

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

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Return to: Northern Virginia Conservation Trust
Packard Center
4022-A Hummer Road
Annandale VA 22003

GPIN: 396-18-8722

DEED OF GIFT OF EASEMENT

Exempted from recordation tax
under the Code of Virginia (1950), as amended, Section 58.1-811 (D)

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made this ____ day of October, 2018, between **MOJAX, LLC**, a Virginia limited liability company having an address of 39881 Snickersville Turnpike, Middleburg, VA 20117-3003 ("**Grantor**"); and the **NORTHERN VIRGINIA CONSERVATION TRUST**, having an address of Packard Center, 4022-A Hummer Road, Annandale, VA 22003 ("**Grantee**"). Grantor and Grantee may be referred to herein individually as the "**Party**" and collectively as the "**Parties.**"

RECITALS:

R-1 Grantor is the owner in fee simple of real property situated in Loudoun County, Virginia, containing in the aggregate approximately 5.59 acres, designated by Loudoun County as GPIN# 396-18-8722, a legal description of which is contained in Exhibit A attached hereto and made a part hereof (the "Property"), and desires to give, grant, and convey to Grantee a perpetual conservation easement over the Property as herein set forth.

R-2 Grantee, as a non-profit corporation incorporated under the laws of the Commonwealth of Virginia and as a tax-exempt publicly-supported exempt organization under Section 501(c)(3) of the Internal Revenue Code, whose primary purpose is protecting the natural and historic resources of Northern Virginia, is a "qualified organization" and "eligible donee" under Code Section 170(h)(3) and Regulations Section 1.170A-14(c)(1), is qualified as a "holder" as defined under the Virginia Conservation Easement Act Section 10.1-1009, et seq. of the Code of Virginia, and is willing to accept a perpetual conservation easement over the Property as herein set forth.

R-3 Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, Sections 10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the “Open-Space Land Act”), provides “that the provision and preservation of permanent open-space land are necessary to help curb urban sprawl, to prevent the spread of urban blight and deterioration, to encourage and assist more economic and desirable urban development, to help provide or preserve necessary park, recreational, historic and scenic areas, and to conserve land and other natural resources” and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land.

R-4 Pursuant to Section 10.1-1009 of the Virginia Conservation Easement Act, the purposes of this Easement (as defined below in Section I) include retaining and protecting open-space and natural resource values of the Property, and this Easement’s limitations on division, residential construction, and commercial and industrial uses contained in Section III will ensure that the Property remains perpetually available for agriculture, livestock production, forestry, recreation, or open-space use, all as more particularly set forth below.

R-5 Chapter 525 of the Acts of 1966, Chapter 18, Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia, declares it to be the public policy of the Commonwealth to encourage preservation of open-space land.

R-6 As required under Section 10.1-1010.E of the Virginia Conservation Easement Act, the use of the Property for open-space land conforms to the Loudoun County Revised General Plan, Revised July 23, 2001 (as amended through December 6, 2016) and updated February 14, 2018 (“Revised General Plan”).

R-7 This Easement is intended to constitute (i) a “qualified conservation contribution” as defined in IRC Section 170(h)(1) and as more particularly explained below, and (ii) a qualifying “interest in land” under the Virginia Land Conservation Incentives Act of 1999 (Section 58.1-510 *et seq.* of the Code of Virginia (1950), as amended) (the “Land Conservation Incentives Act”).

R-8 This Easement is intended to be a grant “exclusively for conservation purposes” under IRC Section 170(h)(1)(C), because it effects (1) the preservation of open space (including farmland and forest land) where such preservation is (a) for the scenic enjoyment of the general public, or (b) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit under IRC Section 170(h)(4)(A)(iii); or (2) the preservation of an historically important land area under IRC Section 170(h)(4)(A)(iv).

R-9 This Easement is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below:

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

a. Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth’s policy to “protect its atmosphere, lands and waters from 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 Conservation Easement Act cited above;

d. Chapter 18, of Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia cited above;

e. The Virginia Land Conservation Incentives Act cited above, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth’s unique natural resources, wildlife habitats, open spaces and forest resources; and

(ii) Land use policies of the County of Loudoun as delineated in the Revised General Plan to which plan the restrictions set forth in this deed conform as follows:

a. The County’s policy to “encourage the use of open space easements as a means of strengthening the County’s Green Infrastructure” (Revised General Plan, Chapter 5, Open Space Easements);

b. The County’s policy to “pursue acquisition of appropriate river and stream corridor assets through open space dedication or easement, purchase of development rights, and other such programs to ensure the protection of these resources for the public good” (Revised General Plan, Chapter 5, River and Stream Corridor Resources);

c. The County’s policy to protect its river and stream corridor resources by “preserving, conserving, and restoring their water quality, flood protection, aquatic and wildlife habitat, and scenic value” (Revised General Plan, Chapter 5, River and Stream Corridor Resources);

d. The County’s policy to protect “appropriate river and stream corridor assets through open space dedication or easement, purchase of development rights, and other such programs to ensure the protection of these resources for the public good.” (Revised General Plan, Chapter 5, River and Stream Corridor Resources);

e. The County’s policy to “protect its natural and cultural-resource base (including stream corridors, wetlands, steep slopes, ridges, mountains, working landscapes, woodlands, historic and archaeological resources, habitats, greenways, trails, reservoirs, and public facilities) in order to preserve the rural character of the land and the social and experiential aspects of the rural way of life” (Revised General Plan, Chapter 7, Land Use Pattern and Design Strategy Policies).

f. The County’s policy to “encourage the retention and reinforcement of the cultural and visual identity of individual villages” (Revised General Plan, Chapter 10: Existing Villages).

