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Fauquier County, VA  
Gail H Barb Clerk of Circuit Court  
File# 2007-00000732  
BK **1249** PG **1474-1491**

amined and  
Returned to:

Prepared by: Henry Day, Esquire  
Warrenton, Virginia

TAX MAP NO. OR PIN: 6041-20-2416; 6041-20-6433; 6040-27-8283; 6040-18-3124;  
6040-18-4518; 6040-18-7974; 6040-19-9402; 6040-29-1794; 6040-17-6419

Exempted from recordation tax  
under the Code of Virginia (1950), as amended,  
Sections 58.1-811 (A) (3) and 58.1-811 (D)

THIS DEED OF GIFT OF EASEMENT (the "Easement"), made this 8th day of January, 2007, between MONTANA FARM, LLC, a Virginia limited liability company ( herein called "Grantor"), the BOARD OF SUPERVISORS OF FAUQUIER COUNTY, of the Commonwealth of Virginia ("Grantee"), whose address is 10 Hotel Street, Warrenton, Virginia 20186, the designations Grantor and Grantee including their successors and assigns.

**RECITALS.**

**R-1.** Grantor is the owner in fee simple of nine (9) parcels of real property situated along Carrington Road, near Delaplane, Marshall, Scott Magisterial District of Fauquier County, Virginia, containing approximately 219.2816 acres, more thoroughly described in this Deed, hereinafter referred to as "the Property," and desires to convey to Grantee, for the public purpose identified herein, an open-space easement over the Property as herein set forth.

**R-2.** Grantee is the governing body of a political subdivision of the Commonwealth of Virginia and a "qualified organization" and "eligible donee" under Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, hereinafter referred to as the "I.R.C.," and Treasury Regulation §1.170A-14(c)(1), is a public body under Section 10.1-1700, of the Code of Virginia, 1950, as amended, hereinafter referred to as the "Virginia Code" and is willing to accept an open-space easement over the Property as herein set forth.

**R-3.** Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Virginia Code, as amended (the "Open-Space Land Act"), declares that the 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, helping provide or preserve necessary park, recreational, historic and scenic areas, and conserving land and other natural resources, and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land.

**R-4.** The Open-Space Land Act declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Grantee to hold

real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space and recreational lands of the Commonwealth.

**R-5.** The Property shares a common border with a property under a non-common open-space easement deeded to the Grantee under the County Zoning Ordinance.

**R-6.** The Property fronts on Virginia State Route 729, Carrington Road, portions of which are visible from Virginia State Route 55, a designated Virginia By-Way, and from Interstate 66, and is identified on Map 2.13, Scenic Roads and Areas of Impact, as well as on Map 2.12, Interstate 66 Visual Impact Corridor, of Fauquier County Comprehensive Plan. Both areas are established to permit special treatment and protection of scenic views from the two roads. The restrictions contained in this Easement protect the scenic views and the scenic enjoyment of the general public and they further a public purpose of the Grantee evidenced in its Comprehensive Plan of Fauquier County, Virginia (1992-2010), hereinafter the "Comprehensive Plan."

**R-7.** The Property is zoned Rural Agriculture (RA) and Rural Conservation (RC) District and contains productive agricultural and forestal land and is situated in an area identified as existing forest area on Map 2.9 of the Fauquier County Comprehensive Plan and Zoning Ordinance.

**R-8.** Chapter 8, Rural Land Use Plan of the Comprehensive Plan, establishes objectives for lands zoned RA and RC of:

- (i) Encouraging farming;
- (ii) Directing growth to designated service districts and away from rural lands;
- (iii) Protecting environmental, cultural and visual resources; and
- (iv) Providing strict controls over all new development in rural areas.

The restrictions contained in this Easement preserve open-space and protect scenic enjoyment and further the Plan's objectives by limiting subdivision and buildable lots, restricting building rights and building locations and preserving the rural character of the Property and the area of the County in which it is located.

