

Modified March 2020

This sample deed is provided to assist landowners and their attorneys in preparing deeds of easement to be conveyed to Blue Ridge Land Conservancy (BRLC), which also does business as Central Virginia Land Conservancy in certain Virginia counties and the City of Lynchburg. As each property contains unique conservation values, staff may recommend provisions appropriate to individual properties. Landowners should discuss present and future land management practices with staff before preparation of the deed of easement. BRLC does not provide legal or tax advice or warrant that this sample will meet all IRS or Virginia Department of Taxation requirements or the Virginia Land Conservation Foundation's Conservation Value Review Criteria. An easement will permanently change how the property may be used and its market value. Because this change can have major estate planning and tax consequences, landowners should consult legal counsel prior to submission of their proposed easement to the BRLC Board of Trustees for its consideration.

NOTE TO TITLE EXAMINERS: This deed of conservation 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 / Return To:**

[Attorney's name, #]  
[Firm]  
[Address Line 1]  
[Address Line 2]  
[Address Line 3]  
[Phone]

**Parcel Record Numbers (PRNs)[Enter locality's preferred terminology: PRN, tax map no, PIN, etc]:**

[Enter parcel record/tax map/PIN numbers]

**Title Insurance Underwriter:**

-

**Consideration: -**

*Exempt from recordation tax  
under Section 58.1-811 (D),  
Code of Virginia, 1950, as amended.*

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, [between *or* among] \_\_\_\_\_, [collectively *or* together "Grantor"] [*Include marital status of Grantor*] [collectively *or* together "Grantor"]; and the Blue Ridge Land Conservancy [*if applicable: d/b/a Central Virginia Land Conservancy*], a Virginia nonprofit nonstock corporation ("Grantee") (the designations "Grantor" and "Grantee" referring to Grantor and Grantee and their respective successors and assigns); [*if lien*] \_\_\_\_\_ (the "Lender"); and \_\_\_\_\_ and \_\_\_\_\_, witnesseth:

**RECITALS:**

**R-1** Grantor is the owner in fee simple of certain real property situated in \_\_\_\_\_ County, Virginia, containing in the aggregate \_\_\_\_\_ acres, more or less, as further described

below (the “Property”), and desires to give, grant, and convey to Grantee a perpetual conservation easement over the Property as herein set forth.

**R-2** Grantee is a charitable corporation exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (and is further a “qualified organization” and “eligible donee” under Section 170(h)(3) of 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) (hereinafter the “IRC”), and a “qualified organization” and “eligible donee” under Section 170(h)(3) of the IRC and Treasury Regulation Section 1.170A-14(c)(1) and.) Grantee is willing to accept a perpetual conservation easement over the Property as herein set forth.

**R-3** The Virginia Conservation Easement Act, Chapter 10.1 of Title 10.1, Sections 10.1-1009 through 10.1-1016, Code of Virginia, 1950, as amended (the “Virginia Conservation Easement Act”) authorizes a charitable corporation, association or trust exempt from taxation pursuant to IRC Section 501(c)(3) to hold a non-possessory interest in real property for the purposes of retaining or protecting natural or open-space values of real property, and the Blue Ridge Land Conservancy qualifies as such a charitable corporation.

**R-4** 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** The limitations and obligations created under this Easement conform in all respects to the County of \_\_\_\_\_ Comprehensive Plan adopted on \_\_\_\_\_. The Property is designated as \_\_\_\_\_ on the county’s future land use map. [Optional, if have correspondence: Correspondence dated from \_\_\_\_\_ County dated \_\_\_\_\_ acknowledging that the limitations or obligations created by this Easement conform in all respects to the comprehensive plan of \_\_\_\_\_ County at the time of this Easement.]

**R-6** This Easement is intended to constitute (i) a “qualified conservation contribution” as defined in IRC Section 170(h)(1) as more particularly explained below, and (ii) a qualifying “interest in land” under the Virginia Land Conservation Incentives Act of 1999 (Section 58.1-510, *et seq.*, Code of Virginia, 1950, as amended).

**R-7** 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). 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 will yield a significant public benefit. [*In almost all BRLC easements the above IRC purpose involving governmental conservation policies is applicable. One or more of the following three IRC purposes may also be applicable; and could be added if the Easement is for* (1) the preservation of land areas for outdoor recreation by, or the education of, the general public, (2) the protection of a relatively natural habitat of fish, wildlife, or plants or similar ecosystem, *or* (3) the preservation of an historically important land area or a certified historic structure.]