R-10 The Property contains approximately 1,200 feet of frontage Mill Raceway and the Little River floodplain, and it is located within the watershed of Goose Creek, the Potomac River, and the Chesapeake Bay. Conservation of this Property, by preventing denser development on the Property otherwise allowed by the existing CR-2 Countryside Residential 2 zoning applicable to the Property and restricting the uses of the Property as set forth in Section III, will help prevent further impairment of the water quality of Goose Creek, the Potomac River, and the Chesapeake Bay, and advance the policies articulated in state law, local ordinance, and local land use plans as detailed in these recitals.

R-11 The Property lies within the Village of Aldie and is visible from the Village, is located within the Aldie Historic District designated by Loudoun County, and is located within the Aldie Battlefield Core Area and Potential National Register Boundary. Conservation of this Property, by preventing denser development on the Property otherwise allowed by the existing CR-2 Countryside Residential 2 zoning applicable to the Property and restricting the uses of the Property as set forth in Section III, will help maintain the character of the historic land area and publicly identified cultural value of the landscape, and advance the policies articulated in state law, local ordinance, and local land use plans as detailed in these recitals.

R-12 The Property contains approximately 1,100 feet of frontage on heavily travelled John Mosby Highway (U.S. Route 50), a proposed Scenic Byway, and serves as a gateway to the Village of Aldie. Conservation of this Property, by preventing denser development on the Property otherwise allowed by the existing CR-2 Countryside Residential 2 zoning applicable to the Property and restricting the uses of the Property as set forth in Section III, will help maintain the scenic character of the Property, and advance the policies articulated in state law, local ordinance, and local land use plans as detailed in these recitals.

R-13 The publicly significant open-space values of the Property described above are further described in the “**Baseline Documentation Report**” provided for in Section V. Such values are collectively referred to in this Easement as the “**Conservation Values**.” The Conservation Values are of importance to the Grantee, the people of the Commonwealth of Virginia, and the people of the United States.

R-14 This Easement will yield significant public benefit as set forth in these recitals and in Section I.

R-15 Grantor and Grantee desire to protect in perpetuity the Conservation Values by restricting the use of the Property as set forth in Section III.

R-16 Grantee has determined that the restrictions set forth in Section III will preserve and protect the Conservation Values in perpetuity and will limit use of the Property to those uses consistent with, and not adversely affecting, the Conservation Values and the governmental conservation policies furthered by this Easement.

R-17 Grantee, by acceptance of this Easement, designates the Property as property to be retained and used for the preservation and provision of open-space land pursuant to the Virginia Conservation Easement Act in perpetuity.

NOW, THEREFORE, in consideration of the foregoing recitals incorporated herein and made a part hereof and in consideration of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby GIVE, GRANT and CONVEY to Grantee this Easement over, and the right in perpetuity to restrict the use of, the Property, upon the following terms and conditions.

SECTION I – PURPOSES

The purposes of this Easement (the “Conservation Purposes”) are (i) to preserve and protect the Conservation Values and other significant conservation interests (to the extent that it is not necessary to impair such other interests to protect the Conservation Values), and (ii) to restrict the use of the Property to those uses that are consistent with such values and interests.

Grantor covenants that no acts or uses that are inconsistent with the Conservation Purposes shall be conducted on the Property, and that all rights reserved by it to the future use of the Property shall be undertaken in a manner that is consistent with the Conservation Purposes.

SECTION II – DEFINITIONS

For purposes of this Easement, the following terms shall have the meaning given to them below. Additional definitions are sometimes expressly provided in the body of this Easement. When a term used in this Easement is not expressly defined herein it shall be defined according to the Zoning Ordinance of Loudoun County in effect at that time, or if not defined in said Ordinance, according to the law governing the interpretation of contracts as applicable in the Commonwealth of Virginia.

- **Accessory Residential Structures:** Structures (defined below) and improvements (defined below) commonly and appropriately incidental and accessory to a dwelling (defined below) reserved (defined below) by the terms of this Easement, and sized appropriately to serve as an amenity to such dwelling, including a garage (defined below), or carport.

- **Act:** The Open-Space Land Act, being §§10.1-1700, *et seq.* of the Code of Virginia, 1950, as amended, pursuant to the authority granted by, and the provisions of which, this Easement is conveyed to and accepted by the Grantee.

- **Building:** An enclosed, roofed, structure used or intended for supporting or sheltering any use or activity including barns, equipment sheds, shelters (but not dwellings) for people and/ or animals.

- **Code and Regulations:** The Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, respectively, including the comparable provisions of any subsequent revision of the Code and/or Regulations.

- **Commercial:** making, or intending to make, a profit.
- **Currently or Existing:** Current or existing as of the Effective Date.
- **Day or days:** Calendar days, not business days.

