or upgrading of the existing public roads. Such improvements could include, but are not limited to, the addition or renovation of ditches, box culverts, drainage swales, side slopes, curbing, regrading, or enhancements, such as pull-offs, bicycle lanes, and restoration projects. For the purpose of this paragraph, however, "minor road improvements" does not include the addition of new travel lanes, except for the aforesaid bicycle lanes. Any portion of the Property acquired from Grantor pursuant to this paragraph shall remain subject to the terms and restrictions of this Easement.

2. BUILDINGS, STRUCTURES, ROADS, AND UTILITIES.

- (i) No buildings, structures, roads or utilities, other than the following, are permitted on the Property:
 - (a) **Dwellings and nonresidential outbuildings or structures**. Two (2) dwelling units, such as detached or attached dwellings or barn or garage apartments, each of which may be used by one or more persons or families, as follows:
 - (1) The two dwellings together shall not exceed an aggregate of 6,100 square feet of above-ground enclosed living area.
 - (2) One dwelling shall not exceed 4,500 square feet of above-ground enclosed living area 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 of the Property.
 - (3) The other dwelling shall not individually exceed 1,600 square feet of above-ground enclosed living area 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 of the Property.
 - (4) In addition to the two dwellings, nonresidential outbuildings and structures commonly and appropriately incidental to such dwellings sized appropriately to serve as amenities to residential use are also permitted on the Property, including one pavilion or gazebo not to exceed 1,000 square feet in ground area.
 - (5) The singlewide mobile home currently existing on the Property shall be counted in the number of permitted dwellings and in the permitted aggregate square feet of above-ground enclosed living area. Grantor shall give Grantee 30 days' written notice before beginning construction or enlargement of a dwelling on the Property; and

Page 10 of 24

- (b) Farm buildings or structures. 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 building or structure on the conservation values of the Property. For purposes of this paragraph, a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in Section II, Paragraph 3(i)(a) below; and
- (c) Buildings for the processing and sale of farm or forest products. Buildings for the processing and sale of farm or forest products produced or partially produced on the Property not exceeding 4,500 square feet of enclosed area in the aggregate and not individually exceeding 2,500 square feet of enclosed area. For purposes of this paragraph, a building for the processing and sale of farm or forest products shall mean a building originally constructed and used for the activities specified in Section II, Paragraph 3(i)(b) below; and
- (d) Roads. Roads or driveways, specifically:
 - (1) Private roads to serve permitted buildings or structures and roads with permeable surfaces (including trails) for permitted uses and activities, such as farming or forestry; and
 - (2) Private roads or driveways and access easements over same to serve adjacent properties, provided that such roads or driveways have the written approval of Grantee, which approval shall take into consideration the impact of the roads or driveways on the conservation values of the Property; and
- (e) **Utilities**. Public or private utilities to serve permitted buildings, structures, or activities on the Property. Public or private utilities to be constructed in whole or in part to serve other properties shall not be constructed on, under, or over the Property unless Grantee determines that the construction and maintenance of such utilities will not impair the conservation values of the Property and gives its prior written approval for such construction and maintenance. Approval or disapproval of such construction and maintenance shall take into consideration the visibility and any other adverse impact of such utilities on the conservation values of the Property. Grantor reserves its separate rights to approve such public or private utilities; and
- (f) Alternative energy structures. Alternative 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 and other permitted buildings, 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
- (g) Small-scale miscellaneous buildings or structures. Small-scale miscellaneous buildings and structures, the existence of which is consistent with the

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conservation purposes of this Easement and which will not impair the conservation values protected herein, such as hunting stands, wildlife observation structures, fences, boardwalks, or structures for crossing of streams or wetlands.

