

COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT
BATH COUNTY CIRCUIT COURT
P.O. BOX 180
WARM SPRINGS, VA 24484
540-839-7226

DEED RECEIPT

DATE: 10/05/12 TIME: 15:11:45 ACCOUNT: 017CLR120000596 RECEIPT: 12000001940
CASHIER: DRW REG: B005 TYPE: DE PAYMENT: FULL PAYMENT
INSTRUMENT : 120000596 BOOK: PAGE: RECORDED: 10/05/12 AT 15:11
GRANTOR: COOK, EDWARD P EX: N LOC: CO
GRANTEE: VIRGINIA OUTDOORS FOUNDATION EX: N PCT: 100%
AND ADDRESS :
RECEIVED OF : COLLINS, MICHAEL DATE OF DEED: 09/24/12
CHECK: \$36.00 6893
DESCRIPTION 1: TRACT PAGES: 22 OF 0
2: WARM SPRINGS DISTRICT NAMES: 0
CONSIDERATION: .00 A/VAL: .00 MAP:
PIN:
301 DEEDS 28.50 145 VSLF 1.50
106 TECHNOLOGY TRST FND 5.00 035 VOF FEE 1.00

TENDERED : 36.00
AMOUNT PAID: 36.00
CHANGE AMT : .00

CLERK OF COURT: M. WAYNE WINEBRINER

Instrument No.

12-596

Date: 10/5/12

NOTE TO TITLE EXAMINERS: This conservation and open-space 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.

September 24, 2012

Prepared by: **Michael M. Collins, Collins & Hepler, PLC, Covington, VA**

TAX MAP NOS. 29-6 (182.08 acres); 29-7 (24 acres); 29-8 (34 acres) 29-29 (one acre) 29-30 (37.5 acres); 29-31 (12.25 acres); and, 29-32 (24.52 acres)

Exempted from recordation tax
under the Code of Virginia (1950), as amended,
Sections 58.1-811 (A) (3), 58.1-811 (D) and 10.1-1803
and from Circuit Court Clerk's fee under Section 17.1-266

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made this ~~24th~~ day of September, 2012, between EDWARD P. COOK, single, "Grantor"; the VIRGINIA OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA ("Grantee") (the designations "Grantor" and "Grantee" refer to Grantor and Grantee and their respective successors and assigns); witnesseth:

RECITALS:

R-1 Grantor is the owner in fee simple of real property situated in Bath County, Virginia, containing in the aggregate 315.35 acres as further described below (the "Property"), and desires to give and convey to Grantee a perpetual open-space easement over the Property as herein set forth.

R-2 Grantee is a governmental agency of the Commonwealth of Virginia and a "qualified organization" and "eligible donee" under Section 170(h)(3) of the Internal Revenue Code (references to the Internal Revenue Code in this Easement shall be to the United States Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings issued thereunder, or the corresponding provisions of any subsequent federal tax laws and regulations) (the "IRC") and Treasury Regulation Section 1.170A-14(c)(1) and is willing to accept a perpetual open-space easement over the Property as herein set forth.

R-3 Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, 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 Sections 10.1-1700 and 10.1-1703 of the Open-Space Land 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 the limitation on division, residential construction and commercial and industrial uses contained in Section II ensures that the Property will remain perpetually available for agriculture, livestock production, forest or open-space use, all as more particularly set forth below.

R-5 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 and authorizes the Virginia Outdoors Foundation to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space and recreational lands of the Commonwealth.

R-6 As required under Section 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the County of Bath Comprehensive Plan adopted on September 11, 2007, and the Property is in an area designated for agricultural use on the county’s future land use map.

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).

R-8 This Easement is intended to be a grant “exclusively for conservation purposes” under IRC Section 170(h)(1)(C), because it effects “the preservation of open space (including farmland and forest land)” under IRC Section 170(h)(4)(A)(iii); specifically the preservation of open space on the Property is pursuant to clearly delineated state governmental conservation policies and for the scenic enjoyment of the general public and will yield a significant public benefit.

