

CLARKE COUNTY  
Conservation Easement Authority  
THURSDAY – 20 May 2021 – 10:00 am  
A/B & Main Conference Room, 2<sup>nd</sup> Floor Government Center

AGENDA

1. Approval of Agenda
2. Approval of Minutes of the meeting of 15 April 2021
3. Bank Account balances
4. Campaign for the Authority
5. Discussion
  - a. Easement Complaint – Bouffault
6. Easement Donation/Purchase
  - a. Carlton Mallory – new application – appraised purchase
  - b. Doris Stimpson – easement donation
  - c. Lizzie Moon – DUR purchase
  - d. RSP Enterprises – waiting for appraisal to be redone
  - e. Lowell Pratt – donation – draft deed provided, approved by BOS
  - f. Wiseman – donation – approved by BOS
  - g. Blue Ridge Hunt – should close this year??
  - h. Staley – attorney reviewing deed
7. Adjournment - next meeting – Thursday June 17<sup>th</sup> 10 am

**CLARKE COUNTY**  
**Conservation Easement Authority**  
**draft Minutes – 15 April 2021 draft**

A regular meeting of the Conservation Easement Authority was held at 10:00 am on Thursday 15 April 2021, in the A/B/Main conference room, 2nd Floor Government Center.

**Present:** R. Buckley, W. Thomas, Terri Catlett R. Bacon  
**Absent:** P. Engel, M. Jones  
**Phone in:** G. Ohrstrom  
**Staff:** A. Teetor, R. Couch Cardillo, C. Boies, B. Stidham  
**Others:** Bill & Marcia Waite

**Agenda** On motion of Mr. Ohrstrom, seconded by Ms. Bacon, the Authority unanimously approved the agenda.

**Discussion**

**a. Easement Complaint – Bouffault**

Members had received the email from Ms. Bouffault with a copy of the complaint regarding use of a County eased property for an Airbnb was included in the packet. Bill & Marcia Waite own the property in question and the easement was recorded in 2017. Ms. Bouffault cites as Exhibit B Clarke County Code Chapter 72 – Conservation Easement Purchase Program that outlines the purpose of the Easement Program. Page 72-5 Section 72-9 outlines the requirements for the Deed of Easement and includes item D that requires each deed to include restrictions pertaining to uses and activities allowed on the parcel. Item (2) “states that the deed shall include a prohibition against commercial activities, but shall not prohibit agriculture, silviculture, horticulture or home occupations as defined in the Clarke County Zoning Ordinance.” In addition, the Easement Authority retains a Deed template that includes the required language. Members reviewed the relevant paragraph from the recorded deed for the Waite’s, detailing permitted Commercial and/or industrial uses. As indicated in the recorded deed some limited industrial or commercial activities are permitted including (iv) activities that can be conducted within permitted buildings without material alteration to their exterior appearance.

Mr. Buckley stated that he felt the Authority has done nothing wrong in regards allowing the use of the Waite property for an Airbnb. Mr. Ohrstrom agreed but opined that the Authority should ask Mr. Mitchell for a legal opinion. Ms. Jones was not present at the meeting but emailed staff prior to the meeting stating that Mr. Mitchell should be consulted. Ms. Bacon asked if any other properties held in easement were used for this purpose. Ms. Teetor stated that Dearmont Hall is another County easement used for an Airbnb. There maybe others that staff is not aware of. Mr. Buckley stated that he can think of countless rental properties that are held in easement, primarily by the Virginia Outdoors Foundation. Mr. Boies recommended contacting Mr. Mitchell as well. He was on the original email from Ms. Bouffault so he has the background information. Mr. Buckley asked the Waites if they had any questions. Mr. Waite stated that he didn’t feel that there was an issue and doesn’t expect any problems but would like to be notified when Mr. Mitchell responds.

On motion of Ms. Thomas, seconded by Ms. Bacon members requested staff to request a legal opinion regarding these two allegations to determine whether or not Airbnb operations are in violation of the easement.

**b. Suzanne Piscitelle – request for easement donation** – Ms. Teetor reported that Ms. Piscitelle has contacted her with regards to donating an easement on the parcel identified as Tax Map# 23-A-1, consisting of 20.44 acres and existing dwelling and no remaining DURs. The property is known locally as Pigeon Hill. Ms. Teetor stated that the property does not meet the criteria for donation as it only meets one of the 4 criteria. As the property is surrounded on 2 sides by property owned by Dr. Reuling, who had expressed interest in placing his land in easement, members suggested contacting him to see if he might put the 50 acre parcel in easement which would then make Ms. Piscitelle’s parcel eligible. Ms. Teetor sent a letter to the Reulings after the meeting. No response has been received to date.

**c. 2021 Easement Solicitation** – Ms. Teetor reported that she had mailed out approximately 250 letters to property owners with land over 40 acres in size with at least 2 DURs remaining. To date she had received 6 applications. Most applicants just wanted additional information. No one has followed up.

**Minutes** On motion of Ms. Thomas, seconded by Ms. Bacon, the Authority unanimously voted to approve the minutes of March 18, 2021.

**Bank Account:** Ms. Teetor reviewed the financial spreadsheets. Current fund balances show a total fund balance of \$346,327 consisting of \$102,382 in the donations account, \$215,716 in stewardship/restricted, and \$28,229 in local funds. Ms. Teetor stated that the expenses were for the photo contest winners, award ceremony, and sponsorship of the annual Virginia Land Trust Conference.

**Public Relations:** Ms. Cardillo stated that so far in 2021 there have been 36 donations totaling \$3,419. This is low but typical for this time of year. She also reported on the status of the Spring newsletter. The feature story will be the partnership with the Potomac Appalachian Trail Club, the revised DUR policy, and a plug for the summer interns.

Ms. Cardillo also asked members for thoughts on using the photo contest photos for giveaways. Mr. Buckley suggested creating window stickers for vehicles. Everyone agreed that would be a good choice as it is inexpensive and will keep the Easement Authority in the public eye. Other thoughts are tote bags with the logo and or photo, notecards continue to be popular. Ms. Cardillo said she would price out some options for consideration at the May meeting. In addition, members thought it would be nice to have a show photos. The group had discussed having it at the Barns again, but Mr. Buckley stated that Long Branch would be interested in hosting an exhibit. Members agreed this would be a great venue. He will work with Ms. Cardillo to fit it into the schedule. Ms. Teetor had one other request for inclusion in the newsletter, that being a spotlight on septic pumpout highlighting groundwater protection. Members agreed that this would be fine to include in the newsletter.

#### **Report on Applications for Easement Purchase/Donation**

**a. Doris Stimpson** – Ms. Stimpson has applied to the easement authority for approval of an easement donation. The property consists of approximately 25 acres. The property is located at 304 Nelson Road directly across from Long Branch. A site visit was conducted on April 13<sup>th</sup>. On motion of Ms. Thomas, seconded by Mr. Ohrstrom, members gave final approval for the easement donation. Ms. Catlett abstained.

**b. Lowell Pratt** – Mr. Pratt’s attorney is reviewing the draft deed of easement.

**c. Tom Wiseman** – Mr. Wiseman is working on closing his father’s estate. No action on the easement is anticipated until later this summer.

**d. RSP Enterprises** – Ms. Teetor reported that the Virginia Land Conservation Foundation, who is providing part of the grant funding for the purchase, is requiring a survey. The survey we showed the total acreage at 194 acres, previous assessment data showed 214 acres, so the appraisal will need to be redone. The goal is to close prior to June 30<sup>th</sup> in order to use expiring VDACS funds for the purchase.

**e. Blue Ridge Hunt** – Anne McIntosh stated that they plan to record in 2021.

**f. Lizzie Moon – DUR purchase** – Lizzie Moon has applied to the easement authority for approval of an easement DUR purchase. The property consists of 15.44 acres. The property is located at 773 Old Winchester Road approximately .4 miles west of Boyce. The parcel has an existing house built in 1958 and 2 remaining DURs. A site visit was conducted on April 13<sup>th</sup>. This item will be discussed in closed session.

### **Report on Applications for Easement Purchase**

On motion of Ms. Bacon, seconded by Mr. Ohrstrom the Authority unanimously approved going into Closed Session pursuant to Section 2.2-3711-A3 of the Code of Virginia, as amended, to discuss the Acquisition or Sale of Property. On motion of Ms. Bacon, seconded by Ms. Thomas, the Authority unanimously approved reconvening in Open Session. Ms. Bacon moved, seconded by Mr. Ohrstrom, to certify that to the best of the member's knowledge:

- (i) only public business matters lawfully exempted from Open Meeting requirements under Chapter 2.2-3700, et sec., of the Code of Virginia, as amended, pursuant to Section 2.2-3711-A3 of the Code of Virginia, as amended, to discuss the Acquisition or Sale of Property, and
- (ii) only such public business matters as were identified in the motion by which the Closed meeting was convened were heard, discussed, and considered in the meeting by the Authority. The vote on the above motion was:

Ms. Bacon	Aye	Mr. Buckley	Aye	Mr. Engel	Absent
Ms. Thomas	Aye	Mr. Ohrstrom	Aye	Ms. Jones	Absent
Ms. Catlett	Aye				

On motion of Mr. Ohrstrom, seconded by Ms. Thomas members voted to approve a DUR purchase of \$40,000/DUR for a total of \$80,000 for the purchase of 2 DURs on the property owned by New Moon Construction, Lizzie Moon, agent, contingent on saving the Spring House.

**Adjournment** There being no further business, Ms. Catlett moved and Ms. Bacon seconded that the Authority adjourn the meeting. The next meeting is scheduled for Thursday May 20<sup>th</sup> at 10:00 am. The motion was approved unanimously.

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Randy Buckley, Chair

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Alison Teetor, Clerk to the Authority

Fund 235 - Conservation Easement Balances

	Total Fund Balance	Donations	Stewardship/Restricted Funds Account	Local Funds
<b>SOY FY20 - Fiscal Year 2021</b>	<b>278,893</b>	<b>83,736</b>	<b>195,156</b>	<b>1</b>
July Rev/AR		1,025	166	0
July Exps/AP		0	0	0
Aug Rev/AR		325	166	0
Aug Exps/AP		-730	-2,045	-2,058
Sept Rev/AR		4,562	121	5,039
Sept Exps/AP		-2,551	-675	0
Oct Rev/AR		1,060	190	0
Oct Exps/AP		-1,868	-2,625	-790
Nov Rev/AR		6,303	47,096	803
Nov Exps/AP		-880	0	-208
Dec Rev/AR		7,350	167	22,496.74
Dec Exps/AP		-1,983	-14,399	-1,150
Jan Rev/AR		11,884	155	1,177
Jan Exps/AP		-320	-7,277	-4,000
Feb Rev/AR		140	140	0
Feb Exps/AP		-705	0	0
Mar Rev/AR		1,175	0	7,537
Mar Exps/AP		-1,746	0	0
Apr Rev/AR		7,640	0	0
Apr Exps/AP		-2,359	0	-248
YTD Rev/AR	126,717	41,464	48,201	37,053
YTD Exps/AP	49,235	13,142	27,021	9,073
Adjustments	0	0	0	0
<b>YTD FUND BALANCE (AR &amp; AP)</b>	<b>356,375</b>	<b>112,058</b>	<b>216,336</b>	<b>27,981</b>

Anticipated Easement Closings:  
Smithfield Farm TBD

**ESTIMATED YTD FUND BALANCE**      356,375      112,058      216,336      27,981

**VDACS**  
75,738.77 Expires 06/30/2021 (FY2019)  
58,333.00 Expires 12/31/2021 (FY2020)  
134,071.77  
-61,827.10  
72,244.67 AVAILABLE Estimated YTD BALANCE VDACS

FY21 Expenditure Appropriations	Appropriated	Actual Expenses	Reappropriated Balance
General Expenses	45,000	49,235	-4,235
Smithfield Farm	569,029	49,235	569,029
	614,029	49,235	0

**Clarke County:**  
Includes expenses not specifically designated to an easement (including donation, stewardship and monthly Hall, Monahan expenses).