• **Dwelling Unit:** A building, collection of buildings, or one (1) or more rooms in a building, arranged, designed, used or intended for use as a complete, independent living facility for one (1) family, and which includes permanent provisions for living, sleeping, eating, cooking and sanitation; but excluding a mobile home, trailer, or modular home unless otherwise expressly reserved on the Property by the terms of this Easement.

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

• **Garage:** A building or part of a building used primarily for the storage of passenger vehicles in operating condition, accessory to the residential use of the Property, but excluding the commercial storage, repair, or service of vehicles of any sort.

• **Grantee:** The Grantee and its successors and/or assigns in title to this Easement.

• **Grantor:** The Grantor, the Grantor's invitees, and the Grantor's successors in title to the Property, any portion thereof, or interest therein, including tenants, lessees, and licensees of the Property, any portion thereof, or interest therein.

If the Grantor is a trust, any reference to the Grantor shall include reference to the beneficiary(ies) of said trust; if the Grantor is a limited liability company or corporation, any reference to the Grantor shall include such company's members and such corporation's shareholders; if the Grantor is a partnership, any reference to the Grantor shall include the partners in such partnership, including limited partners, if any.

• **Ground Area:** The square footage of a structure, or improvement (including any combination thereof), as measured at the exterior of the foundation (perimeter load-bearing) walls and/or piers thereof or, if there are no such foundation walls or piers, the square footage of ground covered by such feature.

• **Home Occupancy Use:** A business, profession, occupation or trade conducted for gain or support within a dwelling reserved by the terms of this Easement, which use is incidental and secondary to the use of the dwelling for residential purposes and which use does not change the residential character of such dwelling.

• **Hostel:** An establishment which provides inexpensive food and lodging for hikers, bikers, equestrians or others using the Property or adjoining property for recreational purposes.

• **Impervious surface:** Any surface paved with concrete, asphalt, chip and seal, and the like, but excluding loose gravel, wood chips or packed earth, and the ground area of any

building, structure or improvement, patios and/ or ground level decks. Impervious surface shall not be deemed to include roads or driveways.

- **Improvements:** man-made additions to the Property and/ or man-made changes in topography, excluding structures, roads and utilities, as defined herein, but including berms, ditches, ponds, parking areas, fountains, pools (including swimming pools), tennis courts, fencing, pipes, pipelines, culverts, mailboxes, gates, gate posts, signs, decks, riding rings, hunting stands and blinds, and patios. Changes in topography resulting from plowing, mowing, planting hay or crops, and trees and other vegetation, shall not be deemed “improvements.”

- **Indemnified Parties:** Grantor or Grantee’s officers, employees, board members, partners, members, shareholders, beneficiaries, trustees, heirs, successors, and assigns, as the case may be.

- **Property:** The real property subject to this Easement, a legal description of which is contained in Exhibit A. Even though the Property may consist of more than one parcel for governmental purposes of zoning or taxation, or may have been acquired as more than one parcel; for all purposes of this Easement the Property shall be considered one (1) parcel.

- **Structure:** An assembly of materials forming a construction, including, among other things, buildings, platforms, observation towers, water tanks, trestles, piers, open sheds, energy generators, or temporary structures having no foundation or footing, such as a tent or tree-house, but excluding Improvements.

- **Utility:** A facility for the provision of infrastructure services including wells, water storage tanks; septic systems; electricity, internet, television, and telephone transmission lines; antennas for the transmission and reception of electro-magnetic energy; equipment used to harness natural renewable energy sources, such as sunlight, water, or biomass; but excluding wind generators and cell towers.

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:

1. DIVISION AND BOUNDARY LINE ADJUSTMENTS.

- (i) **Division of the Property.** The Property currently consists of one (1) parcel. The Property may not be divided, subdivided or partitioned and may only be conveyed as one (1) parcel.

- (ii) **Boundary Adjustments.** Adjustments of the boundaries of the Property (but not of this Easement) with adjoining parcels of land are permitted and shall not be considered separate conveyances of portions of the Property or divisions of the Property, provided that all of the following conditions are met: (1) no boundary adjustment may result in the

creation of any development potential, on or off the Property, that did not exist prior to such adjustment or decrease the protection of the Conservation Values, (2) Grantee approves such adjustments, and is made party to any deed creating a boundary line adjustment, and (3) at least one of the following further conditions are met:

(a) The entire adjacent parcel is subject to a recorded conservation easement held by Grantee; or

(b) The proposed boundary line adjustment shall have been reviewed and approved in advance by the Board of Directors of Grantee.

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

(i) No buildings, structures, roads, trails, or utilities, other than the following, are permitted on the Property:

(a) **Existing dwellings and non-residential outbuildings and structures.** The Property is currently improved with one (1) dwelling unit, one (1) building that is currently serving as an office, one (1) small outbuilding, one (1) swimming pool, one (1) drive and one (1) parking area, along with other minor improvements, all of which are described in the Baseline Documentation Report. Grantor is permitted to continue to use these buildings, structures, and improvements and to expand the existing dwelling up to a total of four thousand five hundred (4,500) square feet in ground area.

(b) **Trails.** Trails with permeable surfaces for pedestrian, biking, and/ or equestrian use.