**R-9.** The Property is in the vicinity of the Cobbler Agricultural and Forestal District as designated by the Board of Supervisors of Fauquier County, pursuant to the Virginia Agricultural and Forestal Districts Act (§§15.2-4300 et seq. of the Virginia Code).

**R-10.** The Agricultural and Forestal District was created pursuant to the Agricultural and Forestal Districts Act, Chapter 43 of Title 15.2, §§15.2-4300 through 15.2-4314 of the Virginia Code, which encourages the conservation, protection, development and improvement of agricultural and forestal lands for the production of food and other agricultural and forestal products as valued natural and ecological resources which 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. This Easement will protect agricultural and forest land by limiting further subdivision and buildable lots on the Property and further a public purpose of the Grantee by protecting agricultural and forestal lands.

**R-11.** The Property contains frontage on Big Branch, the "Protected Stream," a tributary of Goose Creek.

**R-12.** The Property is located within the Goose Creek Watershed, an area designated as worthy of special environmental protection in the Fauquier County Comprehensive Plan as a scenic and environmentally sensitive river, the portion of which located in Loudoun County has been designated a State Scenic River by Act of the General Assembly of the Commonwealth of Virginia. The Grantee has supported the current proposal to the Virginia General Assembly to designate the portion of Goose Creek located in Fauquier County as a scenic river under the Virginia Scenic River Act. This Easement establishes riparian buffers and restricts forestal activities and thereby furthers the public purposes of Grantee's Comprehensive Plan.

**R-13.** The Comprehensive Plan, as adopted by its Board of Supervisors, includes the following goals: "To recognize the county's traditionally agricultural and rural character and the need for preservation of its open-spaces and scenic beauty"; "To protect critical environmental resources and to maintain renewable natural resources so that they are not degraded but remain viable for future generations"; and "To protect and promote the agricultural industry."

**R-14.** Preservation of the Property will promote the public policies of Fauquier County as identified in its Comprehensive Plan, and further a public purpose of the Grantee by protecting open-space, productive agricultural and forest lands, scenic views, natural resources and the historic character and fabric of the Rural Agricultural District of the County.

**R-15.** The Grantor and the Grantee desire to protect in perpetuity the open-space values identified in the previous paragraphs, including, but not limited to, conserving and protecting agricultural and forestal lands as natural resources, protecting rural agricultural lands by prohibiting further subdivisions and limiting building rights, protecting water quality and scenic views, collectively referred to herein as the "Open-Space Values," and intend to accomplish such protection by restricting the use of the Property as hereinafter set forth.

**R-16.** The conservation purpose of this Easement is to preserve and protect in perpetuity the Open-Space Values of the Property.

**R-17.** The Grantee has determined that the restrictions hereinafter set forth in this Easement (the "Restrictions") will preserve and protect in perpetuity the Open-Space Values of the Property, which advance the public purposes established in its Comprehensive Plan, which values are reflected in the preceding paragraphs, the Grantee's evaluation of the Property, the documentation of the condition of the Property as contained in the Grantee's files and records, and any baseline documentation materials created contemporaneous with this Easement.

**R-18.** The Grantee has determined that the Restrictions will limit the uses of the Property to those uses consistent with, and not adversely affecting the Open-Space Values of the Property, the historic and scenic values enjoyed by the general public, or the governmental conservation policies furthered by this Easement.

**R-19.** The Grantee, by acceptance of this Easement, by its Board of Supervisors at its meeting of December 14, 2006, designates the Property to be retained and used for the preservation and provision of the of Open-Space land pursuant to the Open-Space Land Act.

**R-20.** The Grantor intends to convey to the Grantee by this Easement the right to preserve and protect the Open-Space Values of the Property in perpetuity and to further the public purposes established in the Fauquier County Comprehensive Plan and to qualify the grant of such restrictions and associated rights as a qualified conservation contribution under Section 170(h)(2)(c) of the I.R.C.

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by Grantee, the Grantor does hereby give, grant and convey to Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of, the Property, consisting of 219.2816 acres located in Marshall Magisterial District, Fauquier County, as more thoroughly described in Exhibit "A," attached hereto and incorporated herein by reference.