**Emily Johnson:**  
Land Use Rollback Tax- \$5,039.31

**Emily Johnson:**  
CE Stewardship annual state funds \$46,937.95

**Emily Johnson:**  
Land Use Rollback Tax- \$802.74

**Emily Johnson:**  
Land Use Rollback Tax- \$22,496.74

	Donations	Stewardship	Local Funds
July	0.00	0.00	0.00
August	250.00 Ellen Shepard - Annual VA Land Conservation 480.00 Robin Cardillo Services for CEA July	1,400.00 Jessica Crandell-Inspections 158.70 Jessica Crandell-Willeage 136.68 Jessica Crandell-Willeage 350.00 Larry Royston Septic Service - Labor	2,057.50 Hall, Monahan, Engle-Legal svcs for July 2020
Sept	730.00 450.00 Gloria Marconi Summer newsletter 960.00 Robin Cardillo Services for CEA August 195.00 Winchester Printers - envelopes 936.07 Winchester Printers Summer printing newsletter 9.50 Purchase Power Postage	2,045.38 675.00 Dunn Land Surveys - Service	2,057.50 620.00 Hall, Monahan, Engle-Legal svcs for Aug 2020
Oct	2,550.57 560.00 Robin Cardillo Services for CEA September 350.00 Gloria Marconi Design&Prod 2020 CEA Photo 450.00 Gloria Marconi Fall newsletter 507.71 Winchester Printers CEA printing services	675.00 1,550.00 Greenway Engineering Services 1,075.00 Clarke County HD Permits	620.00 790.00 Hall, Monahan, Engle-Legal svcs for Sept 2020
Nov	1,867.71 880.00 Robin Cardillo Services for CEA October	2,625.00	790.00 207.50 Hall, Monahan, Engle-Legal svcs for Oct 2020
Dec	880.00 200.00 Gloria Marconi end of year letter 960.00 Robin Cardillo Services for CEA 822.92 Winchester Printers CEA printing services	0.00 2,500.00 Martins Pumping Service Septic 11,299.00 Simhas and michael Corp Well 600.00 Ben Sprouse Easement Insp	207.50 1,150.00 1,150.00
Jan	320.00 Robin Cardillo Services for CEA	7,276.51 Broy&Son Pump Service-Water	4,000.00 Myers & Woods Appraisal RSP Enterprises
Feb	320.00 704.90 Robin Cardillo Services for CEA	7,276.51	4,000.00
Mar	704.90 400.00 Robin Cardillo Services for CEA 18.00 CEA Birdhouse Postage 110.00 CEA Birdhouse Postage 168.48 Fly Home Birdhouses 450.00 Gloria Macroni CEA services 150.00 Warren Krupsaw prize winner 200.00 Tim Farmer Prize winner 250.00 Ellen Shepard Bronze Sponsor	0.00	0.00
Apr	1,746.48 445.00 Winchester Printers 576.00 Winchester Printers 960.00 Robin Couch Cardillo services for CEA 365.80 Winchester Printers 12.60 Postage	0.00	247.50 Hall, Monahan, Engle-Legal svcs for Apr 2020
YTD Totals	Donations 13,141.98	Stewardship 27,020.89	Local Funds 9,072.50



R O B I N   C O U C H   C A R D I L L O

May 13, 2021

Clarke County Conservation Easement Authority  
Fundraising Report  
May 2021 meeting

**Donor Statistics**

See attached Master Report

- 2021 total: \$5,514 from 49 donations

**Ongoing**

*-Summer newsletter*

- Possible stories? Smithfield?, policy on zero DURs, grant news?
- Publish in August

*-Easement Authority novelty items/giveaways*

- Logo, magnet vs. sticker (300 quantity = \$297 magnet, \$190 sticker)

*-Thinking ahead to donor reception – have it this year?*





# HALL, MONAHAN, ENGLE, MAHAN & MITCHELL

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

## ATTORNEYS AT LAW

WILBUR C. HALL (1892-1972)

THOMAS V. MONAHAN (1924-1999)

SAMUEL D. ENGLE(Retired)

O. LELAND MAHAN

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PLEASE REPLY TO:

P. O. Box 848

WINCHESTER, VIRGINIA 22604-0848

May 3, 2021

## ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

### VIA EMAIL AND U.S. MAIL

Alison Teetor  
Natural Resource Planner of  
Clarke County  
101 Chalmers Court  
Berryville, VA 22611

Re: Airbnb Activity on Conservation Easement Property

Dear Alison:

You have advised me that the Clarke County Conservation Easement Authority ("the Activity") has requested my opinion on the claim of Robina Rich Bouffault, as set forth in her March 31, 2021 letter, that the conservation easement deeded to the Authority and the County by Deed of Gift of Easement dated October 26, 2017 and recorded in Deed Book 622 at Page 584 violates Clarke County Code §75-9 (D) by virtue of Airbnb rentals of a dwelling on the property.

Clarke County Code §75-9(D), as here applicable, provides that a deed of easement to the Authority and the County "shall include standard restrictions contained in conservation easements pertaining to uses and activities allowed on the parcel, and shall include, without limitation, restrictions pertaining to: . . . (2) a prohibition against . . . commercial activities".

HALL, MONAHAN, ENGLE, MAHAN & MITCHELL

Alison Teetor

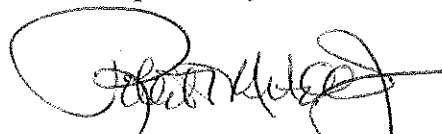
May 3, 2021

Page 2

The subject Deed of Gift of Easement does contain, in my opinion, a standard restriction contained in conservation easements restricting commercial activities. Section 2.4 of the conservation easement (Industrial or Commercial Activities) provides, as here applicable, that “Industrial or commercial activities other than the following are prohibited . . . (iii) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property and that do not diminish the conservation values herein protected; and (iv) activities that can be and in fact are conducted within permitted buildings without material alteration to their external appearance (emphasis added).” In my opinion the activities occurring under Airbnb rentals fall within the exceptions in Section 2.4.<sup>1</sup>

Therefore, it is my opinion that the Airbnb activity on the subject property does not violate County Code §72-9-D or Section 2.4 of the subject Deed of Gift of Easement and is a permitted activity under the conservation easement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert T. Mitchell, Jr.", with a large, stylized initial "R" and "M".

Robert T. Mitchell, Jr.

RTM/ks

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<sup>1</sup> My opinion applies whether or not Airbnb rentals are a “commercial activity”, and I express no opinion thereon.

MEMORANDUM

TO: Conservation Easement Authority  
FROM: Alison Teetor  
DATE: May 10, 2021  
SUBJECT: Application for appraised easement purchase – Carlton Mallory – TM# 38-A-6, 38-A-7, & 37-A-19

Carlton Mallory has applied to the easement authority for approval of an appraised easement purchase. The property consists of 3 parcels and is located on both sides of Kennel Road at the intersection with Swift Shoals Road (see attached map).

The property on the west side of Kennel Road is identified by Tax Map# 37-A-19, and consists of 43.5 acres with an existing house and zero remaining DURs. The property is listed under John W. Truban, Trustee, KHS Land Trust. The parcel was subdivided in 1981, the trust retains 2 - 2 acre parcels each with 1 DUR. One option is for Mr. Mallory to merge the 2 lots into one 4 acre parcel, retaining one of the DURs and retire 1 DUR with the easement. It is staff's preference that the 4 acres not be placed in easement so a boundary line adjustment maybe necessary to transfer the DUR to the larger tract. Another option discussed with Mr. Mallory is the option of merging the 2 acre lots back into the 43.5 acres. This is being considered by the applicant.

On the east side of Kennel Road there are 2 tracts totaling 55 acres. The first is a 50 acre parcel with 1 exemption and 3 remaining DURs, identified as tax map# 38-A-7. The second tract is 5 acres, identified as Tax Map# 38-A-6 with 1 DUR. These parcels would be merged. The 43 acre and 50 acre tract are in landuse. The applicant would like to retire 3 of the 4 remaining DURs. It is likely that Mr. Mallory will agree to retain the existing house and 1 DUR on each parcel so that the end result will be a 55 acre tract with an existing house and 1 DUR, and a 47.5 acre tract with an existing house and 1 DUR.

The parcel is zoned AOC and is in land use. Therefore the following guidelines for accepting properties for easement purchase are used:

- 1) the parcel's Property Resource Score is at least 35;
- 2) at least one dwelling unit right is extinguished by the conservation easement;
- 3) the parcel is adjacent to a parcel already under permanent conservation easement;
- 4) the property has a minimum area of 40 acres.

The Authority requires that a property meet at least two of the four guidelines for acceptance.