(c) **Utilities.** Public or private utilities to serve buildings, structures, or activities, permitted on the Property; and private or public utilities located within existing rights of way therefor, provided that such utilities are consistent with the provisions of such rights of way of public record. Public or private utilities to be constructed in whole or in part to serve other properties shall not be constructed on, under, or over the Property unless Grantee determines that the construction and maintenance of such utilities will not impair the Conservation Values 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. Grantor reserves its separate rights to approve such public or private utilities.

(d) **Small-scale miscellaneous buildings or structures.** Small-scale miscellaneous buildings and structures, the existence of which is consistent with the Conservation Purposes, such as fishing platforms, wildlife observation structures, fences, and boardwalks.

(e) **Exterior Lighting.** Exterior lighting, which shall utilize 90-degree horizontal cut-off downcast fixtures and shall be attached to a permitted building, or if on

a free-standing pole, shall not be located more than ten (10) feet above the immediately surrounding ground level.

(f) **Protection of Historic Resources.** To protect the historic resources of the Property, the destruction or removal, in whole or in part, of the existing dwelling, or the renovation of the exterior of the existing dwelling in a manner that is inconsistent with its historic character, is prohibited. Grantor shall provide written notice to Grantee prior to undertaking any work, except for routine normal maintenance, on the exterior of the existing dwelling. Furthermore, Grantor shall protect and preserve this dwelling, and/or archaeological resources discovered on the Property in the future, and shall promptly notify Grantee in writing of the discovery of any such resources. Earth disturbing activity in locations where archaeological resources have been, or are reasonably believed to be, located shall only be undertaken after written notice to Grantee and thereafter pursuant to such reasonable guidelines or directions provided by Grantee for the purpose of preserving and protecting such structures or resources. Any expansion of the existing dwelling, as provided for in Section II Paragraph 2(i)(a), shall be consistent with the historic nature of said dwelling.

(ii) Grantor shall have the right to construct or locate any buildings, structures, roads, trails, and utilities permitted in Section II Paragraph 2(i) and to repair, maintain, renovate, expand, and replace (but not relocate) any permitted buildings, structures, roads, trails, and utilities on the Property, within the limitations set forth in this Easement.

(iii) In addition to, or in lieu of, their existing use for residential and office purposes, all, or a portion of, the existing buildings, and permitted expansions thereof, may be used for educational, scientific, religious, or public recreational purposes.

(iv) The total Impervious Surface on the Property shall not exceed ten thousand (10,000) square feet, provided that if Grantor can demonstrate that an increase in the Impervious Surface would result in increased protection of the Conservation Values, Grantee may approve such increase.

3. ACTIVITIES ON THE PROPERTY.

(i) Industrial activities are prohibited.

(ii) Commercial activities are prohibited other than the following:

(a) **Use Fees.** In the event that the Property is opened to the public on a regularly scheduled basis, fees may be charged solely for the purpose of defraying the costs of maintaining and operating the Property for public use.

(b) **Home Occupancy Use.**

(c) **Bed and Breakfast.** Operation of a bed and breakfast, or hostel within the existing residence, including any permitted expansion thereof.

(iii) Use of the Property for passive, non-motorized, recreational activity, such as walking, gardening, horseback riding, camping, picnicking, fishing, and public and/ or private gatherings not including amplified sound.

(iv) Use of the Property as a public park, subject to the other restrictions of this Easement.

(v) Conduct of outdoor education and wildlife tours for the public.

4. **TREES AND VEGETATION.** To protect the existing scenic view of the Property from John Mosby Highway, existing trees and vegetation shall not be removed except for the following purposes: (i) to prevent damage or injury to persons or property; (ii) as necessary for other reserved activities; (iii) to eliminate and control invasive species; and (iv) to eliminate dead or diseased trees or other vegetation.

5. **GRADING, BLASTING, FILLING AND MINING.**

(i) Grading, blasting, filling, or earth removal is permitted only as necessary for the construction or location of permitted buildings, structures, and improvements, or for archaeological surveys or investigations, or as permitted in advance and in writing by Grantee. The existing topography of the Property shall be maintained.

(ii) Surface mining on the Property, subsurface mining on or from the surface of the Property, and dredging on or from the Property, except as necessary to maintain permitted ponds, are prohibited.

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.** No billboards or other signs may be displayed on the Property, except for signs that identify the Property, provide safety, instructional, directional, and educational information, or indicate permitted activities thereon. Temporary political signs are allowed. No sign visible from outside the Property shall exceed nine (9) square feet in size, and no signs shall be internally lighted.

Notwithstanding the preceding paragraph, Grantor and Grantee may agree to erect a maximum of two markers or signs, at locations suitable to Grantor, which advises that Grantee holds the Easement granted herein, provided such signs shall not exceed four (4) square feet.

8. **RIPARIAN BUFFER.** To protect water quality, a riparian buffer shall be maintained along the tributary to Little River (“Tributary”) as shown in the Baseline Documentation Report, as follows:

A one hundred (100)-foot vegetated buffer strip shall be maintained along the edge of the Tributary. The buffer shall be measured from the bank of the Tributary, horizontally, in a landward manner, and perpendicular to the Tributary.