The Property is further identified on Fauquier County Tax Maps as PIN-6040-20-2416; PIN-6041-20-6433; PIN-6040-27-8283; PIN-6040-18-3124; PIN-6040-18-4518; PIN-6040-18-7974; PIN-6040-19-9402; PIN-6040-29-1794; and PIN-6040-17-6419. The Property consists of more than one subdivided or tax parcel, but it shall be considered one parcel, except as hereinafter permitted, for the purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole and to each permitted parcel.

#### **ARTICLE I – EASEMENT**

- 1. PURPOSE.** The purpose of this Easement is to preserve and protect the conservation value of the Property in perpetuity by imposing and enforcing the restrictions on the use of the Property by Article II, while allowing the Property to be used for all other uses by the owner as long as such uses do not interfere with the conservation value of the Property. The conservation value of the Property is its value as open-space land as more specifically identified as the Open-Space Values described in the Recitals to this Easement which are hereby incorporated.
- 2. DURATION.** This Easement shall be perpetual. It is an easement in gross which 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 Grantor and the Grantee, and their respective successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

3. **NO PUBLIC ACCESS.** Although this Easement in gross will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Grantor retains the exclusive right to such access and use, subject to the terms hereof.

## ARTICLE II - RESTRICTIONS

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

1. **DIVISION.** The Property may be subdivided once to create two (2) separate parcels and each parcel may be conveyed separately subject to the restrictions contained in this Easement. Any such subdivision shall comply with the provisions of the Grantee's zoning and subdivision ordinances in effect at such time. Except as provided in this paragraph, no further subdivision of the Property shall be permitted.

Boundary line adjustments with adjoining parcels of land, or with parcels created by the division right granted in this paragraph, are permitted and shall not be considered a prohibited division of the Property, provided that Grantee is made party to the deed creating the boundary line adjustment and at least one of the following conditions is met:

(i) The entire adjacent parcel is subject to a recorded open-space easement conveyed to Grantee or other public body as defined in Section 10.1-1700 of the Virginia Code; or

(ii) The proposed boundary line adjustment shall have been reviewed and approved in advance by the Board of the Grantee or the governing body of any successor in interest to the Grantee, such approval not to be unreasonably withheld.

2. **BUILDINGS AND STRUCTURES.** No permanent or temporary building or structures may be constructed or maintained on the Property other than as follows:

(i) Two (2) primary residential dwellings, one for each division permitted under this Easement, and any associated nonresidential outbuildings or structures commonly and appropriately incidental thereto, may be constructed, maintained, repaired, remodeled, restored, enlarged or demolished and replaced on the Property, provided that neither primary residence shall exceed six-thousand (6,000) square feet of above ground enclosed living area.

(ii) The three (3) residential dwellings located on the Property shall be deemed permitted secondary dwellings and may be located on either parcel after the division permitted under this Easement, together with access bridges crossing the Protected Stream and associated nonresidential outbuildings or structures

commonly and appropriately incidental thereto, may be reconstructed, maintained, repaired, remodeled, restored, enlarged or demolished and replaced on the Property; provided, that none of the permitted secondary dwellings shall exceed two-thousand five-hundred (2,500) square feet of above ground enclosed living area.

(iii) No new residential dwelling or structure may be constructed within two-hundred (200) feet of the center line of Carrington Road, State Route # 729. Any such new residential primary dwelling, shall be subject to Grantee's prior written approval of the location and siting of such dwelling and such approval shall not be unreasonably withheld. Any such new dwelling and associated structures shall be located and constructed so as to minimize their visibility from Interstate 66 and State Route 55 at any season of the year. Acceptable strategies for minimizing visibility include, but are not limited to:

- (a) Screening buildings with appropriately sited evergreen plants;
- (b) Retaining existing forest cover;
- (c) Employing architectural forms, materials and colors that blend with the natural landscape rather than contrast with it; and
- (d) Using the natural topography of the Property to minimize the visual impact of the new structure.