- (ii) Grantor shall have the right to construct the dwelling and other buildings, structures, roads, and utilities permitted in Section II, Paragraph 2(i) above and to repair, maintain, renovate, expand, and replace any permitted dwellings and other permitted buildings, structures, roads, and utilities on the Property, within the limitations set forth in this Easement.
- (iii) All or a portion of the aggregate allowable square footage for dwellings set forth in Section II, Paragraph 2(i)(a) above may be allocated to buildings or structures to be used for educational, recreational, scientific, or religious purposes, provided that Grantee determines that the conversion of dwellings or the construction of new buildings or structures for such purposes is consistent with the conservation purposes of this Easement, will not impair the conservation values protected herein, and gives prior written approval of such conversion or construction.
- (iv) To protect the scenic value of the Property, no new buildings or structures larger than 500 square feet in ground area shall be constructed within 450 feet of State Route 720 (Green Level Road) or the south side of State Route 721 (Ashcake Creek Road) as measured from the center lines of the roads. No new buildings or structures larger than 500 square feet in ground area shall be constructed within 250 feet of the north side of State Route 721 (Ashcake Creek Road) as measured from the center line of the road.
- (v) The collective footprint of all buildings and structures on the Property, excluding roads, shall not exceed one-half of one percent (0.5%) of the total area of the Property, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values of the Property, Grantee may approve such increase. For the purpose of this paragraph the collective footprint is the ground area measured in square feet of the buildings and structures set forth in Section II, Paragraph 2(i)(a) through (c), (f), and (g) and Section II, Paragraph 2(iii) above and all other impervious surfaces, excluding roads.

3. ACTIVITIES ON THE PROPERTY.

- (i) Industrial or commercial activities are prohibited, with the exception of the following:
 - (a) Agriculture (including livestock production), equine activities, or forestry;
 - (b) Processing or sale of farm or forest products produced or partially produced on the Property in buildings permitted in Section II, Paragraph 2(i)(c) above;
 - (c) Small-scale incidental commercial or industrial operations compatible with activities set forth in (a) above that Grantee approves in writing as being consistent with the conservation purpose of this Easement;

Page 12 of 24

- (d) Activities, other than those permitted in (a) above, that can be and in fact are conducted within permitted buildings without material alteration to their external appearance, provided that such activities to be conducted in buildings exceeding 10,000 square feet in ground area are subject to the written approval of Grantee, which approval shall take into consideration the impact of the activities and any proposed associated infrastructure improvements on the conservation values of the Property;
- (e) The sale of excess power generated incidentally in the operation of approved alternative energy structures and associated equipment as provided in Section II, Paragraph 2(i)(f) above;
- (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 approval, Grantor is free to participate in same in Grantor's discretion and to retain any remuneration derived therefrom;
- (g) Temporary or seasonal outdoor activities or events ("activities") that do not permanently alter the physical appearance of the Property and that do not impair the conservation values of the Property herein protected, except that such activities involving 100 or more people shall not exceed seven (7) consecutive days unless Grantee gives its prior written approval of such activities, which approval shall take into consideration the number of people involved, the duration of such activities, and any other aspects thereof that may have an impact on the conservation values being protected herein. Approval may be subject to the requirement that at the conclusion of the activity Grantor shall restore the Property to its pre-existing condition; and
- (h) Exploration for and extraction of oil or gas under the surface of the Property as limited and conditioned in Section II, Paragraph 6 below.
- (ii) Educational, recreational, or religious activities are permitted on the Property, provided that they are consistent with the conservation purposes of this Easement and do not impair the conservation values protected herein. (Recreational activities may include use of all or a portion of the Property as a park for passive recreational activities, such as hiking, photography, bird watching, and nature study.)

4. MANAGEMENT OF FOREST.

(i) Best Management Practices (BMPs), as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material timber harvest or land-clearing activity is undertaken. A pre-harvest plan shall be submitted to Grantee for approval no later than 14 days before beginning any material timber harvest, which approval shall take into consideration whether or not the pre-harvest

plan is consistent with the purposes of this Easement. The pre-harvest plan shall describe the BMPs to be used in sufficient detail to ensure that water quality will be protected.

