

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

TAX MAP NO: 24-A-25

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

**DEED OF PARTIAL GIFT OF EASEMENT**

**THIS DEED OF GIFT OF EASEMENT** (“this Easement”), dated the \_\_\_ day of \_\_\_\_\_, 2\_\_\_, by and between The Ellen W. Dupuy Revocable Trust, Ellen W. Dupuy, Trustee, (“Grantor”); the COUNTY OF CLARKE, VIRGINIA, (“County”), the CLARKE COUNTY CONSERVATION EASEMENT AUTHORITY (“Authority”), (“Grantee”), parties of the second part (the designations “Grantor” and “Grantee” refer to the Grantor and Grantee and their respective successors and assigns.

**WITNESSETH:**

WHEREAS, Grantor is the owner in fee simple of real property situated on Bell Lane in Clarke County, Virginia, containing in the aggregate 88.25 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

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: 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, conserving land and other natural resources; and authorizing the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land; and

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 conservation purposes” under IRC §170(h)(1)(C) because it effects “the preservation of open space (including farmland and forest land)” under IRC 170(h)(4)(A)(iii). Specifically, the preservation of open space on the Property is pursuant to clearly delineated state and local governmental conservation policies and will yield a significant public benefit; and

WHEREAS, this open-space easement in gross constitutes a restriction granted in perpetuity on the use that may be made of the Property and is in furtherance of and pursuant to the clearly delineated governmental 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; and

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

a. its Comprehensive Plan to which plan the restrictions set forth in this deed conform and that contain the following goals, objectives and strategies: to “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

b. its tax code, Article VII, 11-23 of the Clarke County Code, which specifically recognizes the importance of the continued preservation of the Property as open space, forestal, and agricultural land by providing special assessment of the Property for real property tax purposes; and

WHEREAS, at the time of execution of this Easement, the Property consists of 88.25 acres, more or less, and has allocated to it an aggregate of four (4) unused Dwelling

Unit Rights (DURs) pursuant to Section 3-D-2 of the Clarke County Zoning Ordinance, and one (1) Exception pursuant to Section 3-D-4. One (1) DUR and one (1) Exception will remain with the Property; three (3) DURs are being terminated by the Grantor incidental to this Easement; and

WHEREAS, the Property contains an 1,400' portion of Dog Run, a perennial stream, classified as an impaired waterway by the Environmental Protection Agency; and

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

WHEREAS, Grantor and Grantee desire to protect in perpetuity the conservation values of the Property as specified in Section I by restricting the use of the Property as set forth in Section 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 of the Property, which values are reflected in Section I; and

WHEREAS, the Virginia Department of Agriculture and Consumer Services ("VDACS") and the County entered into an Intergovernmental Agreement ("the IGA") on December 31, 2018, to provide cooperation between VDACS and the County to implement VDACS' contribution of funds in support of the County's purchase of agricultural conservation easements; and

WHEREAS, the Authority has entered into a purchase agreement under the terms of which the Authority has agreed to pay the Grantor the sum of \$40,800 for this Easement.

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

WHEREAS, The Property lies within the Mosby Heritage Area, a 1,800-square-mile area of Northern Virginia, designated a Heritage Area by the Commonwealth of Virginia in 1995 to increase awareness of the historic, scenic, and natural qualities of the region, which area was named for Civil War Confederate Cavalry Officer John S. Mosby, and which area is stewarded by the Mosby Area Heritage Association, Inc., with a goal of preserving the history, scenery, and culture of the region; and

WHEREAS The Property is within the Chesapeake Bay watershed and contributes in its undeveloped state to the water quality of the Chesapeake Bay and its watershed and to the goals of the multi-jurisdictional 2014 Chesapeake Bay Watershed Agreement, and to the goals of the Chesapeake 2000 Agreement, in which the Governor of the Commonwealth of Virginia and the Administrator of the United States Environmental Protection Agency acknowledged “that future development will be sustainable only if we protect our natural and rural resource land, limit impervious surfaces and concentrate new growth in existing population centers.” A goal of the Chesapeake 2000 Agreement is to “expand the use of voluntary and market-based mechanisms such as easements... to protect and reserve natural resource lands”; and

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 88.25 acres located in Chapel and Battletown Magisterial Districts, Clarke County, Virginia.