(i) Within the buffer strip, except for existing roads or other existing improvements, there shall be (a) no buildings or other structures located or constructed, (b) no paved roads or paving or widening of existing roads without Grantee’s approval, (c) no storage of compost, manure, fertilizers, chemicals, machinery or equipment, (d) no removal of trees, except removal of invasive species, removal of dead, diseased or dying trees, removal of trees posing a threat to human health or safety, or removal of trees for the purpose of maintaining existing roads or constructing new permitted roads or trails, and (e) no plowing, cultivation, filling, dumping, or other earth-disturbing activity, except as may be reasonably necessary for the activities permitted in this paragraph and the following paragraph.

(ii) Permitted within the buffer strip are the following: (a) erosion control or restoration, enhancement, or development of ecosystem functions on the Property as permitted by the express provisions of this Easement, (b) fencing along or within the buffer strip, (c) construction and maintenance of no more than two (2) stream crossings for pedestrians, livestock and vehicles, which crossings shall minimize obstruction of water flow, (d) creation and maintenance of trails with unimproved surfaces, (e) planting of trees, shrubs, grasses, or other vegetation, provided that such plantings are limited to species native to Northern Virginia, (f) clearing, grading and dam construction and maintenance to create and maintain ponds (but not storm water retention or detention ponds to serve other properties), and (g) mowing.

(iii) Should the Tributary meander or change course naturally, or as a result of the restoration, enhancement, or development of ecosystem functions on the Property as permitted by the express provisions of this Easement, the buffer strip shall remain the same width, but move relative to the movement of the Tributary. In such event, any buildings or structures that were outside of the original buffer strips and are determined to be within the new buffer strips shall not be considered in violation of these restrictions and may be maintained at such locations.

(iv) In the event that livestock are maintained on the Property, livestock shall be excluded from the buffer strip, except (1) for brief periods of flash grazing, (2) during times of drought or other emergencies, (3) for stream crossings or (4) for watering at limited access points.

9. **WETLANDS RESTORATION AND CARBON SEQUESTRATION.** Grantor may undertake activities on the Property 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, nutrient offsets (including reforestation), biological carbon sequestration and biodiversity mitigation. Except for mitigation banking as provided for in Paragraph 10, Grantor shall obtain Grantee's prior, written approval for any activities undertaken on the Property pursuant to this Paragraph 9.

10. PARTICIPATION IN MITIGATION BANKING.

(i) Grantor may grant one (1) or more mitigation easements along streams and over wetlands on the Property ("Mitigation Areas"), and Grantor or agents of Grantor may undertake mitigation activities within such Mitigation Areas for the restoration or improvement of streams and wetlands on the Property, and to allow access to such areas across the Property as necessary to conduct such mitigation activities. Mitigation easements and mitigation activities may only be undertaken pursuant to a mitigation plan approved by the United States Army Corps of Engineers, the Virginia Department of Environmental Quality, and/ or another governmental agency.

(ii) Grantor shall provide written notice to Grantee prior to the grant of a mitigation easement, which notice shall include a copy of the mitigation easement. Grantor also agrees to provide written notice to Grantee prior to commencement of any mitigation activities on the Property and to provide Grantee with a copy of the mitigation plan, and any amendments thereto, prior to commencement of the mitigation activities, or activities provided for in any amendment of the plan.

(iii) Grantor retains the exclusive and sole rights to any payment for, or other benefits resulting from, the grant of a mitigation easement on the Property and for undertaking of any mitigation activities as reserved in this Paragraph 10.

(iv) Grantee shall not be responsible for monitoring any mitigation activities provided for in this Paragraph 10, and has no obligation to enforce the provisions of any permit(s), restriction(s), or easement(s) therefor, other than the provisions of this Easement.

11. OTHER USES. Grantor may make any other uses of the Property that are consistent with the Conservation Purposes, provided that Grantor shall obtain the written approval of Grantee prior to undertaking such uses, which approval shall not be unreasonably withheld. Uses reserved pursuant to this Paragraph shall not be deemed "expressly reserved" for any other purpose of this Easement.

Notwithstanding the foregoing, no use may be approved pursuant to this Paragraph 11 unless the approval is consistent with the requirements set forth in Section VI Paragraph 15 for the amendment of this Easement.

SECTION IV – ENFORCEMENT

1. RIGHT OF INSPECTION. Representatives of Grantee may enter the Property from time to time for purposes of inspection (including photographic documentation of the condition

of the Property) and enforcement of the terms of this Easement after permission from or reasonable notice (in accord with the provisions of Section VI Paragraph 9) to Grantor or Grantor's representative, provided, however, if Grantee determines, in its reasonable discretion, that an emergency threatening any of the Conservation Values exists, Grantee or its agents may enter the Property without notice to prevent, terminate or mitigate a potential violation of this Easement with notice to Grantor or Grantor's representative being given at the earliest practicable time thereafter.

2. **ENFORCEMENT.** Grantee, in accepting this Easement, commits to protecting the Conservation Purposes and has the resources necessary to enforce the restrictions set forth herein. Grantee has the right to bring a judicial proceeding to enforce the restrictions, which right specifically includes the rights (i) to require restoration of the Property to its condition existing on the Effective Date, except in the event that there have been any changes in the Property permitted by the provisions of this Easement, restoration may be to such changed condition; (ii) to recover any damages arising from non-compliance; and (iii) to seek temporary or permanent injunctions against violations or threatened violations of this Easement.