- (ii) The cutting, clearing, or removal of trees shall not constitute material timber harvesting or land clearing and shall not require the use of BMPs or a pre-harvest plan if:
 - (a) The cutting, clearing, or removal of trees takes place on less than 10 acres of the Property;
 - (b) The cutting, clearing, or removal of trees is necessary for the construction or maintenance of permitted roads, trails, utilities, buildings, structures, or ponds;
 - (c) The trees are used for firewood for domestic use;
 - (d) The trees are invasive species;
 - (e) The trees pose a threat to the health or safety of persons, property, or livestock;
 - (f) The trees are dead, diseased, or dying; or
 - (g) The cutting, clearing, or removal of trees is necessary for other permitted uses on the Property except timber harvesting or land clearing.

5. RIPARIAN BUFFERS.

- (i) To protect water quality, 100-foot riparian buffer strips shall be maintained along the edge of Difficult Creek and each edge of Ashcake Creek located on the Property, and 35-foot riparian buffer strips shall be maintained along the edges of the perennial tributary streams located on the Property, as measured from the tops of the banks as identified in the Baseline Documentation Report for the Easement (as described in Section IV) and as shown on Exhibit A, attached hereto.
- (ii) Notwithstanding the foregoing, the portion of the field located at the confluence of Difficult Creek and Ashcake Creek that lies within the 100-foot strips along these creeks shall not be included as part of any of the riparian buffer strips. This field is shown more particularly in the Baseline Documentation Report and on Exhibit A where its eastern edge is delineated by GPS points 1 through 7; the riparian buffers in this area lie between the field's edge and the creeks and are bounded generally on the west by said GPS points. In addition, the following buildings and structures may be constructed within the riparian buffer strips:
 - (a) One dwelling, along with nonresidential outbuildings and structures, but only within the area designated as "House Site" (which is located partially within one of the riparian buffers along Ashcake Creek), as shown on the attached Exhibit A and in the Baseline Documentation Report; and
 - (b) One gazebo or pavilion not exceeding 1,000 square feet in ground area.

- (iii) Within the buffer strips there shall be (a) no buildings or other substantial structures constructed, except as permitted in Section II, Paragraph 5(ii) above, (b) no new paved roads or paving of existing roads without Grantee's approval, (c) no storage of compost, manure, fertilizers, chemicals, machinery, or equipment, (d) no removal of trees except removal of invasive species, removal of dead, diseased, or dying trees, removal of trees posing a threat to human or livestock health or safety, removal of trees for the purpose of maintaining existing roads or constructing new permitted roads, or minimal removal of individual trees, and (e) no plowing, cultivation, filling, or other earth-disturbing activity, except as may be reasonably necessary for the activities set forth in Section II, Paragraph 5(iv) below.
- (iv) Notwithstanding the foregoing, permitted within the buffer strips are (a) erosion control or restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3(i)(f) above, (b) fencing along or within the buffer strips, (c) construction and maintenance of stream crossings (including improvements over the buffer strips to access crossings) for pedestrians, livestock, and vehicles, which crossings minimize obstruction of water flow, (d) creation and maintenance of trails with unimproved surfaces, (e) creation and maintenance of wildlife plots and natural heritage habitat, (f) planting of trees, shrubs, grasses, or other vegetation, (g) clearing, grading, and dam construction to create ponds (but not storm water retention or detention ponds to serve other properties), (h) diversion of water for agricultural use on the Property, (i) clearing activities (but not grading) necessary to keep the beach area by the swimming hole in Difficult Creek maintained for noncommercial recreational use, and (j) clearing and grading for, and construction and maintenance of, one of the permitted dwellings (along with nonresidential outbuildings and structures) and the pavilion or gazebo permitted herein, as permitted and limited in Section II, Paragraph 5(ii) above.
- (v) Should Difficult Creek, Ashcake Creek, or either of the perennial tributary streams located on the Property meander or change course naturally, or as a result of the restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3(i)(f) above, the buffer strips shall remain the same width, but move relative to the movement of the creeks. In such event, any buildings or structures that were outside of the original buffer strips and are determined to be within the new buffer strips shall not be considered in violation of these restrictions and may be maintained at such locations.
- (vi) Livestock shall be excluded from the buffer strips, except (a) for brief periods of flash grazing, (b) during times of drought or other emergencies, (c) for stream crossings, or (d) for watering at limited access points.