(iv) Any residential dwelling permitted hereunder, whether existing as of the donation of this Easement or subsequently constructed as authorized hereunder, may later be replaced if located in the existing dwelling's present location, or within one-hundred (100) feet of its present location, subject to the acceptable strategies for minimizing visibility contained in the previous paragraph.

(v) Farm buildings or structures, except that a farm building or farm structure exceeding four-thousand five-hundred (4,500) square feet in ground area may not be constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the conservation value of the Property. For the purposes of this subparagraph, a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in paragraph 3(i).

(vi) All utilities installed on the Property after the recordation of this Easement shall be placed underground.

(vii) Private roads and utilities that serve permitted buildings or structures in this Paragraph 2, or serve adjacent parcels by recorded easements, paved or unpaved farm or forest roads may be constructed and maintained.

Grantor shall give Grantee at least thirty (30) days written notice before beginning construction or enlargement of any dwelling on the Property.

**3. INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Industrial or commercial activities other than the following are prohibited:

(i) Agriculture including animal husbandry, aquaculture, silviculture and equine activities, provided, however, that large-scale industrial or commercial operations such as race tracks or livestock feedlots are permitted only with the prior written approval of Grantee.

(ii) Temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property, and that do not diminish the conservation value herein protected; and

(iii) Activities that can be, and in fact are, conducted within permitted buildings without material alteration to the external appearance. Temporary outdoor activities involving one-hundred (100) or more people shall not exceed seven (7) consecutive days in any ninety (90) day period unless approved by Grantee in advance in writing. Notwithstanding any other provision of this easement, no commercial recreational use, except for de minimis commercial recreational uses, shall be allowed on the Property.

**4. MANAGEMENT OF FOREST.** A current, written forest stewardship plan prepared by a professional forester shall be provided to, and approved by, Grantee prior to any commercial timber harvesting. The primary purposes of the forest management plan shall be to maintain a working forest, improve wildlife habitat, maintain the health of the forest and conserve soil and water. At least thirty (30) days before beginning any commercial timber harvesting, a timber sales contract, pre-harvest plan or other documentation of the intended harvest shall be submitted to Grantee. Best Management Practices, as defined by the Virginia Department of Forestry in Virginia's Forestry Best Management Practices for Water Quality Guide, shall be used to control erosion and protect water quality when any commercial forestry or land clearing activity is undertaken. Notwithstanding the foregoing, the following shall be permissible on the Property and shall not constitute commercial timber harvesting:

(i) The cutting and removal of trees for Grantor's domestic consumption;

(ii) The cutting and removal of trees or brush in connection with the construction of permitted structures, roads, trails and fences and to accommodate other permitted activities hereunder; and

(iii) The cutting and removal of diseased or dead trees or trees, which, were they not removed, would present a hazard to health or safety.

(iv) The cutting and removal of trees for pasture reclamation or to maintain and enhance hardwood timber growth.

5. **GRADING, BLASTING, MINING.** Grading, blasting or earth removal shall not materially alter the topography of the Property except for dam construction to create private ponds, stream bank restoration and erosion control pursuant to a government permit, or as required in the construction of permitted buildings, structures, private roads, and utilities as permitted in Paragraph 2. 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. Generally accepted agricultural activities shall not constitute a material alteration. Surface mining, subsurface mining or drilling for oil or gas on the Property is prohibited. Notwithstanding the foregoing, the removal of surface rocks or boulders for agricultural purposes is permitted.
6. **ACCUMULATION OF TRASH.** Accumulation or dumping of trash, refuse, junk or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the Property.
7. **SIGNS.** Display of billboards, signs, or other advertisements that are visible from outside the Property is not permitted on or over the Property except to:
- (i) State the name of the Property, its age and its address and/or the name and address of the owners of the Property;
  - (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.
  - (vii) For citizen political speech.

No such sign shall exceed nine (9) square feet in size.