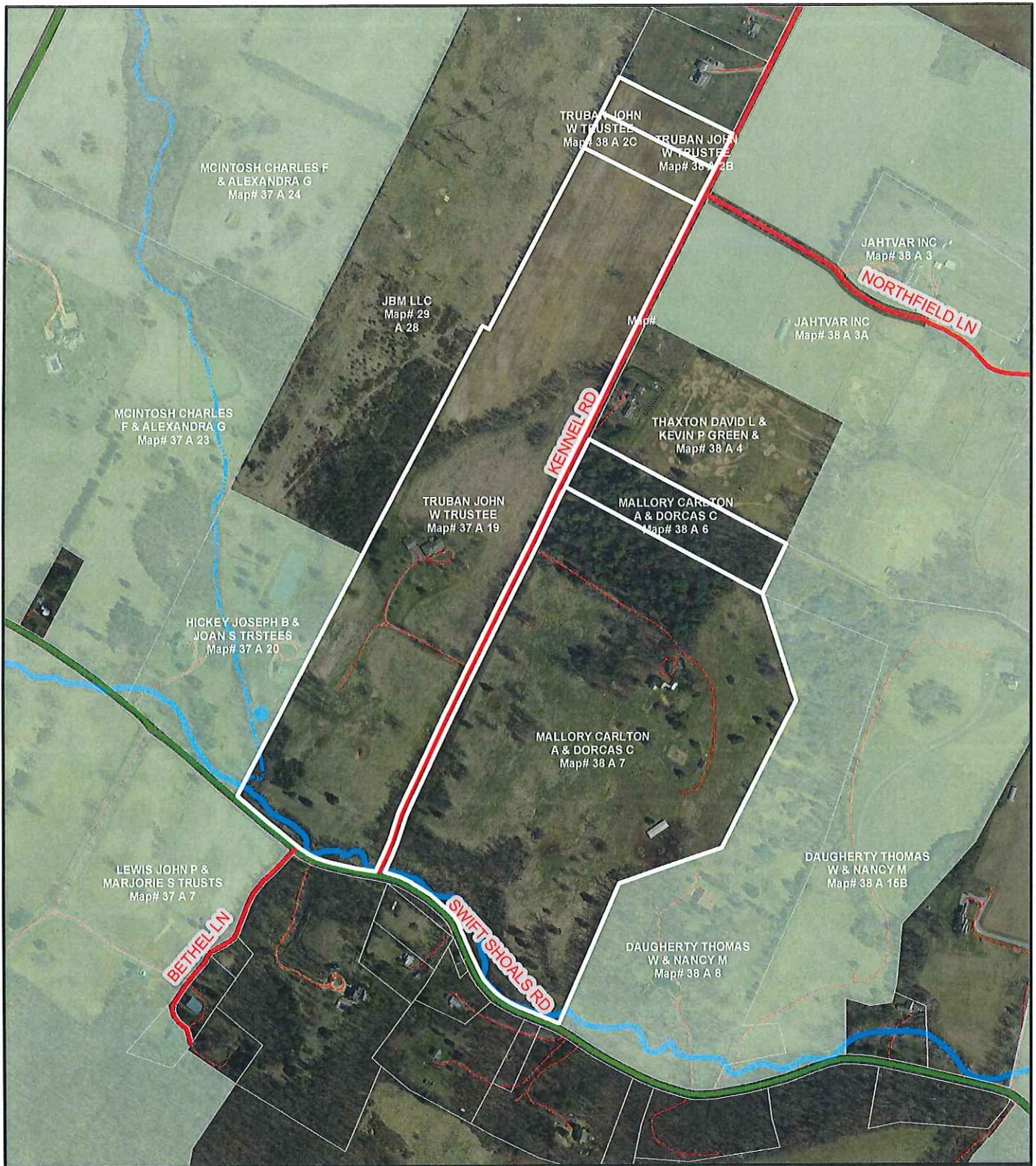
Tax Map#	acres	DURs	ext. dwl	Property Res. Score	land use	#criteria
37-A-19	43.5	0	1	64	yes	4
38-A-7	50	3	1	87.23	yes	4
38-A-6	5	1	0	48.77	no	3

The properties meet at least 3 of the 4 criteria by scoring over 35, being next to an adjacent easement, and giving up at least 1 DUR. Except for the 5 acre parcel both are over 40 acres.

Points were given for retiring 3 of the 4 remaining DURs, being next to existing easements, having a perennial stream (Long Branch), and having frontage on a scenic byway.

Funding sources include the Federal ALE grant, Virginia Land Conservation Fund, and VDACS, in addition to local funding. A preliminary appraisal will be completed to determine the value for grant application purposes.

**Recommendation:** Give preliminary approval for the easement purchase and schedule a site visit.



**Properties owned by Carlton Mallory**

**Location Map**



April 20, 2021  
Clarke County GIS



- Conservation Easement
- Public Road
- Scenic Road
- Private Road
- Intermittent Stream
- Perennial Stream



MEMORANDUM

TO: Conservation Easement Authority  
FROM: Alison Teetor  
DATE: May 11, 2021  
SUBJECT: Application for easement donation – Lowell Pratt

Lowell Pratt has applied to the easement authority for approval of an easement donation. The properties are located at 2683 Mt. Carmel Road approximately 6/10 of a mile north of the intersection with Calmes Neck Lane. The County records show 4 parcels totaling 148 acres with 11 DURs. Please note that the deed of easement has a higher acreage – 180 acres so this needs clarification. The applicant would like to merge the parcels and retire 9 of the 11 remaining DURs. The parcels are primarily forested.

The parcels are zoned FOC and are not in use value taxation but are eligible, therefore in accord with the Commissioner of Revenue’s requirements, then a donation may be considered if at least two of the following four guidelines are met:

- 1) the parcel’s Property Resource Score is at least 35;
- 2) at least one dwelling unit right is extinguished by the conservation easement;
- 3) the parcel is adjacent to a parcel already under permanent conservation easement;
- 4) the property has a minimum area of 40 acres.

Tax Map#	acres	DURs	ext. dwl	Property Res. Score	land use	#criteria
31-A-16	19.75	2	0	39.49	no	2
31-A-16A	15	2	0	39.46	no	2
31-A-16B	90	4	0	54.33	no	3
32-A-29	23	3	0	43.51	no	2

In reviewing the parcels, all meet at least 2 of the 4 criteria. As indicated above, the applicant will merge the parcels into 1 with 2 DURs remaining that will be placed on the property identified by Tax Map# 32-A-29 off of Mt. Carmel Rd. Points were primarily given for retiring the DURs. A site visit was conducted January 19<sup>th</sup>.

Mr. Pratt has agreed to merge the properties so that we don’t have the issue of a parcel with zero DURs. A draft deed was prepared and reviewed by the applicants attorney. The attorney essentially rewrote the deed but the content and intent seems the same as our template. The main changes are the inclusion of specific language to allow for a farm winery/brewery/distillery (w/b/d). A copy of the draft is included in the packet. Mr. Mitchell reviewed the sections highlighted in yellow on pages 15 and 35 and had no issues. I spoke with Mr. Stidham and he suggested the following changes to limit commercial activity resulting from a potential winery:

- a) require a 200’vegetation buffer around property boundary – no structures, harvesting up to 50% of crown cover if cleared as part of a forest management plan.
- b) limit w/b/d use to a tasting room located on the 23 acre parcel or within a second building envelope

- c) and/or leave the 23 acre parcel out of the easement
- d) Staff also contacted VOF to identify any restrictions they have placed on wineries on eased properties. Ms. Leslie Grayson, Deputy Director of Policy and Acquisitions stated:

*“There are aspects of the winery/brewery use that seems better addressed by local ordinance and special exception permits. The industry is continually changing and of course the easement is not able to adjust in the same way.*

*I would focus only on the absolutes and be clear. No building bigger than x. no building site within x.*

*You could say that the raw produce must be grown on site or some percentage but that needs to be easily measured/observed/understandable.*

*You probably need to think as far out in future as possible as to what and how you want to address.*

*It used to be wineries, now it is breweries, distilleries, cideries, etc..*

*So we are trying to focus less on the use and more on the infrastructure required and the impact to the land.”*

I also spoke to Erika Richardson, Assistant Director of Stewardship who reiterated what Ms. Grayson stated.

In summary there are several issues to be addressed:

- 1) size and number of buildings
- 2) location of buildings
- 3) amount of allowable impervious surface
- 4) amount of tree clearing needed to establish growing area – grapes, hops
- 5) limits for events

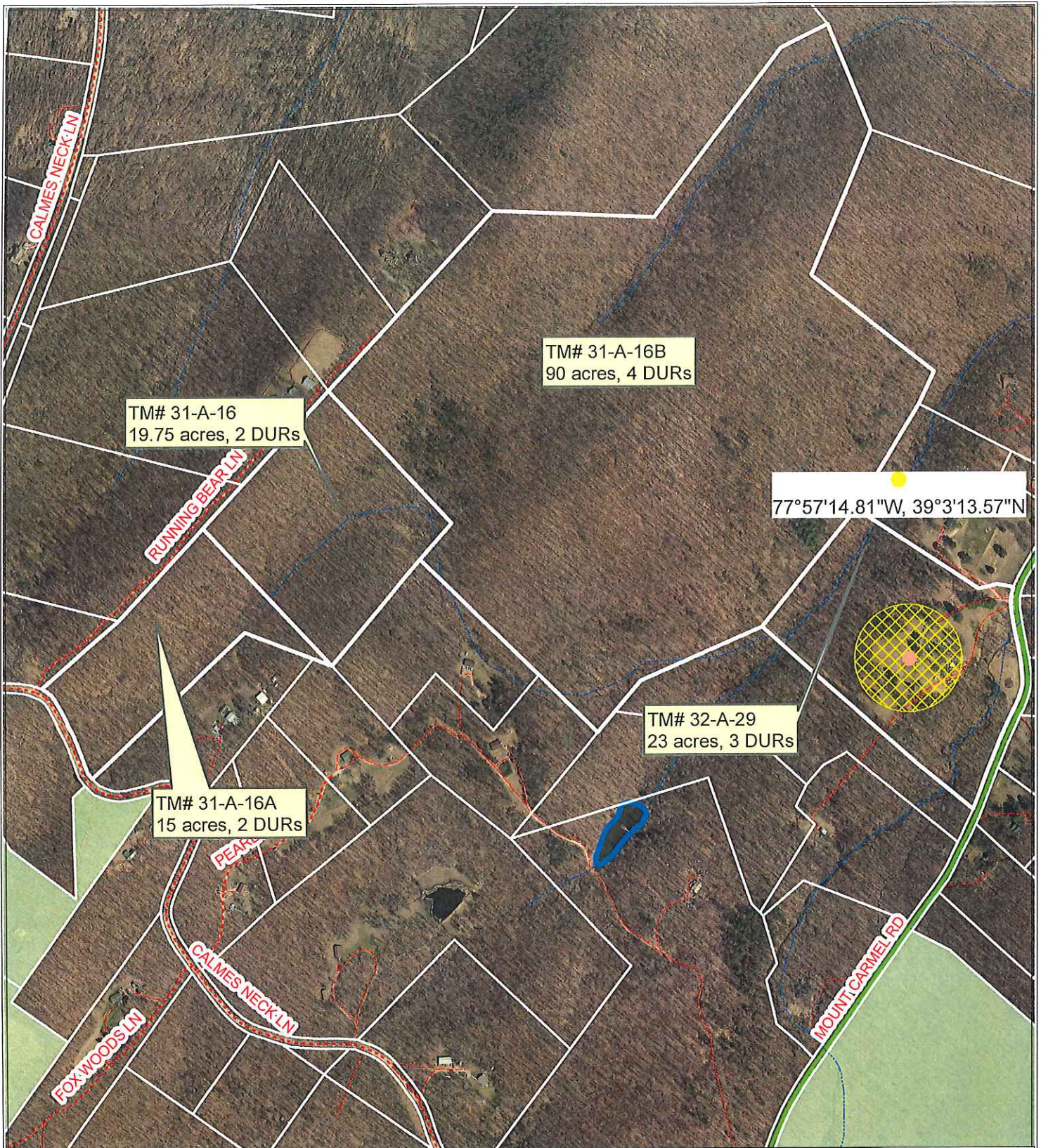
Staff recommendation:

- 1) leave as shown in deed – approval needed for structures > 4,500 sq ft. approval is based on visibility from the road or adjoining properties;
- 2) consider identifying a second and/or third building envelope for the agricultural structures, structures such as run in sheds can be located outside of the building envelopes;
- 3) currently the amount of impervious surface permitted is 1% of the property or approximately 78,000 sq. ft. (2 acres), staff recommends reducing this to ½% or 43,560 sq ft (1 acre)

4) Staff is concerned about potential tree clearing but was reminded by VOF that w/b/d are agriculture so unless there is a visibility or other concern regarding removal of the forest, it should be permitted. Staff recommends a 200’ no clear buffer along forested property lines.