R-9 This open-space easement in gross constitutes a restriction granted in perpetuity on the use which may be made of the Property and 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. Chapter 18, of Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia cited above;

d. 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 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;

e. Grantee's formal practices in reviewing and accepting this Easement. Grantee has engaged in a rigorous review, considered and evaluated the benefits provided by this Easement to the general public as set forth in these recitals, and concluded that the protection afforded the open-space character of the Property by this Easement will yield a significant public benefit and further the open-space conservation objectives of Grantee and the Commonwealth of Virginia. Grantor believes that such review and acceptance of this Easement by Grantee tends to establish a clearly delineated governmental conservation policy as required under IRC Section 170(h)(4)(A)(iii); and

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

Its comprehensive plan adopted on September 11, 2007, to which plan the restrictions set forth in this deed conform and which contains among its land use objectives to "[d]evelop and support the incentives and techniques described herein to preserve Bath County's rural and historic character (conservation easements, land use taxation, historical landmarks designation, Virginia Byway designation, and cluster development)." The comprehensive plan recommends that smart growth principles be included in subsequent revisions to the county's land use regulation. Included among these smart growth principles is Principle #6 – "Preserve Open Space, Farmland, Scenic Views, and Critical Environmental Areas", by such techniques as "[p]rovid[ing] mechanisms for preserving working lands, [l]ink[ing] land conservation with other smart growth principles, [and] [d]esign[ing] and implement[ing] zoning tools that preserve open space".

R-10 The Property is a mix of upland forests and open fields actively farmed by Grantor, who has owned the land since 1956.

R-11 The Property shares approximately 2.5 miles of boundary with the George Washington and Jefferson National Forest, buffering that public land and extending wildlife habitat. National forests are owned by the United States Department of Agriculture (USDA) and managed for resource conservation.

R-12 According to the USDA's Strategic Plan (2007-2012) one of the department's seven goals is to Conserve Open Space, and one strategy to accomplish that goal is to

“Protect private forests in partnership with States through permanent conservation easements...especially land that is at risk for conversion to development and “those (lands) that are most important for providing public benefits”.

R-13 The Property contains nearly 1.8 miles of Back Creek, a stocked trout stream. Four miles south of this property Back Creek flows through National Forest lands, including Blowing Springs Campground, which is a popular trout fishing spot. Back Creek is a tributary of Lake Moomaw and the Jackson River. Preventing excessive development of this land helps to prevent erosion and soil runoff and protects water quality downstream.

R-14 The U. S. Environmental Protection Agency has stated that “Construction activities disturb soil and may release sediment and other pollutants to local streams. EPA estimates that conversion of land produces 40 million tons per year of new sediment during construction. States have identified sediment as the leading cause of impairment to America’s rivers.” (Growth and Water Resources EPA 842-F-02-008. June 2002). Preventing intensive development of the Property retains topsoil and protects water quality;

R-15 Protection of streams such as Back Creek in the bay watershed will help implement the goals of the Chesapeake Bay Preservation Act Sections 10.1-2100 of the Code of Virginia (1950) as amended and support the land conservation goals of the interstate Chesapeake Bay Program, the Governor of Virginia’s goal for preserving 400,000 acres by 2014, and the Federal Executive Order 13508 (5/19/09) strategy to permanently protect two million acres in the bay watershed by 2025.

R-16 State Route 600 runs through this property for approximately 1.5 miles. SR 600 is a primary route for recreational users of the Dominion Back Creek Recreational Area four miles north of this land. The recreational area contains two lakes and is open to the public for fishing, boating, picnicking, swimming, hiking and camping. Preventing excessive development of the Property helps protect the rural viewshed for the public from this road.

R-17 The soils on this mountain farm are exceptional; over 108 acres of the land contain prime soils as designated by the United States Department of Agriculture. Another 103 acres of the land contains Soils of Statewide Importance. Preventing excessive development of this land helps to protect those productive soils.

R-18 The Property lies within the area designated by the Audubon Society as the Alleghany Highlands Important Bird Area, one of several regions in Virginia supporting habitat and species diversity for birds whose survival is at risk.

R-19 This Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in these recitals and in Section I below.

R-20 Grantor and Grantee desire to protect in perpetuity the conservation values of the Property as specified in Section I by restricting the use of the Property as set forth in Section II.

R-21 Grantee has determined that the restrictions set forth in Section II (the Restrictions) will preserve and protect in perpetuity the conservation values of the Property and will limit use of the Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by the Easement.