**R-8** This Easement 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: [*Cite federal, state, or local governmental policies that will be advanced by the preservation of the Property, and the public benefit of such preservation.*]

(i) Land conservation policies of the Commonwealth of Virginia as set forth in:

(a) Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth's policy to protect its atmosphere, lands and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

(b) The Virginia Conservation Easement Act cited above; and

(c) The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, Sections 58.1-510 through 58.1-513, Code of Virginia, 1950, as amended, 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;

(d), (e), (f), etc. (*any other applicable state policies*); and

(ii) Land use policies of \_\_\_\_\_ County as delineated in:

(a) Its comprehensive plan adopted on \_\_\_\_\_ to which plan the restrictions set forth in this Easement conform and which contains the following [*enumerate applicable goals, objectives, strategies, visions, or policies, etc.*] \_\_\_\_\_;

(b) [*Applicable if locality has land use value assessment and the Property has been given such designation*] Section \_\_\_\_\_ of the \_\_\_\_\_ County Code, which provides for use value assessment of real estate devoted to agricultural, forestal, horticultural, or open-space uses, the Property having been approved for use value assessment by the county; and

(c) [*Applicable if Property is in an agricultural, forestal or agricultural and forestal district*] Section \_\_\_\_ of the \_\_\_\_\_ County Code, which provides certain tax benefits and other protections for agricultural and forestal use of land to landowners who voluntarily limit development of their property under the terms of the applicable district, which section was enacted pursuant to the Virginia Agricultural and Forestal Districts Act under Section 15.2-4300, et seq., Code of Virginia, 1950, as amended . The Property is located within the \_\_\_\_\_ Agricultural and Forestal District, and, as such, has been identified by \_\_\_\_\_ County as worthy of protection for conservation purposes;

(d), (e), (f), etc. [*any other applicable local policies*].

**R-9** The Property has certain important attributes, referred to herein collectively as the "conservation values of the Property," the protection of which by this Easement will provide

significant benefits to the citizens of the Commonwealth of Virginia. The conservation values of the Property include, but are not limited to, the following:

(i) Agriculture and Forest: A portion of the Property consists \_\_\_\_\_ . A portion of the Property is forested and includes \_\_\_\_\_ . This Easement prevents uses and development of the Property that would impair the availability of the Property for productive agricultural and forestry use, thus providing an important benefit to the general public.

(ii) Watershed Preservation: The Property includes and contains \_\_\_\_\_ . The preservation of the open-space character of the Property prevents excessive development, soil disturbance, and pollution on the Property, thus enhancing water quality as well as aquatic and riparian habitat.

(iii) Scenic: The Property is a prominent scenic view enjoyed by the public from \_\_\_\_\_ . This Easement will protect the public viewshed on the Property and ensure the public will continue to have the opportunity to appreciate the Property's scenic values.

(iv) Natural Habitat: The Property's \_\_\_\_\_ provide habitat for a variety of wildlife and plant species, and the maintenance of such natural habitat helps support wildlife and fisheries populations in the local ecosystem, which is largely in a natural, undeveloped state.

(v) Climate Resilience: The Property is identified as "resilient" by The Nature Conservancy's Resilient Lands Mapping Tool. A property's Resilience Score estimates its capacity to maintain species diversity and ecological function as the climate changes. The score is relative to all other sites with the same geophysical setting and is described on a relative basis ranging from above to below average. A property's final resilience score is determined by evaluating physical characteristics that foster resilience, particularly the site's landscape diversity and local connectedness. Landscape diversity refers to the microhabitats and climatic gradients available in one's immediate neighborhood. Topographic diversity buffers against climatic effects because the persistence of species in an area increases in landscapes with a wide variety of microclimates. Local Connectedness refers to the number of barriers and the degree of fragmentation within a landscape. A highly connected landscape promotes resilience by allowing species to move around the landscape and find suitable microclimates where they can persist.

(vi) General Open Space: The Property is \_\_\_\_\_ . The preservation of the open-space character of the Property helps to preserve the scenic local and regional landscape in general, which attracts tourism and commerce to the area and enhances the quality of life for area residents.

(vii) The preservation of the open-space character of the Property prevents development of the Property, which existing and foreseeable trends in the vicinity of the Property indicate is increasing and which would lead to or contribute to the degradation of the scenic, natural, and historic character of the area. The preservation of the open space character of the Property is consistent with existing conservation programs in the area.

(viii) [Add this if applicable: Land conservation policies of the United States as set forth in: \_\_\_\_\_.]

**R-\_\_\_** [Cite here any other studies or plans that will be supported by the Property’s preservation, conservation awards, or other recognition that the Property has received.]

**R-\_\_\_** [List in recitals hereinbelow the particular conservation attributes of the Property, the public benefit they yield, and how the restrictions set forth below protect such attributes.].

**R-\_\_\_** 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 natural or open-space conservation objectives of Grantee and the Commonwealth of Virginia.

**R-\_\_\_** 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-\_\_\_** 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-\_\_\_** 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 this Easement.

**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 a conservation easement in gross (this “Easement”) over, and the right in perpetuity to restrict the use of, the Property, which is described below [or in SCHEDULE “A” attached hereto and made a part hereof] [BRLC prefers that the legal description be set forth below rather than in a SCHEDULE “A”] and consists of \_\_\_\_\_ acres, more or less, located in \_\_\_\_\_ County, Virginia, near \_\_\_\_\_, fronting on State Route \_\_\_\_\_ [or road name], to-wit:

\_\_\_\_\_ [attorney to insert legal description] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This conveyance is expressly made subject to all unexpired conditions, covenants, restrictions, reservations, and easements of record insofar as they may lawfully apply to the Property hereby conveyed.