- 5) the applicant has agreed to limit events to:

“temporary or seasonal activities or events that do not harm the agricultural use, future viability, and related conservation values of the Property herein protected, upon review and prior written approval of Grantee, however such activities that exceed 150 persons attending an event for compensation occurring for more than a total of five event days in a calendar year, are prohibited.” Staff agrees that this is reasonable.



Lowell Pratt Properties  
147.75 acres, 11 DURs

Location Map



Clarke County GIS  
December 8, 2020

400 200 0 400 Feet



- Intermittent Stream
- Perennial Stream
- Scenic Byway
- Railroad
- Public Road
- - - Private Road





1/18/18

Prepared by and return to:  
Robert T. Mitchell, Jr., Esquire  
P. O. Box 848  
Winchester, VA 22604-0848

TAX MAP NO: 32-A-29

Tax Map #'s:			
32-A-29	31-A-16	31-A-16A	31-A-16B

Exempt from recordation taxes under Virginia Code §58.1-801 pursuant to §58.1-811 (A)(3)

DEED OF GIFT OF EASEMENT

**THIS DEED OF GIFT OF EASEMENT** (~~“this (the “Easement”)~~), dated the \_\_\_ day of \_\_\_\_\_, ~~2---~~2021, by and between ~~LOWELL DORRANCE~~**Lowell Dorrance PRATT** and ~~MARY CHRISTINE~~**Mary Christine PRATT**, (~~“husband and wife, Grantors (individually and collectively, “Grantor”); the~~**THE BOARD OF SUPERVISORS OF COUNTY OF CLARKE, VIRGINIA**, (~~“ of the Commonwealth of Virginia, a body corporate and politic (the “County”);”)~~) and the **CLARKE COUNTY CONSERVATION EASEMENT AUTHORITY** (~~“ an authorized public body and a political subdivision of the Commonwealth of Virginia (the “Authority”), (“Grantees (individually and collectively, the “Grantee”); parties of the second part (the designations “”); and~~ **Teresa A. HARRIS and Michael S. JONAS, Trustees**, either of whom may act, to be indexed as additional grantors for purposes hereof (the **“Trustees”**) All references to Grantor” and “Grantee” refer to the Grantor and Grantee and herein shall include their respective successors and assigns); Farm Credit of the Virginias, (the **“Bank”**), party of the third part; and **TERESA A. HARRIS and MICHAEL S. JONAS, Trustees** (the **“Trustees”**) party of ~~ACA~~ has joined herein solely to indicate its consent and direction to the ~~fourth part~~ Farm Credit Trustees as set forth in Section 6.22.

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**WITNESSETH:**

WHEREAS, Grantor is the owner in fee simple of real property situated on Mount Carmel Road (Route 606) in Clarke County, Virginia, containing in the aggregate 180.84 acres as further described in attached SCHEDULE A (the "**Property**"), and desires to give and convey to Grantee a perpetual conservation and open-space easement over the Property; and

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~~WHEREAS, the County and the Authority are authorized by the Open Space Land Act to accept, hold, and administer open space easements and possess the authority to accept and are willing to accept this easement under the terms and conditions hereinafter set forth; and~~

WHEREAS, Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, Section 10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the "**Open-Space Land Act**"), declares that the preservation of open-space land serves a public purpose by the ~~following: preservation of open-space land serves a public purpose by~~ curbing urban sprawl, preventing the spread of urban blight and deterioration; and encouraging more economic and desirable urban development; ~~and~~ helping provide or preserve necessary park, recreational, historic, and scenic areas, and conserving land and other natural resources; ~~and authorizing~~ authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land; and

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~~WHEREAS, pursuant to Sections 10.1-1700 and 10.1-1703 of the Open Space Land Act, the purposes of this Easement include retaining and protecting open space and natural resource values of the Property, and limiting division, residential construction, and commercial and industrial uses contained in Section III, ensuring that the Property will remain perpetually available for agriculture, livestock production, forest or open space use, all as more particularly set forth below; and~~

~~WHEREAS, this Easement is granted "exclusively for~~ WHEREAS, Grantor intends to qualify the grant of the restrictions in this Easement and the associated rights given

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to the Grantee herein as a “qualified conservation contribution” under Internal Revenue Code (“IRC”) Section 170(h)(2)(c); and

WHEREAS, IRC Section 170(h)(1) defines a “qualified conservation contribution” as a contribution (A) of a “qualified real property interest”, (B) to a “qualified organization”, (C) exclusively for “conservation purposes”; and

WHEREAS, IRC Section 170(h)(2)(C) defines the term “qualified real property interest” as “a restriction (granted in perpetuity) on the use which may be made of the real property” and an easement granted in perpetuity qualifies as a qualified real property interest under this section, and Section 1.170A-14(b)(2) of the Treasury Regulations (the “Regulations”); and

WHEREAS, the County is the governing body of a political subdivision of the Commonwealth of Virginia, and, accordingly, is a “qualified organization” and an “eligible donee,” as provided in IRC Section 170(h)(3) and in Section 1.170A-14(c)(1) of the Regulations; and is authorized to hold this Easement pursuant to the provisions of Section 10.1-1700(iii) of the Open Space Land Act, and is willing, as acknowledged by the signature of its Administrator below, to accept this Easement over the Property; and

WHEREAS the Authority is a public body authorized and created by the County pursuant to Section 15.2-5600 et seq of Chapter 56 of Title 15.2 of the Code of Virginia, as amended (the “Public Recreational Facilities Authorities Act” or “PRFCA”), a political subdivision of the Commonwealth of Virginia pursuant to Section 15.-2-5604 of the PRFCA, and, accordingly, a “qualified organization” and an “eligible donee,” as provided in IRC Section 170(h)(3) and in Section 1.170A-14(c)(1) of the Regulations; and

WHEREAS, the Authority is incorporated “to acquire and/or receive conservation easements, by purchase, gift, or tother conveyance; to hold and enforce conservation easements conveyed to it” pursuant to Section 12.1 E of Chapter 12 of the Code of Clarke County, Virginia 1997, as amended; and authorized under Section 15.2-5604.3 of the PRFCA to “acquire, purchase, . . . operate and maintain projects” and to “acquire by gift or purchase lands or rights in land,” and the term “projects” is defined by Section 15.2-5601 of the PRFCA to include “conservation projects”, and specifically, “the holding of conservation easements”; and

WHEREAS, . this Easement is granted “exclusively conservation purposes” under the IRC §170Section (h)(1)(C) because ~~it effects~~its purposes include “the preservation of open

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space (including farmland and forest land)” under IRC Section 170(h)(4)(A)(iii).~~Specifically, the (I) and (II) because such~~ preservation ~~of open space on the Property is~~ both “for the scenic enjoyment of the general public,” and “pursuant to clearly delineated ~~state and Federal, State, or~~ local governmental conservation ~~policies~~ policy and will yield a significant public benefit;~~and—~~” and, pursuant to the provisions of IRC Section 170(h)(5)(A), the terms of this Easement provide for the protection of these conservation purposes in “perpetuity” pursuant IRC Section 170(h)(5)(A) and its terms prohibit surface mining by any method pursuant to IRC Section 170(h)(5)(B); and

WHEREAS, this ~~open space easement~~ 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 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 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. 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, 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. Chapter 32, of Title 58.1, §§58.1-3230 through 58.1-3244 of the Code of Virginia, which authorizes special use-value tax assessments for real estate devoted to agricultural, forestal, horticultural, and open-space use;
- ~~—~~e. The Agricultural and Forestal Districts Act, Chapter 43 of Title 15.2, §§15.2-4300 through 15.2-4314 of the Code of Virginia, which encourages the conservation, protection, development, and improvement of agricultural and forestal lands for the production of food and other agricultural and forestal products and as valued natural and ecological

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resources that provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes and as an economic and environmental resource of major importance.

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(ii) Land use policies of the County of Clarke as delineated in:

~~a. its the 2013 Comprehensive Plan to which plan the restrictions set forth adopted by the Board of Supervisors of the County on March 18, 2014, as revised through December 15, 2020 (the "Comprehensive Plan"), and the preservation of the Property in this deed conform and that contain easement specifically conforms to the following goals, objectives and strategies:policies to "protect and preserve and protect the agricultural, natural, and open space character of unincorporated areas", "encourage agricultural operations and productivity and ensure the preservation and availability of agricultural lands for the continued production of crops and livestock", "preserve the natural beauty and protect the ecology of forested areas to ensure that development in those areas is in conformance with their environmental limitations", and "protect natural resources, including soil, water, air, scenery, and fragile ecosystems", the County hereby finding that this Easement is consistent with its Comprehensive Plan; and~~

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~~a. b. its tax code "Forested areas for their value as natural habitat and recreation, ability to enhance air and water quality, prevent soil erosion, and as a source of renewable wood products," (Chapter II-10, Objective 5.3(b)).~~

~~b. "Land adjacent to the Appalachian Trail," (Chapter II-10, Objective 5.3(b)).~~

~~c. "Lands that provide viewsheds for the County's gateways, main roads, and scenic byways" (Chapter II-10, Objective 5.3(g)).~~

~~d. Lands "visible from the Appalachian National Scenic Trail, the Shenandoah River, and other Public Lands" (Chapter II-4, Objective 2, Policy 6).~~

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~~WHEREAS, Article VII, 11-23 of the Clarke County Code, which specifically further recognizes the importance of the continued preservation of the Property as open space, forestal, and agriculturalforest land by providing special assessment of the Property for real property tax purposes; and~~

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WHEREAS, the Property has significant natural resource and open space values sought to be protected by the forgoing public policies, including:

- (i) the Property contains approximately 180 acres of forested land; and
- (ii) the Property fronts on Mount Carmel Road (Route 606) a state designated scenic byway and contributes to the scenic views enjoyed by the public therefrom; and
- (iii) The Property ~~adjoins and~~ is within the viewshed of the Appalachian National Scenic Trail and contributes to the scenic views therefrom.