R-22 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 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 an open-space easement in gross (this "Easement") over, and the right in perpetuity to restrict the use of, the Property, which is described below and consists of 315.35 acres located in Bath County, Virginia, near Mountain Grove, fronting on State Route 600, to-wit:

FIRST: All that certain tract of 193.56 acres, adjoining J. A. Curry Lands on Big Back Creek, Warm Springs Magisterial District, on both sides of said creek which was conveyed to John W. Law by R. Lee Gum by Deed dated August 10, 1908, and recorded in the Clerk's Office of Bath County in Deed Book 23, at Page 397; and being a portion of the same property conveyed to Edward P. Cook by Geneva L. Smith and Earl Smith, Katherine L. Schumacher and Meredith Schumacher, Ernest L. Law and Ruth B. Law, Nora H. Clark, widow of Isaac Law, Stewart B. Law and Helen D. Law, Elizabeth M. Pahl and Eric Pahl, by Deed dated May 06, 1957, and recorded in the aforesaid Clerk's Office in Deed Book 69, at page 211. Less and excepting a conveyance from Edward P. Cook and wife to the Commonwealth of Virginia by Deed dated December 11, 1975 and recorded in Deed Book 91, at Page 304. That conveyance is for 10.49 acres of which 3.09 acres are within the existing right of way of Route 600 and 7.40 acres are additional land therein conveyed. The commissioner of the Revenue has deducted from this parcel the entire 10.49 acres as well as an additional .99 acres deducted between 1957 and 1968 for which no records are available and for which there appears to be no out conveyance from the Grantor, collectively leaving 182.08 acres according to the County tax records. (Tax Parcel 29-6)

SECOND: All that certain tract of 34 acres on the east side of Big Back Creek, conveyed by R. Lee Gum to the said John W. Law by

Deed dated November 05, 1912, and recorded in the aforesaid Clerk's Office in Deed Book 26, at Page 256; and being a portion of the same property conveyed to Edward P. Cook by Geneva L. Smith and Earl Smith, Katherine L. Schumacher and Meredith Schumacher, Ernest L. Law and Ruth B. Law, Nora H. Clark, widow of Isaac Law, Stewart B. Law and Helen D. Law, Elizabeth M. Pahl and Eric Pahl, by Deed dated May 06, 1957, and recorded in the aforesaid Clerk's Office in Deed Book 69, at page 211. (Tax Parcel 29-8)

THIRD: All that certain tract of 24 acres conveyed to John W. Law by Eliza Lam and husband by Deed dated October 27, 1928, and recorded in the aforesaid Clerk's Office in Deed Book 38, at Page 86; and being a portion of the same property conveyed to Edward P. Cook by Geneva L. Smith and Earl Smith, Katherine L. Schumacher and Meredith Schumacher, Ernest L. Law and Ruth B. Law, Nora H. Clark, widow of Isaac Law, Stewart B. Law and Helen D. Law, Elizabeth M. Pahl and Eric Pahl, by Deed dated May 06, 1957, and recorded in the aforesaid Clerk's Office in Deed Book 69, at page 211. (Tax Parcel 29-7)

FOURTH: All that certain tract or parcel of real property, situate along Back Creek, near Route 600, Warm Springs Magisterial District, Bath County, Virginia, adjoining the lands of Edward P. Cook and Charles Thomas, containing one (1) acre, more or less, sold in gross and not by the acre, and being the residue of that 25 acre tract conveyed unto John W. Cassidy by Deed of record in the aforesaid Clerk's Office in Deed Book 52, at Page 421; and being the same property conveyed to Edward P. Cook by Leta F. McLaughlin and Delberta Foster, by Deed dated February 06, 2002, and recorded in the aforesaid Clerk's Office in Deed Book 181, at Page 482. (Tax Parcel 29-29)

FIFTH: All that certain lot, tract or parcel of land containing 37.50 acres, more or less, and being made up of a certain estimated 25 acres that was conveyed by Alexander Curry and Cynthia A. Curry to John A. Curry by Deed dated February 01, 1899 and recorded in the aforesaid Clerk's Office in Deed Book 22, at Page 109 and the other 12.50 acres, more less, is the one/half of a certain estimated 25 acres tract that was conveyed to John A. Curry and Frank O. Foster by Lula F. Curry, by Deed dated May 10, 1906 in the aforesaid Clerk's Office in Deed Book 22, at Page 365; and being the same property conveyed to Edward P. Cook by Amy H. Curry, Ethel Curry Hodge and Fred D. Hodge, J. Layman Curry and Mary R. Curry, by Deed dated October 05, 1960, and recorded in the aforesaid Clerk's Office in Deed Book 69, at Page 209. (Tax Parcel 29-30)