If the court determines that Grantor failed to comply with this Easement, Grantor shall make payment to Grantee for any reasonable costs of enforcement, including costs of restoration, court costs, and attorney's fees and expenses, in addition to any other payments ordered by the court.

A Party's delay in enforcing its rights pursuant to this Easement shall not waive or forfeit such Party's right to take such action as necessary to ensure compliance with this Easement, and the Parties hereby waive any defense of waiver, estoppel or laches with respect to any failure to act.

Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage to the Property or change in the condition of the Property which is either: (i) caused by fire, flood, storm, Act of God, governmental act, or other cause outside of Grantor's control, or (ii) resulting from prudent action taken by Grantor to avoid, abate, prevent, or mitigate such damage to, or changes in, the condition of the Property from such causes.

Nothing in this Easement shall create any right in the public, or any third party, to maintain any judicial proceeding against Grantor or Grantee, and neither Grantor nor Grantee intend, by the conveyance and acceptance of this Easement, to create any form of trust, including a charitable trust.

SECTION V – DOCUMENTATION

Grantor has made available to Grantee, prior to conveyance of this Easement, documentation establishing the condition of the Property at the time of the recordation of this Easement, such documentation to be known as the Baseline Documentation Report. The Baseline Documentation Report shall be kept in the permanent files of Grantee, and

may be used to determine compliance with and enforcement of the terms of this Easement. However, the Parties are not precluded from using other relevant evidence or information to assist in that determination. The Parties hereby acknowledge that the Baseline Documentation Report is an accurate representation of the Property; was received by Grantor and Grantee prior to recordation of this Easement; and contains a statement signed by Grantor and a representative of Grantee as required by Regulations Section 1.170A-14(g)(5)(i).

SECTION VI – GENERAL PROVISIONS

1. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions, and restrictions contained in this Easement are binding upon, and inure to the benefit of, the Parties and their successors and assigns in title to the Property or any portion thereof, and this Easement, as the case may be, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
2. **NO PUBLIC ACCESS AND GRANTOR'S RETENTION OF USE.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Subject to the terms hereof, Grantor retains the exclusive right to such access and use including, but not limited to, the right to hunt, fish, or trap on the Property. Notwithstanding the foregoing, nothing in this Easement shall prevent Grantor from opening the Property to public use, subject to the other provisions of this Easement.
3. **TITLE.** Grantor covenants and warrants that Grantor has good title to the Property (including the mineral rights located under the surface of the Property), that Grantor has all right and authority to grant and convey this Easement, and that the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record), including, but not limited to, any mortgages or deeds of trust not subordinated to this Easement. Notwithstanding the foregoing, this Easement is conveyed subject to all matters of public record that are legally enforceable as of the Effective Date, including any right of public access along the millrace bordering the Property.
4. **CONTROL OF THE PROPERTY.** Nothing in this Conservation Easement shall be construed as giving rise to any right or ability in the Grantee to exercise physical or managerial control over the day-to-day operations of the Property or any of the Grantor's activities on the Property, or otherwise to "participate in management" of the Property, within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or similar federal, state, or local laws.
5. **EXTINGUISHMENT OF DEVELOPMENT RIGHTS.** Grantor hereby grants to Grantee all development rights pertaining to the Property, except for those development

rights expressly reserved by Grantor in this Easement. Development rights shall be deemed to include, but not be limited to, all development rights and development potential that are now or hereafter allocated to, implied, reserved or inherent in the Property or any portion thereof, including, but not limited to (i) all subdivision and development density rights and potential and (ii) the right to use any of the acreage of the Property in any acreage calculation having the effect of creating, or contributing to, additional development on or off the Property, whether such rights exist now or in the future under federal, state or local law, or otherwise.

Grantor unconditionally and irrevocably relinquishes the right to transfer such development rights to any other property adjacent or otherwise, or to use them for the purposes of calculating permissible lot yield, density, and development potential etc., of the Property or any other property.

The Parties agree that all such development rights are hereby terminated and extinguished in perpetuity.

As an elaboration, but not a limitation, of the foregoing, for purposes of this Paragraph 5, the Property shall be considered non-existent for purposes of all development rights and/or development potential, or calculations pertaining thereto, of any and every nature, except as expressly reserved by Grantor in this Easement.

6. **RELATION TO GOVERNMENTAL LAND USE REGULATIONS.** The restrictions imposed by the terms of this Easement are independent of any and all governmental regulations that apply to the use of the Property, including the zoning, subdivision and planning regulations of Loudoun County, Virginia. The relationship of this Easement and any such regulations is such that, although the terms of this Easement and such regulations apply simultaneously to the Property, on a case-by-case basis, the more restrictive regulation or Easement restriction will govern the use of the Property. This provision is intended by the Parties as a clarification of the relationship of the restrictions of the Easement and applicable governmental regulations only, and is not intended to, and does not impose any additional restrictions on the use of the Property.
7. **CONSTRUCTION.** Pursuant to the public policy of the Commonwealth of Virginia favoring land conservation, any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policy and purposes of Grantee. The Parties recognize that it is impossible to precisely define all terms used in this Easement. Furthermore, the Parties intend this Easement to provide the maximum protection to the Conservation Values. Therefore, the Parties hereby agree that, if any term of this Easement is found to be ambiguous, the term shall be interpreted to prevent a use rather than permit such a use, unless the use clearly enhances the Conservation Values of the Property or the protection of the Conservation Values.