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WHEREAS, at the time of execution of this Easement, the Property consists of 180.84 acres, more or less, and has allocated to it an aggregate of eleven (11) unused Dwelling Unit Rights (DURs) pursuant to Section 3-D-2 of the Clarke County Zoning Ordinance, and zero (0) Exceptions pursuant to Section 3-D-4. ~~Two~~Only two (2) DURs and zero (0) Exceptions will remain with the Property; nine (9) DURs are being terminated by the Grantor incidental to this Easement; and

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~~WHEREAS, the property fronts on Mount Carmel Road (Route 606) a state designated scenic byway and contributes to the scenic views enjoyed by the public therefrom; and~~

WHEREAS, the purposes of Grantor and the Grantee (the “**Conservation Purposes**”) are to protect in perpetuity the open-space values identified in the previous paragraphs, including, but not limited to, conserving and protecting forest lands as natural resources, protecting rural agricultural lands by prohibiting further subdivisions, protecting water quality, protecting scenic views from the Appalachian National Scenic Trail and the State’s Scenic Byways (the “**Open-Space Values**”) and intend to accomplish such protection by restricting the use of the Property as hereinafter set forth; and

WHEREAS, the Grantee has determined that this Easement will preserve and protect in perpetuity the Open-Space Values, which preservation and protection will advance the public purposes established in its Comprehensive Plan; and

WHEREAS, this Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in Section I; and

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WHEREAS, Grantor and Grantee desire to protect in perpetuity the ~~conservation values~~Open Space Values of the Property as specified in Section I by restricting the use of the Property as set forth in Section III; and

WHEREAS, Grantee has determined that the restrictions set forth in Section III (the **“Restrictions”**) will preserve and protect in perpetuity the ~~conservation values~~Open Space Values of the Property, which values are reflected in Section I; and

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~~WHEREAS, Grantee has determined that the Restrictions will limit use of the Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by the Easement; and~~

WHEREAS, Grantee, by acceptance of this Easement, designates the Property as property to be retained and used in perpetuity for the preservation and provision of open-space land pursuant to the Open-Space Land Act.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant, and convey to Grantee a conservation and open-space easement in gross (Easement) over, and the right in perpetuity to restrict the use of, the Property, ~~the Property~~ being more particularly described in SCHEDULE “A”, which is attached hereto and made a part hereof, and consists of 180.84 acres located in Chapel Magisterial District, Clarke County, Virginia-;

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The Property is shown as Tax Map No. 32-A-29, 31-A-16, 31-A-16A, and 31-A-16B among the land records of the County of Clarke, Virginia. Even if 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.

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**SECTION I -PURPOSE**

~~—The conservation purpose of this Easement is to preserve land for agricultural use, forestal use, natural habitat and biological diversity, watershed preservation, preservation of scenic open space, and to protect the conservation values of the Property in perpetuity by imposing the restrictions on the use of the Property set forth in Section III and providing for their enforcement in Section IV. The conservation values of the Property are its open space, scenic, natural values and its values as land preserved for open space and rural uses including agriculture, livestock production, and forestry. The limitations on division, residential construction, and commercial and industrial uses contained in this Easement are to ensure that the Property will remain perpetually available for agricultural, forestal, and/or open space uses as may be more particularly described herein. Grantor covenants that no acts or uses that are inconsistent with the conservation purposes of this Easement or the conservation values herein protected shall be conducted on the Property.~~

Pursuant to the Conservation Purposes of this Easement, the terms herein set forth are intended to: (i) preserve the Open-Space Values, and other significant conservation interests (to the extent that it is not necessary to impair such other interests to protect the Open-Space Values), and (ii) restrict the use of the Property to those uses that are consistent with such Open Space Values and interests.

The uses and activities expressly permitted by this Easement have been determined by the Grantee to be consistent with the Conservation Purposes subject to the general condition, in each case, that the permitted use and activity (“use” and “activity” as used in this Easement shall be interchangeable and shall be deemed to have the same meaning) is undertaken in a manner consistent with the Conservation Purposes, and any other specific restriction or condition applicable to such use set forth below.

## SECTION II – DEFINITIONS

For purposes of this Easement, the following terms shall have the meanings provided below, or as expressly provided in the body of the Easement. Any term that has not been expressly defined herein shall be defined in a manner consistent with the interpretation of contracts pursuant to the laws of the Commonwealth of Virginia and/or the Clarke County



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Zoning Ordinance and shall be interpreted in accordance with the provision of paragraph 6.7 herein.

**Access Easement:** ~~Permission~~Grant of a right or permission by landowner to certain individuals, but not the members of the general public, to travel across his or her land to get to another property or a road.

**Agricultural:** Pertaining to Agriculture.

**Agriculture:** Includes the following activities: horticulture, floriculture, plant nurseries, Animal Husbandry, growing and harvesting hay, hops, grains, and other crops on the Property, and Viticulture, mowing and clearing necessary to maintain open fields and fence lines, and access for farm equipment, together with such other activities as are necessary to the foregoing activities; and leasing the Property to others for such activities but subject to the terms of this Easement. The term "Agriculture" as used herein does not include activities that are expressly prohibited herein.

**Agricultural Structure:** A Structure, including a Building, used primarily to support agricultural activities permitted on the Property. A non-exhaustive illustrative list of Agricultural Structures includes: barns, stables, run-in sheds, ~~corrals, riding rings, silos,~~ hay-sheds, farm equipment and storage sheds, livestock watering facilities, above and below ground irrigation facilities, and Structures for storing and/or selling produce and/or products primarily raised and/or made on the Property, ~~corrals, riding rings, and silos. (including forestry products).~~

**Animal Husbandry:** The breeding, raising, and/or caring for farm animals for non-commercial or commercial purposes.

**Blasting:** The act of blowing up or breaking apart of the surface or subsurface of the earth with explosives or percussive force.

**Brewery:** A Building, which may include a Tasting Room, including all necessary equipment, storage space, packaging, bottling, and distribution facilities; for the production of beer from hops, and the sale of beer for consumption on or off from the Property; provided that at least fifty (50) percent, by volume, of beer sold shall be manufactured from hops grown on the Property.

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**Building:** An assembly of materials having one (1) or more stories and roof, designed primarily for the shelter, support or closure of animals or property of any kind.

**Commercial Use:** Non-residential and non-Agricultural for-profit uses (but excluding activities on the Property to protect or enhance the ~~Conservation~~Open Space Values undertaken in exchange for grants from governmental or tax-exempt organizations, or as part of a governmentally sponsored mitigation project for which Grantor may, or may not, receive payment).

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**Current/ Currently:** Existing or occurring on the Effective Date.

**Dredging:** The act of cleaning out or scooping out mud, weeds, dirt, rubbish, or other materials from beneath the surface of a body of water of any size.

**Driveways:** Way or place in private ownership and used for vehicular travel and parking by the owner and those having express or implied permission from the owner but not by other members of the general public.

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**Day or Days:** Shall mean calendar days.

**Earth Removal:** The gathering, collecting or accumulation through the use of mechanical means of surface or subsurface materials including topsoil, subsoil, rock or any other form of naturally occurring material that covers the Property.

**Effective Date:** The date and time that this Easement is first recorded in the Office of the Clerk of the Circuit Court of Clarke County, Virginia.

**Equine Activities:** Equine breeding, training or teaching activities, rides, trips, hunts, or other equine activities of any type however informal or impromptu and including those that are sponsored by an equine activity sponsor.

**Event:** Any assembly, attraction, ceremony, event, festival, gathering, circus, carnival, or show at which rides, games, competitions, attractions, music, dance, or other performing arts are engaged in by participants or provided as entertainment by professional or amateur performers or by prerecorded means that involves the raising, charging, donating or re-couping of funds.

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~~**Farm Buildings:** Buildings used primarily to support Agricultural activity or Forestry permitted on the Property.~~

**Forestry:** The growing, planting, managing, and harvesting of trees.

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**Grading:** The movement or rearrangement of topsoil and subsoil through mechanical means.

**Grantees:** The original Grantees herein, or either of them, and any and all of Grantees' successors in title to this Easement.

**Grantors:** The original Grantors herein, or either of them, and any and all of Grantors' successors in title to the Property or any portion thereof or interest therein.

**Ground Area:** The square footage of a Building or Structure, as measured at the exterior of the foundation (perimeter load-bearing) walls and/or piers or, if there are no foundation or piers, the square footage of ground covered by such feature; and excluding unenclosed decks, patios, porches, roads, walkways, pools, tennis courts, and incidental improvements such as fencing and fence posts, entry gates, well and utility housings, utility poles, sprinklers, and mailboxes.

**Impervious Coverage:** The area measured in square footage that is beneath an impervious surface.

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**Impervious Surface:** Surface or material that does not allow water to percolate into the soil on the Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or any area covered by overhanging roofs. This limitation does not include gravel roads, ~~Public Roads~~ or other ~~roads owned and controlled~~ permeable paving materials approved by parties with rights superior to those rights conveyed to Grantee by this Easement.

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~~**Improvement:** Any permanent or semi-permanent work or structure which tends to increase the value of the Property or to extend the useful life of any existing structure on the Property.~~

~~**Improvements:** Man-made additions to the Property and/or man-made changes in topography, excluding Structures, Roads and Utilities, as defined herein, but including maintenance of berms, ditches, culverts (associated with permitted Roads), ponds, watering troughs, fountains, fencing, cattle guards, pipes, pipelines, mailboxes, gates, gate posts, and signs, as well as unroofed riding rings, hunting stands, blinds, decks and patios that constitute a Permeable Surface (defined below). Agricultural activities, such as plowing, mowing, planting hay or crops, and the planting of trees and other vegetation, shall not be deemed "Improvements."~~

**Industrial Use:** Feedlots and Abattoirs, mining, milling, and heavy manufacturing, and uses tending to injure the Open Space Values by reason of noxious odor, fumes, dust, smoke, vibration, or creation or use of hazardous materials beyond that required by normal Residential or Agricultural uses.

**Mining:** The process of prospecting, discovering, extracting, removing or processing minerals or other materials from a surface or subsurface location.

**Open Space:** Land valued for natural processes and wildlife, agricultural and forest production, aesthetic beauty, active and passive recreation, and other public benefits. Such lands include working and natural forests, rangelands and grasslands, farms, ranches, parks, stream and river corridors, and other natural lands within rural and suburban areas.

**Permeable Surface:** The condition of soil or material on the surface of the earth that allows the free movement of water.

**Private Road:** A regularly used path or way, whether paved or unpaved, crossing any part of the property that has not been dedicated for public use, and is not open to use by the public.

**Public Road:** An area intended for traffic of any kind that is open to use by the public for travel.

**Residence:** Any Building used for a Residential use.

**Residential Uses:** Activities occurring within a group of buildings, a single building, or a portion thereof designed, used or intended for use as a complete, independent living facility and which includes permanent provisions for living, sleeping, eating, cooking and sanitation.

**Riparian Buffer:** Area of perennial, long-lived vegetative cover (grass, shrubs, trees, or a combination of vegetation types) established adjacent to and up-gradient from watercourses or water bodies to improve water quality.

**Road:** A Public Road or a Private Road.

**Stream Crossing:** A man-made improvement intended to permit passage across or through a body of water of any size.

**Structure:** Anything constructed or erected on the Property, the use of which requires clearing, material grading, and/or a permanent location on the ground or attachment to something having a permanent location on the ground such as a Building, fence, bridge,

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tower, windmill, pool, septic tank, tennis court, ball field, or an equestrian riding ring, but excluding Improvements, Roads, and Utilities.

**Subsurface Mining:** The process of prospecting, discovering, extracting, removing or processing minerals or other materials from a subsurface location regardless of where any machinery to facilitate the mining may be located.