8. **RIPARIAN BUFFER.**

- A. **Creation.** Grantee covenants and agrees there is hereby created a riparian buffer area, where natural vegetation is maintained, located thirty-five (35) feet from each side of the Protected Stream, measured from the top of stream bank, hereinafter the "Riparian Buffer," for the purposes of protecting water quality of the Protected Stream.



- B. Soil Disturbance.** There shall be no plowing, cultivation or other earth disturbing activities in the Riparian Buffer; provided however, that tree planting, forest management, in accordance with Virginia's Forestry Best Management Practices for Water Quality Guide, archeological investigations, and restoration, reconstruction and maintenance of documented historic landscapes on historic properties are permitted.
- C. Structures.** There shall be no buildings or other structures constructed, no storage of compost, manure, fertilizers, chemicals, machinery or equipment, and no cultivation or other earth disturbing activity conducted, except as may be reasonably necessary for:
- (i) Stream restoration and erosion control pursuant to a government permit;
  - (ii) Fencing along or within the buffer area;
  - (iii) Provided the water-quality protection function of the buffer is not impaired, removal of trees presenting a danger to persons or property and removal of diseased, dead or non-native invasive trees, shrubs or plants;
  - (iv) Construction and maintenance of stream crossings, including bridges, which allow for unobstructed water flow and wildlife movement;
  - (v) Creation and maintenance of foot or horse trails with unimproved surfaces;
  - (vi) Improvement of the view shed from the dwelling by the minimal harvesting of trees or limbing of the tree canopy; and
  - (vii) Limited mowing to control non-native invasive species or protect trees and other plants planted in the buffer strip.
  - (viii) The general maintenance of the aesthetics of the Property; the enhancement of wildlife habitat; the suppression of fire; or enhancement or the protection of other open-space conservation values.
- D. Livestock.** Grantor covenants and agrees to restrict regular livestock grazing within the Riparian Buffer; provided however, Grantor shall have the right to designate a limited number of livestock crossing points which shall be reasonably acceptable to the Grantee; provided, further access across the buffer and to the stream may be provided livestock in the event of the emergency loss of water.

### ARTICLE III – ENFORCEMENT

1. **RIGHT OF INSPECTION.** Grantor covenants and agrees that representatives or agents of Grantee may enter the Property from time to time for purposes of inspection and enforcement of the terms of this Easement after permission from, or reasonable notice to, the Grantor or the 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 the restrictions contained herein with notice to the Grantor or Grantor's representative being given at the earliest practicable time.
2. **ENFORCEMENT.** The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and restrictions herein contained. Grantor hereby grants and conveys to Grantee 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 non-compliance, and to enjoin non-compliance 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 reasonable attorney's fees, in addition to any other payments ordered by the court.
3. **NATURAL CAUSES.** 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 any prudent action taken by Grantor to avoid, abate, prevent or mitigate damage or changes to the Property from such causes.
4. **NO PUBLIC RIGHTS.** The parties agree that the Easement does not create, and shall not be construed to create, any rights of the general public to maintain any action for enforcement against Grantor, or their successors or assigns, for any violation of the terms of this Deed.
5. **FAILURE TO ENFORCE.** The failure of Grantee to enforce any term of this Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantor from thereby complying with any such term. Furthermore, the Grantor hereby waives any defense of laches, estoppel, or prescription.

### ARTICLE IV – AMENDMENT

1. **GRANTEE'S PROPERTY RIGHT.** Grantor covenants and agrees that the donation of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time.

2. **EXTINGUISHMENT, CONVERSION, DIVERSION.** Grantor and Grantee covenant and agree that this Easement is perpetual and shall not be extinguished, and acknowledge that extinguishment of the Easement is not permitted by the Open-Space Land Act. Nevertheless, should any attempt be made to extinguish the Easement, any such extinguishment can be made only by judicial proceedings and only if such extinguishment also complies with Virginia Code Section 10.1-1704. In addition, 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 and the provisions of Section 170 of the I.R.C. and the applicable Treasury Regulations. 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 the perpetual conservation restriction computed as set forth in Section 1 above, but not to be less than the proportionate value that the perpetual conservation restriction at the time of the extinguishment bears to the then value of the Property as a whole. Grantee covenants and agrees to 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.
3. **AMENDMENT.** Grantor and Grantee, or Grantee and the then owner of the Property, may amend or modify the Easement to strengthen its terms, increase protection of the Property's conservation value and natural resources, add to the restricted property, provided that no amendment shall be allowed which affects the Easement's perpetual duration or results in any financial benefit to the Grantor or the then Property owner. No amendment or modification shall be effective unless documented in a notarized writing executed by Grantee and the then owner of the Property and recorded among the land records of Fauquier County, Virginia.