Grantor and Grantee intend that the grant of this Easement qualify as a “qualified conservation contribution” as that term is defined in Code Section 170(h)(1) and

Regulations Section 1.170A-14, and the restrictions and other provisions of this Easement shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.

Neither Grantor nor Grantee shall be deemed to be the draftsman of this Easement or any part thereof, each having had the benefit of counsel of their own choosing in negotiating its terms.

8. REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS. This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property. Failure of Grantor to comply with this requirement shall not impair the validity of the Easement or limit its enforceability in any way, or the validity of any conveyance of the Property.

9. NOTICE TO GRANTEE AND GRANTOR. Notices required or permitted to be sent under this Easement shall be sent to the current addresses of the Parties set forth at the beginning of this Easement.

(i) Any notices, demands or other communications required or permitted to be given by the terms of this Easement shall be given in writing and shall be delivered either: (i) in person (such delivery to be evidenced by a signed receipt), (ii) by certified mail, postage prepaid, return receipt requested, or (iii) by U.S. Express Mail or commercial overnight courier; or (iv) by regular U.S. Mail.

Such notices shall be deemed to have been "given" (i) when actually delivered, in the case of personal delivery; (ii) when delivered as confirmed by an official return receipt if sent by certified mail; (iii) within two (2) business days of deposit with a courier in the case of U.S. Express Mail, or commercial overnight courier; or (iv) when actually received, in the case of U.S. Mail. Such notices shall be sent to the addresses of the Parties set forth above, or such other address as a Party may, pursuant to the notice provisions of this Paragraph 9, direct.

Notice of change of address shall be effective only when done in accordance with this Paragraph 9.

(ii) Grantor hereby relinquishes any right to use the Property in ways that may be inconsistent with the Conservation Purposes, or with respect to which permission or approval of Grantee is expressly required by the terms of this Easement, until it has notified Grantee in accordance with this Paragraph 9 and obtained approval therefor from Grantee.

(iii) Grantee shall respond in writing to any request for approval by Grantor made in compliance with this Paragraph 9 within thirty (30) days of receipt of such request unless expressly permitted in writing by Grantee, Grantor shall not commence the activity described in the notice. If Grantee fails to respond to such a request within such period, Grantor may either deem the request denied, or may re-submit the request to Grantee. Failure by Grantee to provide a written response (but not necessarily approval) to such re-

submitted request in a manner that is consistent with the other provisions of this Paragraph 9 shall be actionable by Grantor (subject to the provisions of Section IV, Paragraph 2), in Grantor's sole discretion.

All activities requiring prior written approval by Grantee shall be conducted consistently with such approval when granted.

If Grantee objects to the proposed activity it shall inform Grantor in writing of the manner, if any, in which the proposed activity can be modified to satisfy its objections. Thereafter, Grantor may submit a revised proposal accommodating the objections, and Grantee shall review and respond to such revision in the same manner as to the original notice.

Any objection by Grantee to a proposed activity shall be based upon its opinion that the proposed activity is inconsistent with this Easement, and/or upon any specific standards provided for herein. Grantee shall have reasonable discretion in determining whether proposed activity is consistent with the terms of this Easement, and/or any such standards.

In no event may Grantee permit any activity on the Property that would be inconsistent with the Conservation Purposes.

(iv) All notices required by this Easement shall be in writing, and shall provide sufficient information, in addition to any information required by other provisions of this Easement, to allow, in the case of notice to Grantee, Grantee to determine whether the proposal is consistent with the Conservation Purposes. In the case of notice to Grantor, the notice shall inform Grantor of the purpose of the notice, and the provision(s) of this Easement with respect to which the notice has been sent.

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

10. **TAX MATTERS.** Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from conveyance of this Easement, that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. The conveyance and perpetual nature of this Easement is not contingent upon the availability of tax benefits for this conveyance.

By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.

11. **NO MERGER.** Grantor and Grantee agree that if Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.

12. **ASSIGNMENT BY GRANTEE.** Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (i) all

Restrictions and Conservation Purposes set forth in this Easement are to be continued in perpetuity and (ii) the transferee is, at the time of the transfer, a qualified organization defined in Code Section 170(h)(3) Regulations and meets the statutory requirements of The Virginia Conservation Easement Act Virginia Code § 10.1-1009 et seq. (as amended) for a holder of a perpetual conservation easement or the definition of a public body under the Open-Space Land Act Virginia Code § 10.1-1700 et seq. (as amended).