**Surface Mining:** The process of prospecting, discovering, extracting, removing or processing minerals or other materials from a surface location.

**Tasting Room:** An area devoted to the tasting of wine, hard cider, or beer by paying and non-paying guests but excluding the provision of meals except that accessory food sales related to the beverage tasting occurs.

**Timber harvesting:** The commercial practice of felling, cutting or trimming trees for on-site or off-site processing.

**Trail:** An unimproved regularly used path or way, crossing any part of the property that is not designed for motorized traffic.

**Utility:** Structures or facilities used for the production, treatment, storage, and/or transmission of power (e.g., electricity), fuel (e.g., oil or natural gas), communications (e.g., cellular, satellite, radio, television), water, including wells, water storage tanks, sewage or septic systems, or other similar product or service, equipment used to harness natural renewable energy sources, such as sunlight, wind, water, or biomass. The definition includes the associated structures which accompany the utility.

**Winery:** A Building, which may include a Tasting Room, all necessary equipment, storage space, packaging, bottling, and distribution facilities; for the production of alcoholic beverages from grapes or other fruit (such as wine, apples or pears), and the sale of such wine or cider for consumption on or off from the Property; provided that at least fifty (50) percent, by volume, of wine or cider sold shall be manufactured from fruit grown on the Property.

### **SECTION III – RESTRICTIONS**

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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:

### 3.1 DWELLING UNIT RIGHTS.

The Property currently has eleven (11) unused dwelling unit rights (DURs) pursuant to Section 3-D-2 of the Clarke County Zoning Ordinance, and zero (0) Exceptions pursuant to Section 3-D-4 of the Clarke County Zoning Ordinance. Pursuant to Section 3-D-3 of the Clarke County Zoning Ordinance, the Grantor does hereby voluntarily and permanently terminate nine (9) unused DURs on the Property, leaving two (2) unused DURs and zero (0) Exceptions remaining on the Property.

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### 3.2 DIVISION.

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~~A.~~ **A. Subdivision Prohibited.**

Division of the Property is prohibited. The Property shall not be sold, conveyed, or devised except as a whole.

B. Lot consolidation within the Property is permitted as described on the Composite Plat of Merger made by Dunn Land Surveys, dated \_\_\_\_\_, 2021, and, which plat is to be recorded immediately following this Deed of Gift of Easement (herein "the Dunn Plat").

~~C.~~ **C. Boundary Line Adjustments.**

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~~Boundary~~ line adjustments with adjoining parcels of land are ~~permitted~~ prohibited except by an amendment to this Easement pursuant to Section 6.16, and only provided that the following conditions are met:

(i) ~~(i)~~ Grantee shall be made a party to the deed of boundary line adjustment.

(ii) The entire adjacent parcel is subject to a recorded open-space easement and any portion of the Property transferred and incorporated into the adjacent parcel remains expressly subject to the restrictions

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set forth in this Easement ~~or a more restrictive conservation easement approved by Grantee; and,~~

~~(iii) — (ii) The proposed boundary line adjustment shall have been reviewed and approved not result in advance the granting of any rights or the release of any Restrictions on any parcels of land whose boundaries are adjusted.~~

~~(iv) The boundary line adjustment shall not adversely affect, be inconsistent with or conflict with, diminish, impair or interfere with the Open Space Values protected by the Authority, this Easement, or protected by any easement encumbering the other parcel(s) which are party to such boundary line adjustment.~~

(v) Any consent by Grantee to a boundary line adjustment under this Section shall not curtail or infringe upon any lender's independent right, under any deed of trust, or any modification or extension thereof, now or hereinafter recorded against the Property, to approve or deny approval of any such boundary line adjustment involving the Property and any such lender shall be a required party to any boundary line adjustment deed as evidence of its approval.

**C. Public Road Improvements.**

The acquisition of a *de minimis* portion of the Property adjacent to Route 606 (Mount Carmel Road) for minor ~~road improvements~~ **Public 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, which approval shall be contingent upon the project including all reasonable actions, such as landscaping or topographic ~~improvements~~ **Improvements**, to minimize the project's impact on the Property and prevent harm to its ~~conservation values~~ **Open Space Values**. Grantor reserves its separate right to approve such acquisition. Use of the Property for such a project is limited to minor improvements to Route 606 (Mount Carmel Road) in its present alignment, including, but not limited to, maintenance,

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correction, repair, or upgrading of the existing public road. Minor road ~~improvements~~Improvements include, but are not limited to, the addition or renovation of ditches, box culverts, drainage swales, side slopes, curbing, re-grading, or enhancements, such as pull-offs, bike lanes, and restoration projects. For the purpose of this paragraph, “minor road ~~improvements~~Improvements” does not include the addition of new travel lanes, except bike lanes.

### 3.3 ~~BUILDINGS AND STRUCTURES~~, ROADS, AND UTILITIES

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#### A. Structures

No ~~buildings~~Structures or ~~structures~~Improvements other than the following are permitted on the Property: (any permitted Structure or Improvement may be expanded, demolished, and replaced subject to the restrictions of this Easement):

##### (i) ~~(i)~~ Dwellings.

The following Dwellings are permitted on the Property:

(a) One single-family ~~dwelling~~dwelling, of which zero (0) exist on the date of this Easement. Such dwelling shall not exceed 4,500 square feet of above-ground enclosed living area without Grantee’s prior review and written approval; and

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(b) ~~(ii)~~ One (1) secondary dwelling, of which zero (0) exist on the date of this Easement, not to exceed 2,000 square feet of above-ground enclosed, heated living space; and

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(c) ~~(iii)~~ One (1) secondary dwelling, of which zero (0) exist on the date of this Easement, not to exceed 600 square feet of above-ground enclosed, heated living space; and

##### (ii) ~~(iv)~~ nonAccessory Structures.

Non-residential ~~outbuildings and structures~~Structures commonly and appropriately incidental to the ~~dwelling~~Dwellings permitted in subsections (i) and (ii) of this paragraph, and sized appropriately to serve as an amenity to single-family ~~residential use~~Residential Use, provided that the aggregate footprint of such ~~nonresidential outbuildings and structures~~Structures for each permitted

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~~dwelling~~Dwelling shall not exceed 2,500 square feet in ground area unless prior written approval shall have been obtained from Grantee that a larger footprint is permitted considering the ~~purpose~~Conservation Purposes of this Easement and the scale of the proposed ~~outbuilding or structure~~Structure in relation to the surrounding area; and

~~(iii) (v) Buildings for the processing and sale of farm or forest products or certain animal related uses. Buildings for the processing and sale of farm or forest products produced or partially produced on the Property. Such buildings~~Agricultural Structures.

Agricultural Structures, provided such Structures shall not exceed 4,500 square feet of enclosed area in the aggregate and not individually exceeding 2,500 square feet of enclosed area without prior written approval from the Grantee; provided, however, that Structures for Winery, Brewery, and distillery uses shall only be permitted upon Grantee's prior written determination that the construction of such Structures are consistent with the Conservation Purposes of this Easement and protective of the Open Space Values identified herein and that the Structures are located at sites on the Property not adversely impacting such Open Space Values; and

~~(iv) (vi)~~Agricultural Support Structures.

Subject to the written approval of Grantee, kennels, wildlife rehabilitation centers, veterinary clinics, or buildings used for similar enterprises supportive or compatible with Agriculture and the Conservation Purposes including those not directly related to on-site Agricultural Activity on the Property (with the square footage limitations set forth in sub-paragraph (iv) above), with such approval being based upon Grantee's determination that the construction of such ~~buildings~~Structures is consistent with the ~~conservation purposes~~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; and~~

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~~(vii) Subject to the written approval of Grantee, buildings for the production of agricultural products and the manufacturing of distilled spirits, wine or beer (with the square footage limitations set forth in sub paragraph (iv) above), with such approval being based 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; Open Space Values identified herein and that the buildings are located at sites on the Property not adversely impacting such ~~conservation values; and~~ Open Space Values;~~

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~~B. Grantor shall give Grantee 30 days' written notice before beginning construction or enlargement of any dwelling on the Property.~~

~~(v) C. Improvements.~~

~~Improvements to serve the permitted Structures and uses on the Property are permitted to be maintained consistent with the Conservation Purposes of this Easement and provided they shall not impair the Open Space Values protected herein. Any fence or wall over five (5) feet in height shall be constructed with materials that will not block the public view of the Property from a state-maintained road.~~

**B. Additional Structure Restrictions.**

(i) **Location.** To protect the scenic values of the Property, ~~no dwelling or other building~~ Structure shall be constructed within 200 feet of Route 606 (Mount Carmel Road) ~~nor beyond the Building Envelope identified in the attached Exhibit A (the "Building Envelope"); provided, however,~~ that Agricultural Structures permitted under Section 3.2(A)(iii) may

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be permitted outside of the Building Envelope with the prior written approval of the Grantee.

~~— E. Private roads and utilities to serve permitted buildings or structures, private roads or driveways and access easements over same to serve adjacent properties, and roads with permeable surfaces for other permitted uses, such as farming or forestry, may be constructed and maintained, provided that such roads, driveways or easements have the prior written approval of the Grantee. Public or private utilities whose construction and maintenance Grantee determines will not impair the Property's conservation values may be constructed and maintained if Grantee gives its prior written approval; provided, however, easements for the location of underground utilities are permitted as set forth below.~~

~~F. Utilities. Public or private utilities to serve permitted buildings, structures, or activities on the Property shall be permitted. Public or private utilities to be constructed in whole or in part to serve other properties shall not be constructed.~~ **C. Roads.**

No Roads or parking areas shall be permitted on the Property except as follows:

- (i) Currently existing Roads or parking areas may be maintained; provided, however, no such Roads or parking areas shall be expanded or made improved except in compliance with the terms of this Easement.
- (ii) Roads wholly within currently existing access easements or rights of way recorded in the land records as of the effective date of this Easement and solely in conformance with the terms and conditions of such access easements and rights of way currently in effect on the effective date of this Easement.
- (iii) New Impervious Surface Roads and parking areas to provide ingress and egress to Structures within a Building Envelope may be maintained. Provided, however, no new Impervious Surface parking

area shall exceed one thousand (1,000) square feet of Ground Area for any such Structure without prior written approval of Grantee.

(iv) Permeable Surface Roads and Parking Areas reasonably necessary to serve permitted uses of the Property under Section 3.4, or are for public safety needs serving the Property, may also be maintained. Provided, however, that such parking areas shall not exceed four thousand (4,000) of Ground Area on any **each permitted lot** without **prior** written approval of Grantee.

(v) Roads to serve adjacent properties are permitted solely with the prior written approval of the Grantee.

(vi) The location of new Roads and parking areas shall require prior written approval from Grantee prior to commencement of any site work.

**D. Utilities.**

No Utilities may be maintained on the Property except for the following:

(i) Grantor may maintain public or private Utilities to serve permitted Structures, Improvements, and permitted uses of the Property.