#### ARTICLE V – DOCUMENTATION

**DOCUMENTATION.** Documentation retained in the office of Grantee including, but not limited to the baseline documentation report, describes the condition and character of the Property at the time of the gift. The Documentation may be used to determine compliance with and enforcement of the terms of the Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. Grantor has made available to Grantee, prior to the donation, documentation sufficient to establish the condition of the Property at the time of the gift. The parties hereby acknowledge that the documentation supplied and contained in the files of Grantee is an accurate representation of the Property.

#### ARTICLE VI – GENERAL PROVISIONS

1. **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, including but not limited to, any mortgages not subordinated to this Easement.

2. **ACCEPTANCE.** Acceptance of this conveyance by Grantee is authorized by Virginia Code Section 10.1-1701 and is evidenced by the signature of Paul McCulla, County Administrator, by authority granted by Grantee's Board, December 14, 2006.

3. **ASSIGNMENT BY GRANTEE.** Grantee may transfer or convey this Easement to another public body, as the same is defined by the Open-Space Land Act, but only if Grantee conditions such transfer or conveyance on the requirements that:

(i) All restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity; and

(ii) The transferee agrees not to convert or divert the Property from open-space land uses except as permissible under Section 170 of the I.R.C., as amended, and under Section 10.1-1704 of the Open-Space Land Act;

(iii) The transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the I.R.C., as amended, and the applicable Treasury Regulations; and

(iv) The transferee records among the land records where the Easement is recorded an assignment of the Easement and provides written notice of such assignment to the Grantor or the then current owner of the Property.

4. **NOTICES TO GRANTEE.** Grantor shall notify Grantee in writing at, or prior to, closing on any inter vivos transfer or sale of the Property. Any notices, requests for approval or other communications to Grantee or any notices, responses to requests for approval or other communications to Grantor under any section of this Easement shall be in writing and sent to the following addresses or to such addresses as may hereafter be specified in writing:

Grantee:

Board of Supervisors of Fauquier County  
10 Hotel Street,  
WarrentonVirginia20186

Grantor:

Montana Farm, LLC  
Peter C. Schaumber, Jr.  
Managing Member  
3000 44<sup>th</sup> Street, NW  
Washington, DC 20016

5. **INCLUSION OF TERMS 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.

6. **CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would

render it invalid. Notwithstanding the forgoing, lawful acts or uses not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a "qualified conservation contribution" as that term is defined in Section 170(h)(1) of the I.R.C. 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.

7. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property which 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, cluster development arrangement or otherwise.
8. **ZONING ORDINANCE.** Notwithstanding any other provision of this Easement, Grantee's Zoning Ordinance shall apply to the Property and shall take precedence over this Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Easement
9. **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.
10. **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 Section 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from donation of this Easement, or that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.
11. **WARRANTIES.** THE COUNTY OF FAUQUIER AND ANY CO-HOLDER MAKE NO EXPRESS OR IMPLIED WARRANTIES REGARDING WHETHER ANY TAX BENEFITS WILL BE AVAILABLE TO GRANTOR FROM THE DONATION OR ANY PARTIAL DONATION OF THIS EASEMENT, NOR WHETHER ANY SUCH TAX BENEFITS MIGHT BE TRANSFERABLE, NOR WHETHER THERE WILL BE ANY MARKET FOR ANY TAX BENEFITS WHICH MIGHT BE TRANSFERABLE, NOR WHETHER THIS DEED OR ANY OTHER FORM OR DOCUMENTATION PREPARED BY THE COUNTY WILL SATISFY ANY STATE OR FEDERAL