The Property is shown as Tax Map No. [or PIN] \_\_\_\_\_ among the land records of \_\_\_\_\_ County, Virginia. Even [if/though] the Property

consists of more than one parcel for real estate tax or any other purpose, 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. *[Use if more than one tax parcel: Even though the Property consists of \_\_\_\_\_ parcels for real estate tax purposes and it may have been acquired previously as separate parcels, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.]* *[If the Property is a portion of or contains a portion of a tax parcel, revise the language above accordingly.]*

Grantee hereby accepts the grant of this Easement and agrees to hold this Easement in perpetuity exclusively for the Purpose set forth in Section I below.

## 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 Baseline Documentation Report described in Section IV below, and include the Property's open-space *[and if applicable: scenic, natural, historic, scientific, or recreational]* values *[Add if applicable: and its value as land preserved for rural uses such as forestry and/or agriculture (including livestock production)]*. *[In Section II add specific restrictions needed to provide protection for such values.]*

Pursuant to the Virginia Land Conservation Foundation's Conservation Value Review Criteria, the further conservation purpose of this Easement is *[Insert one or more from VLCF criteria as applicable: preservation of land for agricultural use, forestal use, natural habitat and biological diversity, and/or natural resource-based outdoor recreation or education, historic preservation, watershed preservation, preservation of scenic open space, and/or preservation of open space designated by local government.]*

Grantor covenants that no acts or uses are currently being conducted or will be conducted on the Property which are: (i) inconsistent with the conservation purposes of this Easement; or (ii) consistent with the conservation purposes of this Easement, but are destructive of other significant conservation interests unless such acts or uses are necessary for the protection of the conservation interests that are the subject of this Easement.

## 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, or subdivision of the Property is prohibited. [*Alternate language where division rights are retained: The Property shall not be divided or subdivided into, or separately conveyed as, more than \_\_\_\_\_ parcels (\_\_\_\_\_ division(s) permitted).*]

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

**(iii) For purposes of this Easement, division of the Property includes, but is not limited to, creation or recordation of a subdivision plat, judicial partitioning of the Property, testamentary partitioning of the Property, or pledging for debt of a portion of the Property.**

(iv) Boundary-line adjustments with adjoining parcels of land are permitted and shall not be considered separate conveyances of portions of the Property or divisions or subdivisions of the Property, provided that all of the following conditions are met:

(a) Any portion of the Property transferred and incorporated into the adjacent parcel remains expressly subject, in perpetuity, to the restrictions as set forth in this Easement;

(b) Grantee approves such adjustments;

(c) Grantee is made party to any deed creating a boundary-line adjustment;

(d) The entire adjacent parcel is subject to a recorded conservation easement owned by Grantee or an "eligible donee" as defined in Treasury Regulation Section 1.170A-14(c); and

(e) Such boundary-line adjustments do not affect this Easement's perpetual duration, conflict with or be contrary to or inconsistent with the conservation purpose of this Easement, or reduce the protection of the conservation values of the Property protected by this Easement.

(v) The acquisition by a governmental entity of a *de minimis* portion of the Property adjacent to \_\_\_\_\_ [*Route(s)*] \_\_\_\_\_ for minor road improvements shall not be considered a division or subdivision of the Property, and neither the acquisition of such a *de minimis* portion of the Property nor the use of the portion of the Property so acquired shall be prohibited by this Easement, provided that Grantee approves such conveyance or taking. Grantee's approval shall be contingent upon the project including all reasonable actions, such as landscaping and/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 project is limited to minor improvements to [*Route(s)*] \_\_\_\_\_ in [*its/their*] present alignment(s), including, but not limited to, maintenance, correction, repair, or upgrading

of the existing public road(s). 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 purposes of this paragraph, “minor road improvements” does not include the addition of new travel lanes, except for non-motorized travel such as 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. [*This paragraph is not applicable if the Property has no road frontage.*]

(vi) [*If applicable:* In the event that [the/a] permitted division of the Property requires a road or street dedication, such dedication shall not be considered a separate conveyance of a portion of the Property or a division of the Property, and this Easement shall remain in force with respect to the dedicated portion.]

## 2. **BUILDINGS, STRUCTURES, ROADS, AND UTILITIES.**

(i) Terms used herein such as buildings, structures, dwellings and other terms shall be as defined by the Virginia Uniform Statewide Building Code.

(ii) Grantor shall submit plans sixty (60) days before beginning construction or enlargement of any new structure, building, road or utility permitted by Section II, Paragraph 2(iii) below to Grantee for its review and approval prior to commencement of construction, which review and approval shall be limited to consideration of the impact of the quantity, footprint, size, height, siting, colors, and materials of the proposed improvement on the scenic and conservation values of the Property, and to ensure that they promote a rural building presentation from (conservation value to be protected). Grantor shall have the right to repair, maintain, renovate, and replace any existing structure, building, road, or utility permitted by Section II Paragraph 2(iii) below within the limitations set forth in this Easement.