(ii) Grantor may maintain Utilities to harness natural renewable energy sources **such** as the sun, wind, water, or biomass and scaled to provide electrical energy or pump water for permitted Structures, Improvements, and uses on the Property with the prior written approval of Grantee. Any such Utilities approved by Grantee shall be located to minimize their impact upon the view of the Property from public vantage points. **The sale of excess power generated incidentally in the operation of such Utilities and associated equipment including, but not limited to, solar panels, wind turbines, and micro-hydro installations is permitted.**

(iii) Grantor may maintain, or permit to be maintained, currently existing public or private Utilities within recorded easements and rights of way recorded prior to

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~~the Effective date and solely in compliance with any restrictions set forth therein. Except for the foregoing, public or private Utilities to serve other properties are~~ on, under, or over the Property unless Grantee determines that the construction and maintenance of such ~~utilities~~Utilities will cause no ~~more than minimal~~impairment of the ~~conservation values~~Open Space 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~~Open Space Values of the Property. Grantor reserves its separate right to approve such public or private utilities. ~~Notwithstanding the foregoing, easements for the location of underground utilities may be placed on the Property by voluntary conveyance by Grantor or by condemnation.~~

~~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, other buildings, structures, and activities on the Property shall be permitted, the aforesaid 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. The location of any free-standing structures shall be approved in writing by the Grantee.~~

**H-F. Collective Ground Area Footprint Limitation.**

The collective footprint of all buildings and structures on the Property, including paved parking areas but excluding roads, shall not exceed one percent (1%) 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 protected herein, Grantee may approve such increase.~~ For the purpose of this paragraph the collective footprint is the ~~ground area~~Ground Area measured in square feet of the ~~structures~~Structures set forth in subsections 3.3(i)

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through ~~(vi)~~ above and all other impervious surfaces, excluding ~~roads~~permitted Roads and parking areas.

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### 3.4 ACTIVITIES AND USES:

#### A. Prohibited Uses.

Industrial uses are prohibited on the Property. All uses, including all Commercial Uses not expressly permitted herein, inconsistent with the Conservation Values and Purposes of this Easement, are prohibited.

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#### B. Permitted Uses

Subject to any additional limitations of the applicable zoning ordinance and this Easement, and the general condition that they be carried on in a manner that does not adversely affect, conflict with, diminish, impair, or interfere with the Conservation Purpose or Open Space Values, Grantee has determined that the following uses (which may be commercial or non-commercial) are consistent with the Conservation Purpose and Values and are permitted on the Property:

- (i) Residential Uses: permanent Residential Uses are permitted within the limitations set forth ~~Dwellings~~ permitted in Section 3.3.

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~~B. Industrial and/or Commercial Uses: Industrial or commercial activities on the Property are prohibited except for the following:~~

- (ii) ~~(i) agricultural~~ Agriculture and Agricultural production and related uses ~~(ii), including~~ renewable energy production for the purpose of generating energy for the ~~agricultural~~ Agricultural and ~~residential~~ Residential needs of the Property; ~~the sale of excess power generated in the operation of such renewable energy structures and associated equipment or other energy structures that Grantee approves~~ (subject to the provisions of Section 3.3(D)).

- (a) As long as at least five (5) acres of the Property are in writing as ~~being consistent with the conservation purposes of this Easement;~~ Agricultural use, the Property shall be managed in accordance with a written Farm Conservation Plan for the Property prepared by the

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Clarke County Soil and Water Conservation District, within six (6) months of the date hereof, which terms and conditions are incorporated herein by reference. The Farm Management Plan shall incorporate Best Management Practices for water quality protection, be approved by Grantee, and may, from time to time, be modified or amended by mutual agreement of Grantor and Grantee, provided that said Farm Conservation Plan (or any modification or amendment thereof) shall not be inconsistent with the Conservation Purposes.

(iii) ~~(iii) temporary~~ Temporary or seasonal activities or ~~events~~ Events that do not harm the ~~agricultural~~ Agricultural use, future viability, and ~~related conservation values~~ Open Space Values of the Property herein protected, upon review and prior written approval of Grantee., however such activities that exceed 150 persons attending an event for compensation occurring for more than a total of five event days in a calendar year, are prohibited.

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(iv) ~~(iv) commercial~~ Commercial enterprises related to ~~agriculture~~ Agriculture or ~~forestry~~ Forestry including but not limited to processing, packaging, and marketing of farm or forest products, and farm machinery repair and commercial enterprise activities related to interpretation of the Property's historic or archaeological resources.

(v) ~~(v) Hunting and fishing.~~

(vi) Winery, Brewery, and distillery uses provided approved in writing by the Grantee.

(vii) Other small-scale incidental commercial ~~or industrial~~ operations compatible with the permitted activities set forth in ~~(A) or 3.4(B)~~ (i) and (ii) for which Grantee provides its prior written approval;

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(viii) ~~C.~~ 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

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stream mitigation, nutrient banks, biological carbon sequestration and biodiversity mitigation shall be permitted, 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.

~~D. — Notwithstanding any other provision of this Easement, no commercial recreational uses are permitted, except for de minimis commercial recreational uses.~~

~~E. — The provisions of this Easement and associated exhibits shall not be interpreted to restrict the types of agricultural operations that can function on the Property, so long as the agricultural operations are consistent with the long term viability of the Property and Easement purposes, and do not violate Federal laws, including Federal drug laws. No uses shall be permitted that decrease the Easement's protection for the current agricultural use and future agricultural viability of the Property, as well as protection of related conservation values of the Property. Permitted uses of the Property include the specific uses allowed in Section 3.4.B.(i) (v) and the following activities, subject to the qualifications stated below:~~

~~(i) Agricultural Production — The production, processing, and marketing of agricultural crops and livestock.~~

~~(ii) Forest Management and Timber Harvest — Forest management and timber harvesting, provided it is carried out, to the extent practicable, in accordance with current, generally accepted best management practices (defined by the Virginia Department of Forestry) for the sites, soils, and terrain of the Property.~~



### 3.5 MANAGEMENT OF FOREST.

A. Best Management Practices (BMPs), as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any timber harvest or land-clearing activity is undertaken. A Forest Stewardship Management Plan approved by the Virginia Department of Forestry shall guide all material timber harvest activities on the Property. A pre-harvest plan consistent with the Forest Stewardship Management Plan shall be submitted to Grantee for approval 30 days before beginning any material timber harvest. The pre-harvest plan shall describe the BMPs to be used in sufficient detail to ensure that water quality will be protected. The objectives of the Forest Stewardship Management Plan may include, but are not limited to, forest health, biodiversity, timber management, wildlife habitat, scenic forest, aesthetics, recreation, water and air quality, carbon or other mitigation banking programs, historic and cultural resource preservation, natural area preservation, or any combination thereof. Grantee shall be notified 30 days prior to the clearing of over 10 acres of forestland for grassland, crop land, or in association with the construction of permitted buildings.

B. Noncommercial *de minimis* harvest of trees for trail clearing, firewood, or Grantor's domestic use or trees that pose an imminent hazard to human health or safety, or that are an invasive species shall not require a Forest Stewardship Management Plan.

**3.6 GRADING, BLASTING, MINING.** Grading, blasting, or earth removal shall not materially alter the topography of the Property except for (i) dam construction to create ponds; (ii) wetlands or stream bank restoration pursuant to a government permit; (iii) erosion and sediment control pursuant to a government-required erosion and sediment control plan; or (iv) as required in the construction of permitted buildings, structures, roads, and utilities. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in such construction. Grading, blasting, or earth removal in excess of one acre

for the purposes set forth in subparagraphs (i) through (iv) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities 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.

**3.7 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 creating brush piles, composting, or storing farm machinery, organic matter, agricultural products, or agricultural byproducts on the Property.

**3.8 SIGNS.** Display of billboards, signs, or other advertisements is not permitted on or over the Property except to: (i) state the name and/or address of the owners of the Property and/or the name of the Property or Farm or other permitted activities, (ii) advertise the sale or lease of the Property, (iii) advertise the sale of goods or services produced incidentally to a permitted use of the Property, (iv) provide notice necessary for the protection of the Property, (v) give directions to visitors, or (vi) recognize historic status or participation in a conservation program. Temporary political signs are allowed. No signs shall exceed nine square feet in size or the County's Zoning Ordinance requirements, whichever is more restrictive.

~~**3.9 RIGHTS OF GRANTOR:** Notwithstanding any of the foregoing provisions, the Grantor expressly reserves to themselves and their successors and assigns the right to do the following:~~

~~(a) Continue the agricultural, forestry, and naturalistic uses of the Property.~~

~~(b) Continue to hunt, fish, or trap on the Property, subject to relevant laws.~~

~~(c) Improve, repair, restore, alter, remodel, or replace the existing and the permitted structures with structures of similar size and purpose, provided that the~~

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~~changes are compatible with the conservation purposes of the Property and all other provisions of this Easement.~~

~~(d) Continue the use of the Property for all purposes not inconsistent with this Easement.~~

#### **SECTION IV – ENFORCEMENT**

- 4.1 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.
- 4.2 ENFORCEMENT.** Grantee has the right to bring an action at law or in equity to enforce the Restrictions contained herein. This right specifically includes the right to require restoration of the Property to a condition of compliance with the terms of this Easement as existed on the date of the gift of the Easement, except to the extent such condition thereafter changed in a manner consistent with the Restrictions; to recover any damages arising from noncompliance; and to enjoin noncompliance by *ex parte* 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 ~~insure~~ensure compliance with this Easement, and Grantor hereby waives any defenses of waiver, estoppel, or laches with respect to any failure to act by Grantee. Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage or change to the condition of the Property caused by fire, flood, storm, Act of God, governmental act, or other cause outside of Grantor's control or by any prudent action taken by Grantor to avoid, abate, prevent, or mitigate damage or changes to the Property from such causes.

#### **SECTION V – DOCUMENTATION**

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Documentation retained in the office of Grantee including, but not limited to, the Baseline Documentation Report (“**Documentation Report**”), describes the condition and character of the Property at the time of the gift. The 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. 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. The parties hereby acknowledge that the Documentation Report contained in the files of Grantee is an accurate representation of the Property.

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#### **SECTION VI – GENERAL PROVISIONS**

- 6.1 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. Landowner’s rights and obligations under this Easement terminate upon proper transfer of Landowner’s interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- 6.2 NO PUBLIC ACCESS.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public either a right of access to or use of the Property. Grantor retains the exclusive right to such access and use, subject to the terms hereof.
- 6.3 TITLE.** Grantor covenants and warrants that Grantor has good title to 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 utility and access easements) including, but not limited to, any mortgages not subordinated to this Easement.

**6.4 ACCEPTANCE.** Acceptance of this conveyance by Grantee is authorized by Virginia Code Section 10.1-1701 and is evidenced by the signature of the Chair of the Authority, by authority granted by the Authority Board, and by the Chair of the Board of Supervisors, by authority granted by the Board of Supervisors.

**6.5 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, shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open-space requirements under otherwise applicable laws, regulations, or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, a cluster development arrangement, or otherwise.