6. GRADING, BLASTING, FILLING, AND MINING.

(i) Grading, blasting, filling, or earth removal shall not materially alter the topography of the Property except for (a) clearing, grading, and dam construction to create ponds (but not storm water retention or detention ponds to serve other properties), (b) restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3(i)(f) above, (c) erosion and sediment control pursuant to an erosion and sediment control plan, or (d) as required in the construction of permitted

buildings, structures, roads, and utilities. Grantee may require appropriate sediment and erosion control practices to be undertaken for buildings, structures, roads, or utilities that require Grantee's approval in Section II, Paragraph 2(i) above as a condition of such approval.

(ii) Grading, blasting, filling, or earth removal in excess of one acre for the purposes set forth in subparagraphs (a) through (d) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities, including the conversion of forest land into farmland, shall not constitute a material alteration of the topography. Surface mining, subsurface mining, dredging on or from the Property, and drilling for oil or gas on the Property are prohibited, except that exploration for and extraction of oil and gas from under the surface of the Property by directional drilling from well sites located on nearby properties is permitted.

7. ACCUMULATION OF TRASH.

Accumulation or dumping of trash, refuse, junk, or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products, or agricultural byproducts on the Property.

8. SIGNS.

No billboards or other signs may be displayed on the Property, except for signs that relate to the Property or to permitted activities (including commercial activities) thereon. Temporary political signs are allowed. No sign visible from outside the Property shall exceed thirty-two (32) square feet in size.

SECTION III - ENFORCEMENT

1. RIGHT OF INSPECTION.

Representatives of Grantee may enter the Property from time to time for purposes of inspection (including photographic documentation of the condition of the Property) and enforcement of the terms of this Easement after permission from or reasonable notice to Grantor or Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate, or mitigate a potential violation of these restrictions with notice to Grantor or Grantor's representative being given at the earliest practicable time.

2. ENFORCEMENT.

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

Page 16 of 24

condition prior to a violation hereof, provided that such prior condition was in compliance with the restrictions of and consistent with the purpose of this Easement; (b) to recover any damages arising from noncompliance; and (c) to enjoin noncompliance by temporary or permanent injunction. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs, and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay shall not waive or forfeit its right to take such action as may be necessary to ensure compliance with this Easement, and Grantor hereby waives any defense of waiver, estoppel, or laches with respect to any failure to act by Grantee.

- (ii) Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage to the Property or change in the condition of the Property (a) caused by fire, flood, storm, Act of God, governmental act, or other cause outside of Grantor's control or (b) resulting from prudent action taken by Grantor to avoid, abate, prevent, or mitigate such damage to or changes in the condition of the Property from such causes.
- (iii) Nothing in this Easement shall create any right in the public or any third party to maintain any judicial proceeding against Grantor or Grantee.

SECTION IV - DOCUMENTATION

Grantor has made available to Grantee, prior to conveyance of this Easement, documentation sufficient to establish the condition of the Property at the time of the conveyance, and documentation retained in the office of Grantee including, but not limited to, the Baseline Documentation Report describes the condition and character of the Property at the time of the conveyance. The Baseline Documentation Report may be used to determine compliance with and enforcement of the terms of this Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. The parties hereby acknowledge that the Baseline Documentation Report contained in the files of Grantee is an accurate representation of the Property and contains a statement signed by Grantor and a representative of Grantee as required by Treasury Regulation Section 1.170A–14(g)(5)(i).