**REQUIREMENT, LAW OR REGULATION RELATED TO TAX CREDITS OR DEDUCTIONS FOR THE DONATION OR PARTIAL DONATION OF THIS EASEMENT.**

- 12. RIGHT TO DESIGNATE EASEMENT CO-HOLDER.** Grantee shall have the right, in its sole discretion, now and at any time in the future, to transfer part or all interest it has under this Easement to another public body as the same is defined in Section 10.1-1700 of the Open-Space Land Act. Such transfer shall not require the consent of the Grantor or any trustee under a deed of trust which has been subordinated to this Easement, but shall be subject to the conditions and requirements of Paragraph 3 of this section (Assignment by Grantee).
- 13. SEVERABILITY.** If any provision of this deed or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.
- 14. ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement.
- 15. CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.
- 16. RECORDING.** This Easement shall be recorded in the land records office of the Circuit Court of Fauquier County, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.

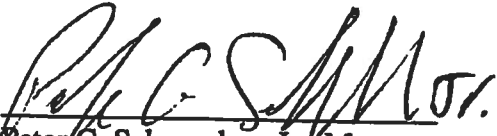
[THIS SPACE INTENTIONALLY LEFT BLANK]

WITNESS the following signatures and seals:

Grantor:

MONTANA FARM, LLC  
a Virginia limited liability  
company

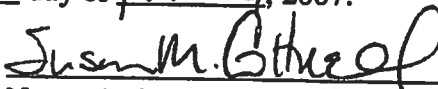
By:

  
Peter C. Schaumber, Jr., Manager

COMMONWEALTH OF VIRGINIA,  
COUNTY OF FAUQUIER, TO WIT:

I, Susan M. Cottrell, a Notary Public for the Commonwealth aforesaid,  
hereby certify that Peter C. Schaumber, Jr., Manager, personally appeared before me this day and  
acknowledged the foregoing instrument.

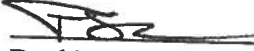
WITNESS my hand and official seal this 8<sup>th</sup> day of January, 2007.

  
Notary Public

My commission expires: DEC. 31, 2010 (SEAL)

Accepted:

BOARD OF SUPERVISORS OF FAUQUIER COUNTY, VIRGINIA  
A body corporate and politic

By:   
Paul McCulla  
Its County Administrator

COMMONWEALTH OF VIRGINIA,  
COUNTY OF FAUQUIER, TO WIT:

I, Regina T. Dodson, a Notary Public for the Commonwealth aforesaid, hereby certify that Paul McCulla, Fauquier County Administrator, personally appeared before me this day and acknowledged the foregoing instrument on behalf of the Board of Supervisors of Fauquier County, Virginia.

WITNESS my hand and official seal this 9<sup>th</sup> day of January 2007.

Regina T. Dodson  
Notary Public

My commission expires: Jan 31, 2008 (SEAL)



**APPROVED AS TO FORM**

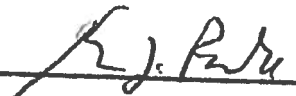
 1/8/07  
COUNTY ATTY. DATE



EXHIBIT "A"

All those certain lots or parcels of land situate, lying and being in Fauquier County, Virginia, and being more particularly described as follows:

BEGINNING at a point in the center of Va. Route 729 and corner to Parcel 'A' of this same property; thence with the center of Va. Route 729 generally as follows: 533.95 feet along the arc of a curve to the left, having a radius of 1680.00 feet, a delta angle of 18 degrees 12' 36", and a chord bearing and distance of N 24 degrees 43' 26" E 531.70 feet to a point corner to the residue of the Minnie Smith Estate; thence departing from Va. Route 729 and with the said residue, S 52 degrees 11' 11" E 3141.47 feet to a pipe set in the line of the R. E. Warriner property; thence with the Warriner property, S 01 degrees 01' 35" W 454.74 feet to a pipe set corner to the J. W. Parker property; thence with the Parker property, S 20 degrees 06' 49" W 198.38 feet to a pipe corner to the aforesaid Property 'A'; thence with Parcel 'A', N 51 degrees 35' 01" W 3353.87 feet to the point of beginning and containing 40.0000 acres, more or less PIN 6040-17-6419-000; AND,