(iii) **Permitted buildings, structures, roads, and utilities.** No buildings, structures, roads, or utilities, other than the following, are permitted on the Property:

(a) **Dwellings and nonresidential outbuildings and structures.** Single-family dwelling(s) or dwelling unit(s) [*“dwelling(s)”*], such as detached or attached dwellings or barn or garage apartments, which shall not exceed an aggregate of \_\_\_\_\_ square feet of above-ground enclosed living area and nonresidential outbuildings and structures commonly and appropriately incidental to such dwelling(s) sized appropriately to serve as amenities to residential use, subject to the following:

(1) Such dwelling(s) shall not [*if more than one: individually*] exceed \_\_\_\_\_ 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(s) on the scenic and other conservation values of the Property. Dwellings [*or The dwelling*] 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.



(2) To protect the conservation values of the Property, the permitted dwelling(s) shall not be constructed in, or moved to, any location other than the “Dwelling Building Envelopes” identified on Exhibit [ ] attached hereto and by this reference made a part thereof.

(3) No habitable dwellings exist on the Property as of the date of this Easement. [*Or list the existing dwellings on the Property*]

(b) **Farm buildings and structures.** Farm buildings and structures, except that a farm building or farm structure exceeding \_\_\_\_\_ 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. For purposes of this paragraph (b), 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 or for certain animal-related uses.** Buildings not exceeding four thousand five hundred (4,500) square feet of enclosed area in the aggregate and not individually exceeding two thousand five hundred (2,500) square feet of enclosed area for the processing and sale of farm or forest products produced or partially produced on the Property or, with Grantee’s prior written approval, buildings for kennels, wildlife rehabilitation centers or similar enterprises. For purposes of this paragraph (c), a building for the processing and sale of farm or forest products or for animal-related uses shall mean a building originally constructed and used for the activities specified in Section II, Paragraph 3(i)(b) below. Approval of buildings for animal-related uses shall be contingent upon Grantee’s determination that the construction of such buildings is consistent with the conservation purposes of this Easement and protective of the conservation values identified herein and that the buildings are located at sites on the Property not adversely impacting such conservation values. [*If applicable: In the event of division of the Property as provided in Section II, Paragraph 1, the grantor making the division retains all permitted rights to buildings for the processing and sale of farm or forest products or for certain animal-related uses unless the right to construct such building or buildings is allocated [between or among] the parcels in the instrument creating the division or another recorded instrument*];

(d) **Roads, driveways, and trails.** Roads, driveways, and trails, specifically:

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

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

(3) [*If applicable: Public roads required to be constructed in conjunction with (the) permitted division(s) of the Property, provided that Grantee determines that*

the construction and maintenance of such public roads will not impair the conservation values of the Property and gives prior written approval of such construction. Dedication of required road(s) for such division(s) shall not be considered (an additional division/additional divisions) of the Property and this Easement shall remain in effect with respect to the portion of the Property so dedicated.

(4) Pervious trails for non-motorized use, including, but not limited to, hiking, biking, and equestrian trails; and

(e) **Utilities.** Public or private utilities to serve permitted buildings or structures. Grantor reserves its separate rights to approve such public or private utilities. Public or private utilities to be constructed in whole or in part to serve other adjacent properties shall not be constructed on, under, or over the Property unless Grantee determines that the construction and maintenance of such utilities will cause no impairment of the conservation values of the Property and gives its prior written approval for such construction and maintenance. Approval 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 or disapprove such public or private utilities; and

(f) **Small-scale miscellaneous buildings and structures.** Small-scale miscellaneous buildings and structures, the existence of which is consistent with the conservation purposes of this Easement and which will not impair the conservation values protected herein, such as hunting stands, wildlife observation structures, fences, boardwalks, or structures for crossing streams or wetlands (subject to the restrictions contained in Section II, Paragraph 5(ii) below)]; and

(g) **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 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; and alternative energy structures constructed in whole or in part to serve other properties, provided that Grantee determines that the construction and maintenance of such structures will cause no impairment of the conservation values of the Property and gives its prior written approval for such construction and maintenance. Approval of such construction and maintenance shall take into consideration the visibility and any other possible adverse impact of such structures on the conservation values of the Property.

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

(v) **Alternative use of square footage of dwelling(s).** All or a portion of the aggregate allowable square footage for the dwelling(s) set forth in Section II, Paragraph 2(iii)(a) above may be allocated to any number of buildings or structures, to be used for educational, scientific, or recreational, or religious purposes, provided that Grantee determines that the conversion of dwellings or the construction of new buildings or structures and their intended use(s) are consistent with the conservation purposes of this Easement, determines that such conversion or construction and use(s) will not impair the conservation values protected herein, and gives prior written approval of such conversion or construction. The approval of such construction shall take into consideration the impact of the size, height, and siting of the proposed building(s) on the conservation values of the Property.