**6.6 GRANTEE APPROVAL:**

A. The Grantor shall notify the Authority 60 days (hereafter “Grantor’s Notice”) prior to undertaking any activities permitted under Section II, paragraphs [3.2, 3.3, 3.4 and 3.5].

B. Grantor’s Notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to enable the Grantees to make informed judgments as to its consistency with the terms of this Easement.

C. In addition, if such permitted activity requires Grantor to obtain a permit or other governmental approval, Grantor shall disclose on the application for such permit or other governmental approval that the property is subject to this Easement.

D. It shall be the responsibility of the Authority to determine its position and to notify and determine the County’s and any other co-holder’s position on the request for approval. The Authority shall respond to the Grantor within thirty (30) days of receipt of Grantor’s Notice, advising the Grantor of the approval or disapproval of

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the request or advising the Grantor that circumstances require additional time to respond to the request. Such circumstances shall include the complexity of the request or proposed project, the amount of information submitted with the request, and the need for on-site inspections or consultations.

E. If the Authority does not notify Grantor of the decision on the request within ninety (90) days of receipt of the Grantor’s Notice, then the Grantees and any co-holder shall be deemed to have ~~approved the request, and the Grantor may proceed with the action for which approval was requested~~denied the request.

F. In order for a request to be approved, it must be approved by each Grantee and any other co-holder.

G. If the Authority, the County, or any other co-holder should disagree on whether a request should be approved or disapproved, the parties should review possible remedies prior to the expiration of the ninety (90) day period. If no resolution to the disagreement can be found prior to the end of the ninety (90) day period, the disagreement shall be documented in writing and the Authority should notify the Grantor of the disapproval of the request.

H. ~~No Grantor agrees to review all requests for approval required in good faith in keeping with its obligations hereunder shall be unreasonably~~

H. \_\_\_\_\_ withheld. In no event, however, shall approval be given to any activity that would result in the termination of this Easement or the development or construction of any ~~structures~~Structures not provided for herein.

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**6.7 CONSTRUCTION.** 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), this Easement shall liberally be construed in favor of the grant to effect the purposes of the Easement and the policies 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 not expressly prohibited by this

Easement are permitted on the Property- consistent with the conservation purposes. Grantor and Grantee intend that the grant of this Easement qualify as a “qualified conservation contribution” as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations §1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.

**6.8 NOTICE TO GRANTEE OF ADVERSE EFFECTS.** Grantor agrees to notify Grantee in writing before exercising any reserved right that Grantor believes may have an adverse effect on the conservation or the open-space values or interests associated with the Property.

**6.9 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 and shall specifically reference the obligation for payment of a Transfer Fee upon a sale of the Property, as provided in Paragraph 6.10, infra.

**6.10 SUBSEQUENT TRANSFER OF PROPERTY/TRANSFER FEE.**

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

B. At the closing on the transfer for value of all or any part of the Property, the purchaser shall pay to the Clarke County Conservation Easement Authority a Transfer Fee equal to one percent (1%) of the full consideration paid for the Property, or portion thereof, including improvements thereon, and including any contiguous land that is part of the same transfer, including improvements thereon.

**6.11 TAX MATTERS.** The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately



substantiated by an appraisal from a qualified appraiser as defined in IRS regulations [see [§IRC Section 1.170A-13\(c\)\(5\)](#)], and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from donation of this Easement, or that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.

- 6.12 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.
- 6.13 ASSIGNMENT BY GRANTEE.** Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity and (2) the transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the IRC as amended and in the applicable Treasury Regulations.
- 6.14 GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the conveyance of this Easement 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.
- 6.15 EXTINGUISHMENT, CONVERSION, 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 that do not permit extinguishment of open-space easements or loss of open space. Nevertheless, should an attempt be

made to extinguish this Easement, such extinguishment can be made only by judicial proceedings and only if in compliance with Section 10.1-1704. In any sale or exchange of the Property subsequent to 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 6.14 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.

**6.16 AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's ~~conservation values~~Open Space Values or add to the restricted property, provided that no amendment shall affect this Easement's perpetual duration or reduce the Property's ~~conservation values~~Open Space Values. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded among the land records of the County of Clarke, Virginia.

**6.17 JOINT OWNERSHIP.** If at any time the Property or any portion of or interest is owned in joint tenancy, tenancy by the entirety or tenancy in common, all such owners shall be jointly and severally liable for all obligations of Grantor set forth herein.

**6.18 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.

**6.19 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.

**6.20 CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.

**6.21 RECORDING.** This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of Clarke, Virginia, and Grantee may rerecord it any time as may be required to preserve its rights under this Easement.

**6.22 SUBORDINATION.** ~~The Bank is the noteholder of a note secured by a Deed of Trust on the Property dated June 30, 2020 and recorded in the Clerk's Office of the Circuit Court of Clarke County, Virginia in Deed Book 658 at Page 275. The Bank hereby consents to the terms and intent of this Easement and agrees that the lien represented by said Deed of Trust shall be held subordinate to and subject to this Easement, and the Bank joins in this Deed to reflect its direction to the Trustee to execute this Easement to give effect to the subordination of such Deed of Trust to this Easement.~~

Farm Credit is the note holder under a certain credit line deed of trust dated June 30, 2020, and recorded in the Clerk's Office of the Circuit Court of Clarke County, Virginia in Deed Book 658 at Page 275 which subjects the Property, among others, to Farm Credit's lien (the "Farm Credit Deed of Trust"). Farm Credit hereby consents to the terms, conditions, and restrictions of this Easement, agrees that the lien represented by said Farm Credit Deed of Trust shall be held subject to this Easement, and joins in this Easement to reflect its direction to the sole acting Trustee to execute this Easement to give effect to the subordination of such Farm Credit Deed of Trust to this Easement. The sole acting Trustee joins in the execution of this Easement to confirm that in the event of foreclosure under the Farm Credit Deed of Trust or other sale of the property described in the Farm Credit Deed of Trust under judicial or non-judicial proceedings, the property will be sold subject to this Easement. Notwithstanding the above, for so long as any Deed of Trust in favor of Farm Credit of the Virginias, ACA, its successors or assigns, as described above, or any modification or extension thereof, constitutes a lien on any portion of the Property (or permanently in the event that the portion of the Property under the Farm Credit lien is sold at foreclosure or is conveyed to Farm Credit by deed in lieu of foreclosure), Farm Credit must consent to any boundary line adjustment involving the Property.

Commented [AT13]: Reviewed and approved by Bob Mitchell

~~1/18/18~~

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WITNESS the following signatures and seals:

\_\_\_\_\_  
Lowell ~~D-Dorrance~~ Pratt, Grantor

\_\_\_\_\_  
~~Nary C. Mary Christine.~~ Pratt, Grantor

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, To-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, ~~2~~\_\_\_\_\_, by \_\_\_\_\_, 2021, by Lowell Dorrance Pratt and Mary Christine Pratt.

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

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

(SEAL)

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COUNTY OF CLARKE, VIRGINIA, Grantee

By: \_\_\_\_\_  
Chairman, Board of Supervisors

STATE OF VIRGINIA, At-Large  
CITY/COUNTY OF \_\_\_\_\_, To-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, ~~2~~, 2021, by \_\_\_\_\_, on behalf of the COUNTY OF CLARKE, VIRGINIA, Grantee.

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

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CLARKE COUNTY CONSERVATION EASEMENT  
AUTHORITY, Grantee

By: \_\_\_\_\_  
Chairman, Board of Directors

STATE OF VIRGINIA, At-Large  
CITY/COUNTY OF \_\_\_\_\_, To-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, ~~2~~, 2021, by \_\_\_\_\_, on behalf of the CLARKE COUNTY CONSERVATION EASEMENT AUTHORITY, Grantee.

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

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

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Farm Credit of the Virginias

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

Name: \_\_\_\_\_

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

STATE OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, To-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2 2021, by

\_\_\_\_\_, \_\_\_\_\_ as

\_\_\_\_\_, \_\_\_\_\_ of Farm Credit of the Virginias, ACA, on ~~its~~ behalf of the ~~(Bank)~~.

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

My commission expires: \_\_\_\_\_

Registration No. : \_\_\_\_\_

(SEAL)

\_\_\_\_\_

~~1/18/18~~

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EITHER:

(SEAL)

TERESA A. HARRIS, Trustee

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OR:

(SEAL)

MICHAEL S. JONAS, Trustee

STATE OF VIRGINIA

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CITY/COUNTY OF \_\_\_\_\_, To-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, ~~2~~\_\_\_\_, by \_\_\_\_\_, ~~Trustee-2021~~, by \_\_\_\_\_ as sole acting Trustee, for Farm Credit of the Virginias, ACA

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

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

(SEAL)



SCHEDULE "A"

All that certain tract or parcel of land, together with the improvements thereon and appurtenances thereunto belonging, located on the west side of Virginia Route No. 606 (Mount Carmel Road) in Chapel Magisterial District, Clarke County, Virginia, containing 22.5140 acres according to plat of boundary survey thereof prepared by H. Christopher Hughes, Land Surveyor, dated December 19, 2011, which plat is recorded in Plat Book 10 at Page 67, in the Office of the Clerk of the Circuit Court of Clarke County, Virginia. (Tax Map #32-A-29).

AND

The following described three tracts of land situated on the east side of the Shenandoah River in Chapel Magisterial District, Clarke County, Virginia originally described as follows:

First: Certain other tract of land situated on the east side of the Shenandoah River in Clarke County, Virginia, Chapel Magisterial District, bounded as follows:

Beginning at a stone in Fuller's line corner to Robert Drish, running N 4 1/2 W 71.5 poles to a stone, corner in Robert Drish's line, thence with his line N 47 E 34 11/10 poles to a stump, thence with another of Drish's lines W 11 E 16 poles to a cluster of chestnuts in Mrs. Colston's line, thence with said Colston's line S 76 W 30 poles to a chestnut oak in a branch, thence 44 W 14 poles to a stake, thence S 32 W 11 3/10 poles to a stake, thence 46 1/4 W 4 4/10 poles to the beginning, containing 19 3/4 acres, more or less (Tax Map 32-A-16), and

Second: That certain tract containing 15 acres, more or less, adjoining the Jack Royston tract, Lanham and others (Tax Map #32-A-16A); and

Third: That certain tract of land containing 90 acres, more or less, known as the "Nancy Willingham" tract, adjoining Resse Lloyd, Ludwell Lloyd and Letcher Lloyd (Tax Map 32-A-16B); and

Which three parcels (first, second and third) referenced above as Tax Map Numbers 32-A-16, 32-A-16A, and 32-A-16B, were more recently surveyed to contain a total of 158.3216 acres, in the aggregate without reference to internal boundaries between them, according to plat of boundary survey thereof prepared by H. Christopher Hughes, Land Surveyor, dated December 19, 2011, which plat is recorded simultaneously herewith in Plat Book 10 at Page 67 in the Office of the Clerk of the Circuit Court of Clarke County, Virginia.

1/18/18

EXHIBIT A: BUILDING ENVELOPE

200' Radius from the following GPS Center point Coordinates:

Latitude: 39° 3'13.57"N

Longitude: 77°57'14.81"W

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