SECTION V - GENERAL PROVISIONS

1. DURATION.

This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions, and restrictions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

2. NO PUBLIC ACCESS AND GRANTOR'S RETENTION OF USE.

Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Subject to the terms hereof, Grantor retains the exclusive right to such access and use including, but not limited to, the right to hunt, fish, or trap on the Property.

3. TITLE.

Grantor covenants and warrants that Grantor has good title to the Property (including the mineral rights located under the surface of the Property), that Grantor has all right and authority to grant and convey this Easement, and that the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record) including, but not limited to, any mortgages or deeds of trust not subordinated to this Easement.

4. ACCEPTANCE.

Grantee accepts this conveyance pursuant to Virginia Code Section 10.1-1801, which acceptance is evidenced by the signature of a Deputy Director or Staff Attorney by authority granted by Grantee's Board of Trustees.

5. INTERACTION WITH OTHER LAWS.

This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, has been or shall be 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 OF THIS EASEMENT.

Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses consistent with the purpose of and not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a "qualified conservation contribution" as that term is defined in IRC Section 170(h)(1) and Treasury Regulation Section 1.170A–14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.

Page 18 of 24

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 AND GRANTOR.

For the purpose of giving notices hereunder, the current address of Grantee is Capitol Place Building, 1108 East Main Street, Suite 700, Richmond, Virginia 23219. 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 P. O. Box 690464, Orlando, Florida 32869.

Grantor shall notify Grantee in writing at or prior to closing on any *inter vivos* transfer, other than a deed of trust or mortgage, of all or any part of the Property.

In addition, Grantor agrees to notify Grantee in writing before exercising any reserved right 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.

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

9. TAX MATTERS.

The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in Treasury Regulation Section 1.170A—13(c)(5), and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from donation of this Easement, that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. 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. NO MERGER.

Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.

11. ASSIGNMENT BY GRANTEE.

Assignment of this Easement is permitted by Virginia Code Section 10.1-1801, but Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (i) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity and (ii) the transferee then qualifies as an eligible donee as defined in IRC Section 170(h)(3) and the applicable Treasury Regulations.

12. GRANTEE'S PROPERTY RIGHT.

Grantor agrees that the donation of this Easement to Grantee gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the perpetual conservation restriction at the time of the donation bears to the value of the Property as a whole at that time. The values applicable for purposes of the calculations required by this paragraph shall be the values finally determined for purposes of any federal income tax deduction allowed with respect to the conveyance of this Easement.

13. CONVERSION OR DIVERSION.

Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Section 10.1-1704 of the Open-Space Land Act, which does not permit loss of open space.

14. EXTINGUISHMENT.

Should an attempt be made to extinguish this Easement in whole or in part, such extinguishment shall be carried out by judicial proceedings in compliance with IRC Section 170(h) and applicable Treasury Regulations. In a sale or exchange of the Property subsequent to and resulting from such extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Section V, Paragraph 12 above, but not to be less than the proportion that the value of this Easement at the time of extinguishment bears to the then value of the Property as a whole. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this Easement and the Open-Space Land Act.

15. AMENDMENT.

Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property by an amended deed of easement, provided that no amendment shall (i) affect this Easement's perpetual duration, (ii) conflict with or be contrary to or inconsistent with the conservation 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 in the Clerk's Office of the Circuit Court of Halifax County, Virginia.

16. COST-RECOVERY CHARGES.

Grantee reserves the right to recover its costs incurred in responding to requests initiated by Grantor involving matters such as boundary-line adjustments, easement amendments, project reviews for ecosystem services, preparation of reports to facilitate sales, and access or utility easements over the Property. Such cost-recovery charges shall be determined and periodically adjusted by its Board of Trustees, as set forth in a published fee schedule, and shall not exceed staff and / or consultants' costs incurred in responding to such requests.