(vi) [In order to comply with Treasury Regulation Section 1.170-14(e)(2) and the Virginia Land Conservation's Conservation Value Review Criteria it is strongly recommended that site control of dwellings and other buildings be included herein to prevent destruction of significant conservation interests such as scenic vistas, historic features, farmland, etc. with suggestions set forth for a subparagraph (iv) below.]

(vii) **Siting of buildings and structures.** To protect [*Select one or more conservation values that are being protected, for example:* the scenic values of the Property, the agricultural soils on the Property *and/or* the historic \_\_\_\_\_ on the Property], no buildings or structures larger than \_\_\_\_\_ square feet in ground area shall be constructed [*Optional:* within \_\_\_\_ feet of (*road designation*) \_\_\_\_\_ as measured from the center line of the road *or* above the \_\_\_\_\_-foot contour elevation *or* within the designated no-build area/restricted build area shown on Exhibit\_\_\_\_, attached hereto and by this reference made a part hereof.]

(viii) **Collective footprint limitation.** For the purpose of this paragraph, the collective footprint is the ground area measured in square feet of the buildings and structures set forth in Section II, Paragraph 2(iii) above and all other impervious surfaces, excluding linear surfaces, such as roads, driveways, walls, fences, and boardwalks. The collective footprint shall not exceed \_\_\_\_\_percent (\_\_\_\_%) of the total area of the Property [*In general, between one-half of one (½ of 1%) percent and one (1%) percent is recommended. Properties will be evaluated on a case-by-case basis, and characteristics of the Property as well as size will be taken into consideration. For example, smaller properties or working farms may require larger collective footprints, while larger properties or steep wooded properties may require lesser ones.*], 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. [*Addition when appropriate:* In the event of division of the Property, the collective footprint of each created parcel shall not exceed \_\_\_\_\_ (\_\_\_\_%) percent of the total area of such parcel unless otherwise allocated in the instrument of transfer or another recorded instrument or allocated de facto by conveyance of a parcel with existing structures.] [*Proviso: Carefully calculate the permitted footprint for any parcel(s) with small acreage. For example, the one-half percent collective footprint for a ten-acre parcel is 2,178 square feet unless otherwise allocated in the instrument of transfer.*]

### 3. **ACTIVITIES ON THE PROPERTY.**

- (i) Industrial or commercial activities on the Property are prohibited, with the exception of the following:
- (a) Agriculture (including livestock production), equine activities, agritourism (as defined by Section 3.2-6400, Code of Virginia, 1950, as amended), or forestry;
  - (b) Processing or sale of farm or forest products produced or partially produced on the Property and approved animal-related uses 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 purposes of this Easement;
  - (d) Activities that can be and in fact are conducted within permitted buildings without material alteration to their external appearance;
  - (e) The sale of excess power generated incidentally in the operation of approved alternative energy structures;
  - (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 purposes 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. Grantee reserves the right to impose a cost recovery charge for evaluation of ecosystem function projects on the Property;
  - (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 consecutive days or more than \_\_\_ days in the aggregate in any \_\_\_ day period 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 preexisting condition.
- (ii) Educational, recreational, scientific, 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, but are not limited to, 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.)

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

#### 4. MANAGEMENT OF FOREST.

(i) When any timber harvest or land-clearing activity (other than those in the following paragraph) of one (1) acre in total or more per occurrence is undertaken, Grantor shall adhere to the following: Best Management Practices (BMPs), as defined by the Virginia Department of Forestry at the time, shall be used to control erosion and protect water quality. All timber harvest activities on the Property shall be guided by a Forest Stewardship Management Plan approved by Grantee. A pre-harvest plan consistent with the Forest Stewardship Management Plan shall be submitted to Grantee for approval no earlier than one year nor later than thirty (30) days before beginning any material timber harvest, which approval shall be limited to determination of whether or not the pre-harvest plan is in compliance with the Forest Stewardship Management Plan and is consistent with the terms of this Easement. The pre-harvest plan shall require the marking of Streamside Management Zones (SMZs) by appropriate means before any harvesting is undertaken. Without limiting the foregoing requirement regarding submission of pre-harvest plans, Grantee shall be notified not later than thirty (30) days prior to the clearing of forestland for conversion into grassland, crop land, or in association with the construction of permitted buildings.

(ii) Provided that their scope is less than 1 acre in total per occurrence, neither a Forest Stewardship Management Plan nor a pre-harvest plan shall be required for the following permitted noncommercial activities: (a) cutting of trees for the construction of permitted roads, utilities, buildings and structures, (ii) cutting of trees for trail clearing, (iii) cutting of trees for firewood, or for other domestic uses of Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of non-native or invasive species or trees that are diseased or have died naturally.

(iii) [*Optional*: Clear cutting, other than in association with permitted conversion into grassland or cropland, shall be prohibited without the written approval of the Grantee. Such approval shall take into consideration the following: i) the impact of the clear cutting on the scenic viewshed of the Property; ii) the impact on wildlife habitat; iii) the impact on water quality; iv) the health of the forest if threatened by disease, infestation, non-native or invasive species or other threat; and v) its overall impact on the conservation values of the Property. If any part of the forested portion of the Property is clear cut, it shall be allowed to revegetate naturally or planted in a mix of native hardwood and coniferous species with the intent to restore the forest to its natural state. Replanting of any clear cut areas in monocultures or homogenous stands of the same or similar species is prohibited.]