SIXTH: All of the following tracts of real property, situate in the Warm Springs Magisterial District, Bath County, Virginia: **FIRST:** 24.52 acres devised Leta McLaughlin by the Last Will and Testament of Ethel Forster dated June 20, 1984 and admitted to probate December 05, 1994 and recorded in Will Book 17, at Page 740; being a 25 acre parcel less and excepting a conveyance from Frank and Ethel Forster to the Commonwealth of Virginia by Deed dated March 13, 1974 and recorded in Deed Book 88, at Page 390. The conveyance was for .48 acres, of which .22 acres was within the existing right-of-way of Route 600 and .26 acres was additional land therein conveyed. The Commissioner of the Revenue has deducted from this parcel the entire .48 acres. **SECOND:** all of that certain tract or parcel described as containing 12.25 acres, more or less, conveyed in gross and not by the acre and being likewise devised to Leta McLaughlin as aforesaid; and being the same parcels conveyed to Edward P. Cook by Leta F. McLaughlin by Deed dated June 01, 1999, and recorded in the aforesaid Clerk's Office in Deed Book 164, at Page 549. (Tax Parcels 29-31 and 29-32)

The Property is shown as Tax Map Nos. 29-6 (182.08 acres); 29-7 (24 acres); 29-8 (34 acres) 29-29 (one acre) 29-30 (37.5 acres); 29-31 (12.25 acres); and, 29-32 (24.52 acres) among the land records of the County of Bath, Virginia. Even if the Property consists of more than one parcel for real estate tax or any other purpose or if it may have been acquired previously as separate parcels, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

SECTION I -PURPOSE

The purpose of this Easement is to preserve and protect the conservation values of the Property in perpetuity by imposing the restrictions on the use of the Property set forth in Section II and providing for their enforcement in Section III. The conservation values of the Property are described in the above recitals, are documented in the Documentation Report described in Section IV below and include the Property's open-space, natural, and scenic values and its value as land preserved for rural uses such as forestry and agriculture (including livestock production). Pursuant to the Virginia Land Conservation Foundation's Conservation Value Review Criteria the further purpose of this Easement is preservation of land for agricultural use, forestal use and the preservation of scenic open space.

Grantor covenants that no acts or uses that are inconsistent with the purpose of this Easement or the conservation values herein protected shall be conducted on the Property.

SECTION II – RESTRICTIONS

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

1. **DIVISION.** Separate conveyance of a portion of the Property or division or subdivision of the Property is prohibited.

Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered separate conveyances of portions of the Property or divisions or subdivisions of the Property, provided that Grantee approves such adjustments, is made party to any deed creating a boundary line adjustment, and at least one of the following conditions is met:

- (i) The entire adjacent parcel is subject to a recorded open-space easement owned by Grantee; or
- (ii) The proposed boundary line adjustment shall have been reviewed and approved in advance by the Board of Trustees of Grantee.

The acquisition of a *de minimis* portion of the Property adjacent to Route 600 for minor road improvements shall not be considered a division or subdivision of the Property, and neither the acquisition of such a *de minimis* portion of the Property nor the use of the portion of the Property so acquired shall be prohibited by this Easement, provided that Grantee approves such conveyance or taking, which approval shall be contingent upon the project including all reasonable actions, such as landscaping or topographic improvements, to minimize the project's impact on the Property and prevent harm to its conservation values. Grantor reserves its separate rights to approve such acquisition. Use of the Property for such a project is limited to minor improvements to Route 600 in its present alignment, including, but not limited to, maintenance, correction, repair, or upgrading of the existing public road. Such improvements could include, but are not limited to, the addition or renovation of ditches, box culverts, drainage swales, side slopes, curbing, regrading, or enhancements, such as pull-offs, bike lanes, and restoration projects. For the purpose of this paragraph, "minor road improvements" does not include the addition of new travel lanes. Any portion of the Property acquired from Grantor pursuant to this paragraph shall remain subject to the terms and restrictions of this Easement.