The Property is shown as Tax Map No. 24-A-25 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.

### **SECTION I - PURPOSE**

The conservation purpose of this Easement is to preserve land for agricultural use, forestal use, natural habitat and biological diversity, historic preservation, 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, historic 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.

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

**Access Easement:** 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, hay-sheds, farm equipment and storage sheds, livestock watering facilities, above and below ground irrigation facilities, Structures for storing and/or selling produce and/or products primarily raised and/or made on the Property, corrals, riding rings, and silos.

**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.

**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 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).

**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.

**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

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

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

**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.

**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 by parties with rights superior to those rights conveyed to Grantee by this Easement.

**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.

**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 fence, bridge, tower, windmill, pool, septic tank, tennis court, ball field, or an equestrian riding ring.

**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

**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.

### **SECTION III – RESTRICTIONS**

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

**3.1 DWELLING UNIT RIGHTS.** The Property currently has four (4) unused dwelling unit rights (DURs) pursuant to Section 3-D-2 of the Clarke County Zoning Ordinance, and one (1) Exception 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 three (3) unused DURs on the Property, leaving one (1) unused DUR and one (1) Exception remaining on the Property.

**3.2 DIVISION.**

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

B. Boundary line adjustments with adjoining parcels of land are permitted provided that the following conditions are met:

(i) 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 set forth in this Easement or a more restrictive conservation easement approved by Grantee; and

(ii) The proposed boundary line adjustment shall have been reviewed and approved in advance by the Authority.

### **3.3 BUILDINGS AND STRUCTURES.**

A. No new buildings or structures other than the following are permitted on the Property:

(i) One single-family dwelling, of which one (1) exists on the date of this Easement. Such dwelling shall not exceed 4,500 square feet of above-ground enclosed, heated living area without Grantee's prior review and written approval;

(ii) One secondary dwelling, of which zero (0) exists on the date of this Easement, not to exceed 2,500 square feet of above-ground enclosed, heated living area;

(iii) One secondary dwelling, of which zero (0) exists on the date of this Easement, not to exceed 600 square feet of above-ground enclosed, heated living area;

(iv) non-residential outbuildings and structures commonly and appropriately incidental to the dwellings permitted in subsections (i) and (ii) of this paragraph, and sized appropriately to serve as an amenity to single-family residential use, provided that the aggregate footprint of such nonresidential outbuildings and structures for each permitted 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 of this Easement and the scale of the proposed outbuilding or structure in relation to the surrounding area; and

(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. No one building shall

exceed 4,500 square feet of enclosed area unless prior written approval shall have been obtained from the Grantee; and

(vi) Subject to the written approval of Grantee, commercial kennels, wildlife rehabilitation centers, veterinary clinics, or buildings used for similar enterprises (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 identified herein and that the buildings are located at sites on the Property not adversely impacting such conservation values; and

(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 (v) 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 identified herein and that the buildings are located at sites on the Property not adversely impacting such conservation values; and

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

C. Private roads to serve permitted buildings or structures on the Property are allowed. Private roads or driveways or access easements over the Property to serve adjacent properties and roads with permeable surfaces for other permitted uses may be constructed and maintained, provided that such roads, driveways, and easements have the prior written approval of the Grantee.

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

on, under, or over the Property unless Grantee determines that the construction and maintenance of such utilities will cause no more than minimal impairment of the conservation values of the Property and gives its prior written approval for such construction and maintenance. Approval or disapproval of such construction and maintenance shall take into consideration the visibility and any other adverse impact of such utilities on the conservation values of the Property. Grantor reserves its separate 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.

E. 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.

F. The collective footprint of all buildings and structures on the Property, including paved parking areas but excluding roads, shall not exceed 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 measured in square feet of the structures set forth in subsections (i) through (vi) above and all other impervious surfaces, excluding roads.

#### **3.4 ACTIVITIES AND USES:**

A. Residential Uses: permanent Residential Uses are permitted within the limitations set forth in Section 3.3.

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

(i) agricultural production and related uses

(ii) renewable energy production for the purposes of generating energy for the agricultural and residential needs of the Property; the sale of greater than incidental excess power (as described above in paragraph 3.3 E) generated in the operation of such renewable energy structures and associated equipment shall require prior written approval of the Grantee and must be being consistent with the conservation purposes of this Easement;

(iii) 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.