(iv) [*Optional*: **Alternative for no commercial timbering**: No timbering shall be permitted on the Property other than for the Grantor's domestic consumption except for the cutting of trees (i) which are diseased; (ii) which have died naturally; (iii) which are removed for the uses permitted in Paragraph 2 (Buildings and Structures); (iv) for trail clearing; (v) which are cleared for the creation of pasture not to exceed ten (10) acres in the aggregate; (vi) or, which were they not removed, would present an imminent hazard to human health or safety. Removal of non-

native or invasive species is permitted. It is the intent of the Grantor that the existing woodlands be maintained in their natural state except for the limited items expressly permitted in this Easement.]

**5. RIPARIAN BUFFER(S).**

To protect water quality, riparian buffer strips shall be maintained as follows:

- (i) A \_\_\_\_-foot forested riparian buffer strip shall be maintained along (the, each) edge of the \_\_\_\_\_ [*Add as appropriate*: River, Creek, perennial stream, intermittent stream, wetlands] as measured from the top(s) of the bank(s) or the centerline of the watercourse [choose one].
- (ii) Within the buffer strip(s) there shall be
  - (a) No buildings or other substantial structures constructed;
  - (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
    - (1) Removal of non-native or invasive species,
    - (2) Removal of dead, diseased, or dying trees,
    - (3) Trees posing a threat to human or livestock health or safety;
    - (4) Minimal removal of trees for the purpose of maintaining existing roads or for construction and maintenance of new permitted roads, stream crossings, dams, and any other structures permitted in subparagraph (iii) below;
  - (e) No mowing, bushhogging or disturbance of the understory or root mat;
  - (f) 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(ii) below.
- (iii) If present, livestock shall be excluded from the buffer strip(s) by fencing, except during emergencies, at permitted stream crossings, or with the approval of the Grantee. Said fencing shall be constructed to USDA Natural Resource Conservation Service standards at the time for exclusion of livestock.
- (iv) Notwithstanding the foregoing, permitted within the buffer strip(s), subject to any applicable laws and regulations, 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 strip(s);
  - (c) Construction and maintenance of up to [*quantity*] stream crossings (including improvements over the buffer strip to access crossings) for pedestrians, livestock and vehicles, which crossings are constructed to USDA Natural Resource Conservation Service standards at the time;
  - (d) Creation and maintenance of trails with unimproved surfaces;
  - (e) Removal of non-native or invasive species or dead, diseased or dying trees;
  - (f) Minimal removal of individual trees or trees posing a threat to human or livestock health or safety;
  - (g) Planting of trees, shrubs, grasses, or other vegetation;
  - (h) Dam construction to create ponds;
  - (i) Diversion of water for agricultural use on the Property. [*Optional language to be included at Grantee's discretion only for forested tracts if Grantor wishes to retain the right to conduct commercial timbering: (j) the harvest of timber in accordance with the Forest Stewardship Management Plan and pre-harvest plan described in Section II, Paragraph 4 above.*]
- (v) Should the \_\_\_\_\_ [*whatever watercourse(s)*] 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 strip(s) shall remain the same width, but move relative to the movement of the \_\_\_\_\_ [*whatever watercourse(s)*]. In such event, any buildings or structures that were outside of the original buffer strip(s) and are determined to be within the new buffer strip(s) shall not be considered in violation of these restrictions and may be maintained at such location(s) but may not be replaced at such location(s) without Grantee's prior written consent.

## 6. GRADING, BLASTING, FILLING AND MINING.

- (i) Grading, blasting, filling, excavation, dredging or earth removal shall not materially alter the topography of the Property, including any watercourses on the Property, except (a) for dam construction to create ponds, (b) for the maintenance of any ponds on the Property, (c) for restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3 (i)(f) above, (d) for erosion and sediment control pursuant to an erosion and sediment control plan, or (e) as required in the construction or maintenance of permitted buildings, structures, roads, driveways, trails, and utilities. Such maintenance shall not impair the conservation values of the Property. 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(iii) above as a condition of such approval.