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

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

(a) **Dwellings.** Four dwelling units, such as detached or attached dwellings or barn or garage apartments, which shall not exceed an aggregate of

13,000 square feet of above-ground enclosed living area and non-residential outbuildings and structures commonly and appropriately incidental to such dwellings sized appropriately to serve as amenities to residential use. Such dwellings shall not individually exceed 4,500 square feet of above-ground enclosed living area without Grantee's prior review and written approval, which approval shall take into consideration the impact of the size, height and siting of the proposed dwellings on the scenic and other conservation values of the Property. Dwellings currently existing on the Property shall be counted in the number of permitted dwellings and in the permitted aggregate square feet of above-ground enclosed living area. Grantor shall give Grantee 30 days' written notice before beginning construction or enlargement of any dwelling on the Property; and

(b) **Farm buildings or structures.** Farm buildings or structures, except that a farm building or farm structure exceeding 6,000 square feet in ground area may not be constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the conservation values of the Property. For purposes of this paragraph (b), a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in Section II Paragraph 3(i) (a) below; and

(c) **Buildings for the processing and sale of farm or forest products.** Buildings for the processing and sale of farm or forest products produced or partially produced on the Property not exceeding 4,500 square feet of enclosed area in the aggregate and not individually exceeding 2,500 square feet of enclosed area. For purposes of this paragraph (c), a building for the processing and sale of farm or forest products shall mean a building originally constructed and used for the activities specified in Section II Paragraph 3(i)(b) below; and

(d) **Roads.** Private roads to serve permitted buildings or structures and roads with permeable surfaces for other permitted uses, such as farming or forestry; and

(e) **Utilities.** Public or private utilities to serve permitted buildings or structures. 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 of the Property and gives its prior written approval for such construction and maintenance. Approval or disapproval of such construction and maintenance shall take into consideration the visibility and any other adverse impact of such utilities on the conservation values of the Property. Grantor reserves its separate rights to approve such public or private utilities; and

(f) **Alternative energy structures.** Alternative energy structures scaled to provide electrical energy or pump water for permitted dwellings, structures, and activities on the Property, which limitation shall not be deemed to prohibit the sale of excess power generated incidentally in the operation of such structures and associated equipment including, but not limited to, solar panels, wind turbines, and micro-hydro installations; and

(g) **Small-scale miscellaneous buildings or structures.** Small-scale miscellaneous buildings and structures, the existence of which is consistent with the conservation purposes of this Easement and which will not impair the conservation values protected herein, such as hunting stands, wildlife observation structures, fences, boardwalks, or structures for crossing of streams or wetlands.

(ii) Grantor shall have the right to construct new buildings, structures, roads, and utilities permitted in Section II Paragraph 2(i) above and to repair, maintain, renovate and replace all existing permitted dwellings and all other new and existing buildings, structures, roads, and utilities on the Property, within the limitations set forth in this Easement.

(iii) All or a portion of the aggregate allowable square footage for dwellings set forth in Section II Paragraph 2(i)(a) above may be used for other kinds of buildings or structures, such as educational, recreational, or religious buildings or structures, provided that Grantee determines that the construction of such buildings or structures is consistent with the conservation purposes of this Easement, will not impair the conservation values protected herein, and gives prior written approval of such construction.

(iv) To protect the scenic values of, and the agricultural soils on the Property should any of the existing dwellings on the Property be relocated, they shall be sited within 200 feet of their current locations or in a site not visible from State Route 600 unless Grantee gives prior written approval for an alternate site. Such approval shall take into consideration the impact of the size, height and siting of the proposed dwellings on the productive agricultural soils and the scenic and other conservation values of the Property. In addition, no new building or structure larger than 200 feet in ground area shall be constructed within 200 feet of the boundary of the George Washington and Jefferson National Forest on the Property without prior written approval from Grantee.

(v) The collective footprint of all buildings and structures on the Property, excluding roads, shall not exceed **one-half of one (0.50 %)** 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 of the Property, Grantee may approve such increase. For the purpose of this paragraph the collective footprint is the ground area measured in square feet of the buildings and structures set forth in Section II Paragraph 2(i)(a) through (c),

(f), and (g) and Section II Paragraph 2(iii) above and all other impervious surfaces, excluding roads.

3. ACTIVITIES ON THE PROPERTY.

(i) Industrial or commercial activities are prohibited, with the exception of the following:

(a) agriculture (including livestock production), equine activities, or forestry;

(b) processing or sale of farm or forest products produced or partially produced on the Property in buildings permitted in Section II Paragraph 2(i)(c) above;

(c) small-scale incidental commercial or industrial operations compatible with activities set forth in (a) above that Grantee approves in writing as being consistent with the conservation purpose of this Easement;

(d) activities that can be and in fact are conducted within permitted buildings without material alteration to their external appearance.

(e) the sale of excess power generated incidentally in the operation of approved alternative energy structures and associated equipment as provided in Section II Paragraph 2 (i)(f) above.