(iv) commercial enterprises related to agriculture or 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) small-scale incidental commercial or industrial operations compatible with activities set forth in (A) or (B) for which Grantee provides its prior written approval;

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 stream mitigation, 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 RIPARIAN PROTECTION ZONE.**

A. To protect water quality and natural habitat, a riparian protection zone (RPZ) shall be maintained on the Property as shown on Exhibit B, attached hereto and made a part hereof, and as shown in the Baseline Documentation Report. Such zone is made up of a 100-foot riparian buffer along both sides of the Dog Run, a perennial stream, on the Property, as measured from the top of the bank of the stream.

B. Within the RPZ there shall be:

- (i) no buildings or other substantial structures constructed;
- (ii) no new paved roads or paving of existing roads without Grantee's approval;
- (iii) no storage of manure, fertilizers, chemicals, machinery or equipment;
- (iv) no removal of trees, except
  - (a) removal of invasive species,
  - (b) removal of dead or diseased trees,
  - (c) removal of trees posing a threat to human or livestock health or safety,
  - (d) minimal removal of trees for the purpose of maintaining existing roads,
  - (e) minimal removal of trees for creation of small wildlife plots, and
  - (f) minimal removal of trees for construction and maintenance of new permitted roads, stream crossings, dams, and any other structures permitted in subparagraph (ii) below; and
  - (g) no plowing, cultivation, filling, dumping, or other earth-disturbing activity, except as may be reasonably necessary for the activities set forth in Section III Paragraph 3.6.C below.

C. Permitted within the RPZ are: (i) erosion control or restoration, enhancement, or development of ecosystem functions as permitted and limited under Section III, Paragraph 3.4.C above; (ii) fencing along or within the RPZ; (iii) construction and maintenance of stream crossings (including improvements over the RPZ to access crossings) for pedestrians, livestock, and vehicles, which crossings minimize obstruction of water flow; crossings must be perpendicular to the stream unless approved in writing by the Grantee; (iv) creation and maintenance of trails without hard surfaces, and maintenance of existing and new permitted trails; (v) creation and maintenance of natural habitat and small wildlife plots; (vi) planting of trees, shrubs, grasses, or other vegetation; and

(vii) clearing, grading and dam construction to create ponds (but not storm water retention or detention ponds to serve other properties),

D. Subsequent to the recordation of this Easement, Dog Run may meander or change course naturally, or as a result of the restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section III, Paragraph 3.4.C above. In such event, the RPZ shall remain the same width, but move relative to the movement of Dog Run. In such event, any buildings or structures that were outside of the original RPZ and are determined to be within the new RPZ shall not be considered in violation of these restrictions and may be maintained and replaced at such locations, but not enlarged.

**3.7 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.

**3.8 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.

**3.9 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.

**3.10 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 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 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.

- 4.3 FAILURE TO ENFORCE DOES NOT WAIVE RIGHT TO ENFORCE.** The failure of Grantee to enforce any term of this Deed of 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. In addition, VDACS retains its right pursuant to 2.h of the IGA to bring action, without bond or other surety, in a court of law for specific performance of Grantee's or its successors' or assigns' enforcement responsibility.

### **SECTION V – DOCUMENTATION**

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.

### **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 III, paragraphs 3.2, 3.3, 3.4, 3.5, 3.6, and 3.7.

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 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.

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 approval required hereunder shall be unreasonably

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 not provided for herein.

**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. 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.

- 6.10 SUBSEQUENT TRANSFER OF PROPERTY** 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.
- 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 §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 or add to the restricted property, provided that no amendment shall affect this Easement's perpetual duration or reduce the Property's conservation 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.

WITNESS the following signatures and seals:

\_\_\_\_\_  
Ellen W. Dupuy, Trustee, Grantor  
The Ellen W. Dupuy Revocable Trust

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

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

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

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

(SEAL)

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\_\_\_\_, by \_\_\_\_\_, on behalf of the COUNTY OF CLARKE, VIRGINIA, Grantee.

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

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

(SEAL)

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\_\_\_\_, by \_\_\_\_\_, on behalf of the CLARKE COUNTY CONSERVATION EASEMENT AUTHORITY, Grantee.

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

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

(SEAL)

SCHEDULE "A"