(ii) Grading, blasting, filling, excavation or earth removal in excess of one acre for the purposes set forth in (a) through (d) in subparagraph (i) above require a minimum of thirty (30) days' prior notice to Grantee. Generally accepted agricultural activities, including the conversion of forest land into farmland, shall not constitute a material alteration. Surface mining, subsurface mining, dredging on or from the Property, or drilling for oil or gas on the Property is prohibited. Extraction of minerals, sand, or gravel from the Property is prohibited. *[Note to drafters: If a right to extract any of these by subsurface methods is reserved, provisions will be included in the easement to restrict the location and extent of such activity, to require such measures as may be necessary to ensure the protection of the conservation values of the Property as set forth in this Easement, and to require restoration of the affected area after completion of such extraction in conformance with Treasury Regulations Sec.1.170A-14(g)(4)(i).]*

## **7. ACCUMULATION OF TRASH.**

Additional accumulation or dumping of trash, refuse, junk or toxic materials after the date of this Easement 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.**

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 to:

- (a) Require restoration of the Property to its condition at the time of the donation;
- (b) In Grantee's discretion, to require restoration of the Property to its condition prior to a violation of the terms hereof, provided that such prior condition was in compliance with the restrictions and consistent with the purpose of this Easement;
- (c) Recover any damages arising from noncompliance;
- (d) Enjoin noncompliance by *ex parte* temporary injunction or by 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 defenses 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. Nothing shall prohibit Grantee from seeking enforcement assistance from the Commonwealth of Virginia or any political subdivision or agency thereof.

## SECTION IV – DOCUMENTATION

Grantor has made available to Grantee, prior to donating this Easement, documentation sufficient to establish the condition of the Property at the time of the gift, and documentation retained in the office of Grantee including, but not limited to, the Baseline Documentation Report (BDR), describes the condition and character of the Property at the time of the gift. 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 [*Optional addition:* including, but not limited to, the right to hunt, fish, or trap on the Property].

### 3. GRANTOR'S REPRESENTATIONS AND WARRANTIES.

Grantor represents, covenants, and warrants that (a) Grantor has good fee simple title to the Property (including the mineral rights located under the surface of the Property), (b) Grantor has all right and authority to give, grant and convey this Easement, (c) the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record), including, but not limited to, any leases, option contracts, mortgage liens, deeds of trust liens, or other liens not subordinated to this Easement, and (d) no consent of any third party is required for Grantor to enter into this Easement. [*Add if applicable:* (e) each person and/or entity signing on behalf of Grantor is authorized to do so, and/or (f) Grantor is and shall be duly organized and legally existing under the laws of the Commonwealth of Virginia and/or (g) all beneficiaries' consents have been obtained to enter into this Easement.]

### 4. ACCEPTANCE.

Acceptance of this conveyance by Grantee is authorized by its Board and is evidenced by the signature of its Executive Director.

**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 AND INTERPRETATION.**

Pursuant to the public policy of the Commonwealth of Virginia favoring land conservation, any general rule of construction to the contrary notwithstanding (including the common law rule that covenants restricting the free use of land are disfavored and must be strictly construed), it is the intent of the parties hereto that this Easement and all language contained herein shall be liberally construed in favor of the grant to effect the purposes of the Easement and the 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. 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 Easement shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.

**7. REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.**

This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property. Failure of Grantor to comply with this requirement shall not impair the validity of the Easement or limit the Easement’s enforceability in any way.

**8. NOTICE TO GRANTEE AND GRANTOR.**

For the purpose of giving notices hereunder the current address of Grantee is 27 Church Ave SW, Roanoke, VA 24011, and any notice to Grantor shall be given to the recipient at the address at which the real estate tax bill is mailed for the Property or portion thereof that is the subject of the notice and which is currently \_\_\_\_\_.

**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

**10. REVIEW AND AUDIT BY ALL APPROPRIATE TAX AUTHORITIES.**

Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from donation of this Easement, or that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.

**11. NO MERGER.**

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

**12. ASSIGNMENT BY GRANTEE.**

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.

**13. 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 gift bears to the value of the Property as a whole at that time.

**14. PERPETUAL EASEMENT.**

Grantor and Grantee intend that this Easement be perpetual.

**15. EXTINGUISHMENT.**

Should an attempt be made to extinguish this Easement in whole or in part, such extinguishment can be carried out only by judicial proceedings and only if in compliance with IRC Section 170 (h) and applicable Treasury Regulations. In a sale or exchange of the Property subsequent to and resulting from an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Section V Paragraph 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.

**16. AMENDMENT.**

Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add real property subject to the restrictions set forth in this deed to the restricted property by an amended deed of easement, provided that no amendment shall (i) be inconsistent with the public interest or the mission of the Grantee; (ii) violate any applicable federal, state, or local laws; (iii) affect this Easement's perpetual duration; (iv) be inconsistent with the documented intent of the Grantor, or any direct funding source used, if applicable; (v) permit development, improvements, or uses prohibited by this Easement on its effective date; (vi) conflict with or be contrary to or inconsistent with the conservation purposes of this Easement; (vii) reduce the protection of the conservation values; (viii) affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land"; (ix) affect the status of Grantee as a "qualified organization" or "eligible donee"; or (x) 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 [County], Virginia.

**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. RECODIFICATION AND AMENDMENT OF STATUTES AND REGULATIONS.**

This Easement cites various federal and state statutes and regulations applicable to open-space easements. In the event that such statutes or regulations are re-codified or amended, this Easement will be interpreted and enforced according to the re-codified or amended statutes and regulations most closely corresponding to those cited herein and carrying out the purposes recited herein.

**22. RECORDING.**

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

**23. COUNTERPARTS.**

This Easement may be executed in one or more counterpart copies, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto shall not affect the validity of the Easement.