(f) activities to restore or enhance wetlands or streams or restore, enhance, or develop other ecosystem functions on the Property including, but not limited to, stream bank restoration, wetland and stream mitigation, biological carbon sequestration and biodiversity mitigation, provided that such activities are not in conflict or inconsistent with the conservation 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. Grantee reserves the right to impose a cost recovery charge for evaluation of ecosystem function projects on the Property.

(g) temporary or seasonal outdoor activities or events ("activities") that do not permanently alter the physical appearance of the Property and that do not impair the conservation values of the Property herein protected, except that such activities involving 100 or more people shall not exceed seven consecutive days unless Grantee gives its prior written approval of such activities, which approval shall take into consideration the number of people involved, the duration of such activities, and any other aspects thereof that may have an impact on the

conservation values being protected herein. Approval may be subject to the requirement that at the conclusion of the activity Grantor shall restore the Property to its pre-existing condition.

(h) oil and gas exploration and extraction as permitted and limited in Section II, Paragraph 6 (v) below.

(ii) Educational, recreational, or religious activities are permitted on the Property, provided that they are consistent with the conservation purposes of this Easement and do not impair the conservation values protected herein. (Recreational activities may include use of all or a portion of the Property as a park for passive recreational activities, such as hiking, photography, bird watching, and nature study.)

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

4. **MANAGEMENT OF FOREST.** Best Management Practices (BMPs), as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material timber harvest or land-clearing activity is undertaken. A pre-harvest plan shall be submitted to Grantee for approval no later than 14 days before beginning any material timber harvest, which approval shall take into consideration whether or not the pre-harvest plan is consistent with the provisions of this Easement. The pre-harvest plan shall describe the BMPs to be used in sufficient detail to ensure that water quality will be protected.

The following activities do not constitute material timber harvesting or land clearing and do not require the use of BMPs or a pre-harvest plan: cutting, clearing, or removal of less than 10 acres of trees (i) for the construction of permitted roads, utilities, buildings, or structures, (ii) for firewood (iii) for creation or clearing of trails, (iv) which pose an imminent hazard to the health or safety of persons, property, or livestock, (v) which are invasive species, or (vi) for other permitted uses on the Property.

5. **RIPARIAN BUFFER.** To protect water quality, riparian buffer strips shall be maintained as follows:

A 35-foot buffer strip shall be maintained along each edge of Back Creek as measured from the tops of the banks.

(i) Within the buffer strips there shall be (a) no new buildings or other substantial structures constructed, (b) no new paved roads or paving of existing roads without Grantee's approval (c) no storage of compost, manure, fertilizers, chemicals, machinery or equipment, (d) no removal of trees except removal of invasive species or removal of dead, diseased or dying trees, or trees posing a threat to

human or livestock health or safety, and (e) no plowing, cultivation, filling, or other earth-disturbing activity, except as may be reasonably necessary for the activities set forth in Section II Paragraph 5(ii) below.

(ii) Notwithstanding the foregoing, permitted within the buffer strips, subject to any applicable laws and regulations, are (a) erosion control or restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3 (i)(f) above, (b) fencing along or within the buffer strips, (c) construction and maintenance of stream crossings (including improvements over the buffer strips to access crossings) for pedestrians, livestock and vehicles, which crossings minimize obstruction of water flow, (d) creation and maintenance of trails with unimproved surfaces, (e) removal of invasive species or dead, diseased or dying trees, (f) minimal removal of individual trees or trees posing a threat to human or livestock health or safety, (g) planting of trees, shrubs, grasses, or other vegetation, (h) dam construction and grading to create ponds, and (i) diversion of water for agricultural use on the Property.

(iii) Should Back Creek meander or change course naturally, or as a result of the restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3 (i)(f) above, the buffer strips shall remain the same width, but move relative to the movement of the creek. 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.

6. GRADING, BLASTING, FILLING AND MINING.

(i) Grading, blasting, filling, or earth removal shall not materially alter the topography of the Property except (a) for clearing, grading, and dam construction to create ponds (but not stormwater retention ponds to serve other properties), (b) for restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3 (i)(f) above, (c) for erosion and sediment control pursuant to an erosion and sediment control plan, (d) as required in the construction of permitted buildings, structures, roads, and utilities or (e) as permitted and limited in Section II Paragraph 6 (ii) below with respect to the qualified mineral interest hereby retained by Grantor in subsurface gas and oil only and the right to explore for and extract such hydrocarbons.