Lot 1, containing 20.0890 acres, PIN 6041-20-6433-000; and  
Lot 2, containing 18.6437 acres, PIN 6041-20-2416-000; and  
Lot 3, containing 32.0492 acres, PIN 6040-29-1794-000; and  
Lot 4, containing 32.5279 acres, PIN 6040-19-9402-000; and  
Lot 5, containing 29.7948 acres, PIN 6040-18-7974-000; and  
Lot 6, containing 32.5757 acres, PIN 6040-18-4518-000; and  
Lot 7, containing 12.8957 acres, PIN 6040-18-3124-000; and  
Lot designated as PIN 6040-27-8283-000, containing 2.1049 acres; all as shown on plat entitled "Plat Showing Boundary Survey on the Properties of James L. Strother, Co-Trustee and The Fauquier Bank, Co-Trustee and Kathleen Schaumber Mandzij, Peter C. Schaumber, Jr. & Alexandra D. Schaumber", dated December 10, 2004, recorded December 29, 2004, in Deed Book 1135 at Pages 1156-1160 among the land records of Fauquier County, Virginia.

AND BEING the same property conveyed to Montana Farm, LLC, by the following:

by deed from James L. Strother and The Fauquier Bank, Co-Trustees, under the Will of Minnie D. Smith, dated January 6, 2005, recorded January 7, 2005, in Deed Book 1136, at page 2321;

Report of Title, GT06-0116D, page 2,

and by deed from Kathleen Schaumber Mandzij, Peter C. Schaumber, Jr. and Alexandra D. Schaumber, dated December 26, 2006 and recorded January 3, 2007, in Deed Book 1247, at page 1623;

and by deed from 831 St. Peter Street LLC, a Louisiana limited liability company, dated December 26, 2006 and recorded January 3, 2007, in Deed Book 1247, at page 1625.

RECORDED IN CLERKS OFFICE OF  
FAUQUIER ON  
January 19, 2007 AT 3:40:38 PM  
\$0.00 GRANTOR TAX PD  
AS REQUIRED BY VA CODE §58.1-802  
STATE: \$0.00 LOCAL: \$0.00  
FAUQUIER COUNTY, VA  
GAIL H BARB CLERK OF CIRCUIT COURT  
*Gail H Barb*, Clerk

Fauquier County, VA  
Gail H Barbieri Clerk of Circuit Court  
40 Culpeper St  
Warrenton, VA 20186  
Phone Number: (540)347-8610  
DEEDS Receipt

Official Receipt: 2007-00000909  
Printed on 01/19/2007 at 03:45:11 PM

RECEIVED OF HENRY DAY  
Date Recorded: 01/19/2007

Instrument ID	Recorded Time	Amount
Bk 1249 Pg 1474	03:40:38 PM	\$30.00

Instrument: 200700001016  
DEGOV-DEED OF EASEMENT GOVERNMENT  
GRANTOR: MONTANA FARM L L C EX: N  
GRANTEE: BOARD OF SUPERVISORS OF  
FAUQUIER COUNTY EX: N

Address1:

Address2:

City/State/Zip:

Description:

Consideration: \$0.00

Assumption: \$0.00

Locality:

Pages: 18

Percent:

Names: 0

Accounts

Amount

442 TRANSFERS TO 113/315

\$0.00

DEEDS

\$28.50

VSLF-VA STATE LIBRARY FEE

\$1.50

Itemized Check Listing

Check # 892 \$30.00

Total Due: \$30.00

Paid By Check: \$30.00

Change Tendered: \$0.00

PLEASE VISIT OUR WEBSITE @

WWW.FAUQUIERCOUNTY.GOV

Cashier: NWH Reg: FEE1