17. JOINT OWNERSHIP.

If Grantor at any time owns the Property or any portion of or interest therein in joint tenancy, tenancy by the entirety, or tenancy in common, all such tenants shall be jointly and severally liable for all obligations of Grantor set forth herein.

18. SEVERABILITY.

If any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.

19. 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.

20. CONTROLLING LAW.

The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia, resolving any ambiguities or questions of the validity of specific provisions in order to give maximum effect to its conservation purpose.

21. RECORDING.

This Easement shall be recorded in the land records in the Clerk's Office of the Circuit Court of Halifax County, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.

22. 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

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the same Easement.	Execution of this Easement at different times and in different places
by the parties hereto	shall not affect the validity of the Easement.

 $\ensuremath{\text{WITNESS}}$ the following signatures and seals:

 $(Counterpart\ signature\ pages\ follow.)$

Page 22 of 24

BK 1 145PG 263

(Counterpart signature page 1 of 2)

STUART E. BUCHANAN

COMMONWEALTH OF VIRGINIA

COUNTY OF CHARLOTTE, to-wit:

The foregoing instrument was acknowledged before me this $21\mathrm{st}$ day of November, 2013 by Stuart E. Buchanan.

My commission expires: _

otary Public

Registration No.: ///lac

(Counterpart signature page 2 of 2)

Accepted: VIRGINIA OUTDOORS FOUNDATION

Dr. Jamara SVance

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Montgomery, to-wit

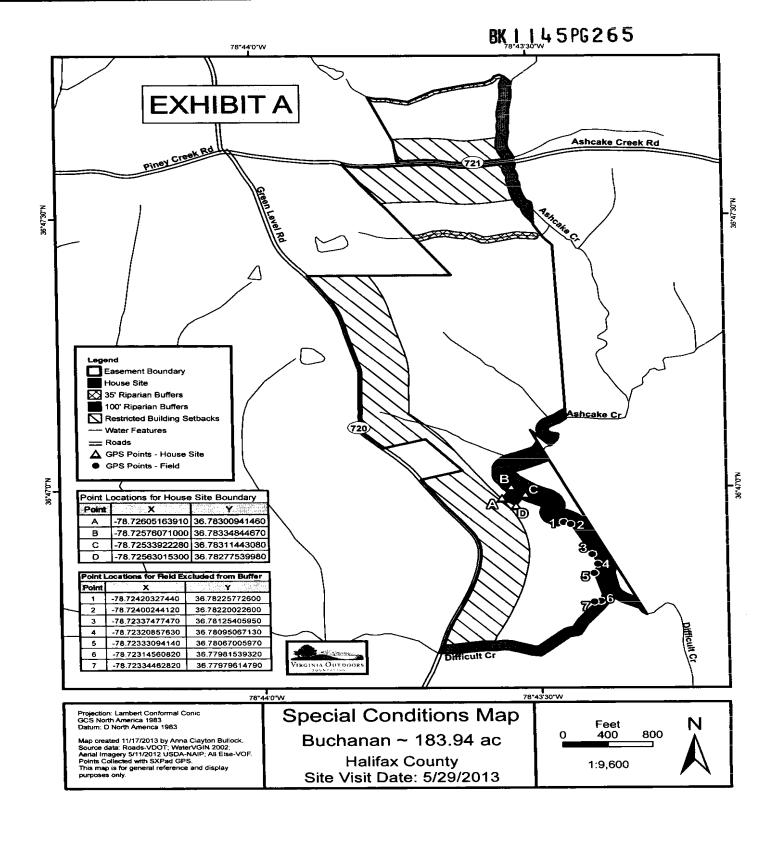
The foregoing instrument was acknowledged before me this 22 day of overhear, 2013 by <u>Tomara A. Vance</u>, a Deputy Director / Staff Attorney of the Virginia Outdoors Foundation.

My commission expires: 30 Jone 2015.

Notary Public

Registration No.: 7283689

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