**24. REVIEW FEES.**

Grantee reserves the right to charge Grantor, and Grantor agrees to pay to Grantee, a fee to reimburse Grantee for its actual and reasonable expenses (including those of its staff) incurred

for Grantee to review and approve any right that is reserved by Grantor in this Easement, and which is required by this Easement to be reviewed and approved by Grantee before being exercised, in accordance with the policies of the Grantee at the time the review is made. Grantee also 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.

**25. INDEMNIFICATION OF GRANTEE.**

Grantor hereby agrees to indemnify and hold harmless Grantee and its directors, officers, agents, volunteers, and employees (collectively, the “Indemnified Parties”) from and against any and all liabilities, penalties, causes of action, claims, demands, orders, judgments, or administrative actions against Indemnified Parties, including, without limitation, reasonable attorney’s fees arising from Grantee’s interest in the Property as Grantee under this Easement and in connection with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of the Indemnified Parties or arising out of Indemnified Parties’ physical presence on the Property; Indemnified Parties acknowledge that the Property is an active farming, forestry and agritourism property and that there are inherent dangers in connection with same; (ii) the violation or alleged violation of, or other failure to comply with, any federal, state, or local law, regulation, ordinance or requirement, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property which directly leads to a loss suffered by Indemnified Parties; (iii) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, ordinance or requirement as hazardous, toxic, polluting or otherwise contaminating or harmful to human health or the environment which directly leads to a loss suffered by Indemnified Parties unless caused solely by any of the Indemnified Parties.

**26. ADDITIONAL GRANTOR.**

*[Add Additional Grantor paragraph, when only one spouse owns the Property.]<sup>21</sup>.*

\_\_\_\_\_, *Additional Grantor, husband/wife of Grantor, joins in the execution of this deed to evidence his/her consent to the gift of easement herein made and its exclusion from the augmented estate of Grantor pursuant to Virginia Code §64.2-305 as now written or hereafter amended.*

**27. SUBORDINATION BY LENDER.**

[Subordination, if applicable]

\_\_\_\_\_, herein the Lender, is the Noteholder under a certain Deed of Trust dated \_\_\_\_\_ and recorded in the Clerk's Office of the Circuit Court of \_\_\_\_\_ County, Virginia in Deed Book \_\_\_\_\_ at Page \_\_\_\_\_, which subjects the Property to the Lender's lien. The Lender hereby consents to the terms, conditions, and

restrictions of this Easement, agrees that the lien represented by said Deed of Trust shall be held subject to this Easement, and joins in this Deed to reflect its direction to the Trustee(s) to execute this Easement to give effect to the subordination of such Deed of Trust to this Easement. The Trustee(s) join(s) in the execution of this Easement to confirm that in the event of foreclosure under the deed of trust or other sale of the property described in the deed of trust under judicial or non-judicial proceedings, the property will be sold subject to this Easement.

**28. CONSTRUCTIVE DENIAL.**

For activities or uses that are expressly permitted by the terms of this Easement only with the Grantee's approval, the Grantor's request for approval shall be in writing and shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity or use in sufficient detail to permit the Grantee to make an informed determination regarding approval or denial of the request. Such a request shall be delivered to the Grantee at least sixty (60) days prior to the anticipated start date of such activity or use, unless otherwise specified elsewhere in this Easement. Grantee agrees to use reasonable diligence to respond to such a request prior to the anticipated start date of such activity or use. Grantee's failure to respond to such a request prior to the anticipated start date of such activity or use shall be deemed a constructive denial. Because a constructive denial is not a decision by the Easement holder based on the merits of the Grantor's request, it is not final or binding on the Grantee, and the Grantor may resubmit the same or a similar request for approval.

WITNESS the following signatures and seals:

[Counterpart signature pages follow]



\_\_\_\_\_  
Grantor

\_\_\_\_\_  
Grantor

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, TO WIT:

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
20\_\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(SEAL) My commission expires: \_\_\_\_\_  
Registration No. \_\_\_\_\_

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, TO WIT:

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(SEAL) My commission expires: \_\_\_\_\_  
Registration No. \_\_\_\_\_

Accepted:  
BLUE RIDGE LAND CONSERVANCY,

By: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, TO WIT:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by David C. Perry, \_\_\_\_\_, the Executive Director of the Blue Ridge Land Conservancy.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires: \_\_\_\_\_  
Registration No. \_\_\_\_\_

[Counterpart signature page 3 of 4]

Lender:

By: \_\_\_\_\_

Its: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, TO WIT:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ [*name of officer*], \_\_\_\_\_ [*title of officer*] of \_\_\_\_\_ [*name of corporation*], a \_\_\_\_\_ [*state of incorporation*] corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires: \_\_\_\_\_  
Registration No. \_\_\_\_\_

[Counterpart signature page 4 of 4]

\_\_\_\_\_, Trustee

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, TO WIT:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, Trustee.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires: \_\_\_\_\_  
Registration No. \_\_\_\_\_