13. **GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the donation 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 this Easement bears to the value of the Property as a whole at the time of the recordation of this Easement.
14. **EXTINGUISHMENT.** If a subsequent unexpected change in the conditions surrounding the Property makes the continued use of the Property for the Conservation Purposes impossible or impractical, the restrictions of this Easement may only be extinguished by a judicial proceeding. In such case, on a subsequent sale, exchange, or involuntary conversion of the Property, 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 the preceding paragraph. Such proceeds shall be used by Grantee in a manner consistent with the Conservation Purposes.
15. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the protection of the Conservation Values, provided that no amendment shall (i) affect this Easement's perpetual duration or remove the Easement from all or any portion of the Property, (ii) conflict with or be contrary to or inconsistent with the Conservation Purposes, (iii) affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land", (iv) affect the status of Grantee as a "qualified organization" or "eligible donee," or (v) create an impermissible private benefit or private inurement in violation of federal tax law. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded in the Clerk's Office of the Circuit Court of the Loudoun County, Virginia.
16. **JOINT OWNERSHIP.** If Grantor, or its successors, at any time own the Property or any portion of or interest therein in joint tenancy, tenancy by the entirety, or tenancy in common, all such tenants shall be jointly and severally liable for all obligations of all such successors set forth herein.
17. **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.
18. **ENTIRE AGREEMENT.** This Easement, including the exhibit attached hereto, and the Baseline Documentation Report, set forth the entire agreement of the Parties with respect to this Easement and supersede all prior discussions, negotiations, understandings, or agreements relating to the Easement.

19. **CONTROLLING LAW, VENUE AND JURISDICTION.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia and the United States and shall be in accord with the provisions of Section VI Paragraph 7.

The Parties agree that venue and jurisdiction for the trial of any dispute between them or any third party relating to the enforcement or violation of any of the terms of this Easement shall be the Circuit Court of Loudoun County, Virginia, and no proceeding shall be initiated in any other court, except for appeals from the decision of such trial court.

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

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

22. **PAYMENT OF COSTS, TAXES OR ASSESSMENTS.**

(i) Grantor shall bear all costs of operation, upkeep and maintenance of the Property.

(ii) Grantor shall be responsible for the payment of all real estate taxes or assessments lawfully levied upon the Property and/or upon this Easement and/or upon Grantee as a result of its holding this Easement, and Grantee shall have no obligation, or responsibility, for the payment of such taxes or assessments. Grantee shall have the right to make any payment or to participate in any foreclosure or similar proceeding resulting from any delinquency, as necessary to protect its interest in the Property.

(iii) Grantor shall indemnify Grantee and Grantee's Indemnified Parties from any liability or expenses incurred by Grantee in connection with the payment of the costs and/or taxes that are the subject of this Paragraph 22.

23. **INDEMNIFICATION.**

The Parties acknowledge and agree that Grantee has neither possessory rights in the Property, nor any right or responsibility to control the use of the Property (except to enforce the restrictions on use of the Property provided for in this Easement), nor to maintain, or keep up the Property, and the Parties agree that Grantor retains all such rights and control exclusively.

Grantor shall indemnify Grantee, and Grantee's Indemnified Parties, from any court awarded damages, together with reasonable attorney's fees and expenses incurred by Grantee and/or Grantee's Indemnified Parties, and all attorney's fees and expenses

assessed against Grantee and/or Grantee's Indemnified Parties, resulting from any and all of the following:

- (i) Personal injury or property damage that occurs on the Property not due to the negligence of Grantee and/or its agents;
- (ii) Liability, including, but not limited to, liability under CERCLA, and/or similar local, state or federal laws, relating to cleanup of hazardous substances that were released or in any way deposited on the Property, other than by Grantee and/or its agents.

Grantee shall indemnify Grantor, and/or Grantor's Indemnified Parties from any court awarded damages, together with reasonable attorney's fees and expenses incurred by Grantor, and/or the Grantor's Indemnified Parties, and all reasonable attorney's fees and expenses assessed against the Grantor, and/or the Grantor's Indemnified Parties, resulting from any and all of the following:

- (i) Personal injury or property damage that occurs on the Property due to the negligence of the Grantee and/or its agents;
- (ii) Liability, including, but not limited to, liability under CERCLA, and/or similar local, state or federal laws, relating to cleanup of hazardous substances that were released or in any way deposited on the Property, by the Grantee and/or its agents.

A Party's rights and obligations pursuant to this Easement shall terminate upon transfer of that Party's entire interest in the Easement, or the Property, as the case may be, except that liability for the acts or omissions of such Party during the time that such Party held an interest in the Property or in the Easement shall survive transfer of any interest in the Property with respect to such Party

WITNESS the following signatures and seals:

[Counterpart signature pages follow.]

[Counterpart signature page 1 of 2]

MOJAX, LLC

By: Michael L. Oxman, managing member

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

The foregoing instrument was acknowledged before me this ___ day of _____, 2018 by
Michael L. Oxman on behalf of Mojax, LLC.

Notary Public

(SEAL)

My commission expires: _____
Registration No. _____

[Counterpart signature page 2 of 2]

Accepted:
NORTHERN VIRGINIA CONSERVATION TRUST
Grantee

By: _____
Alan Rowsome, Executive Director

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

The foregoing instrument was acknowledged before me this ___ day of _____, 2018 by Alan Rowsome, on behalf of the Northern Virginia Conservation Trust.

Notary Public

(SEAL)

My commission expires: _____
Registration No. _____