(ii) As of the date of this Easement Grantor is the owner of the entire Property including the mineral rights located under the surface of the Property; such mineral rights have not been severed from the surface of the Property. The method of exploration and extraction of gas or oil and the measures that will be taken to protect the conservation values of the Property used during and after

completion of exploration and extraction (the "gas or oil plan") must be approved by Grantee in writing, complied with by Grantor, and meet the following general requirements: (a) such method must not be inconsistent with the particular conservation values protected by this Easement, (b) such method must have only a limited, temporary, localized impact on the Property, and (c) such method must not be irretrievably destructive of any significant conservation interests.

The gas or oil plan must include the following: (a) a description of the areas to be disturbed on the surface of the Property, (b) the impact of the mining activity on the conservation values being protected herein and the proposed mitigation of any adverse impacts, (c) the impact of the mining activity on water resources on or below the surface of the Property and the proposed mitigation of any adverse impacts, and (d) the plan for the proposed reclamation of surface of the Property to its original state at the conclusion of the project.

The gas or oil plan shall specifically provide for the following: (a) no more than one well site with one well may be located on the Property, (b) no more than one acre may be utilized or disturbed for such well and any other exploration, production or storage facilities, (c) the drilling pad and any exploration, production, or storage facilities must be concealed from public view by vegetation, the natural topography, or permitted buildings and structures on the Property and must be removed therefrom at the conclusion of the permitted mining activity by or on behalf of Grantor, (d) the location and placement of all pipelines leading from the well must be approved in writing by Grantee, (e) any altered physical features of the Property must be restored to their original state and the restored topography appropriately vegetated within a period of one year upon conclusion of the permitted mining activity by or on behalf of Grantor, (f) the payment of a cost recovery charge in an amount determined by Grantee's Board of Trustees from time to time for (1) review of the gas or oil plan, lease, surface-use agreement, and any other documents required or entered into for gas or oil exploration and extraction from the Property and (2) for monitoring and enforcement of the these restrictions by Grantee or a retained consultant, and (g) the posting of a reclamation bond payable to Grantee in an amount and in a form suitable to Grantee to ensure that Grantee has sufficient funds to reclaim the site if Grantor, lessee, or an assignee fails to do so within the stated one year period. Grantee may disapprove the gas or oil plan if it finds that the plan does not comply with the requirements of this Section II Paragraph 6 (ii).

Grantor shall not lease any subsurface gas or oil mineral rights unless such instrument (e.g. gas or oil lease, any accompanying surface-use agreement, and any other instruments involving the leasing of such rights) references this Easement, sets forth or summarizes the provisions of this Section II Paragraph 6 (ii), specifically requires compliance with all terms and conditions of this Easement, and makes Grantee a party thereto. Grantor shall provide copies of such documents to Grantee for Grantee's review and approval.

7. **ACCUMULATION OF TRASH.** Accumulation or dumping of trash, refuse, junk or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products, or agricultural byproducts on the Property.
8. **SIGNS.** No billboards or other signs may be displayed on the Property, except for signs that relate to the Property or to permitted activities (including commercial activities) thereon. Temporary political signs are allowed. No sign visible from outside the Property shall exceed thirty-two square feet in size.

SECTION III – 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 to Grantor or Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with notice to Grantor or Grantor's representative being given at the earliest practicable time.
2. **ENFORCEMENT.** Grantee, in accepting this Easement, commits to protecting the conservation purposes of the Easement and has the resources necessary to enforce the restrictions set forth herein. Grantee has the right to bring a judicial proceeding to enforce the restrictions, which right specifically includes the right (i) to require restoration of the Property to its condition at the time of the donation; (ii) in Grantee's discretion, to require restoration of the Property to its condition prior to a violation of the terms hereof, provided that such prior condition was in compliance with the restrictions and consistent with the purpose of this Easement; (iii) to recover any damages arising from non-compliance; and (iv) to enjoin non-compliance by 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 ensure compliance with this Easement, and Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by Grantee. Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage to the Property or change in the condition of the Property (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.

SECTION IV – DOCUMENTATION

Grantor has made available to Grantee, prior to donating this Easement, documentation sufficient to establish the condition of the Property at the time of the gift, and documentation retained in the office of Grantee including, but not limited to, the Baseline Documentation Report describes the condition and character of the Property at the time of the gift. The Baseline Documentation Report may be used to determine compliance with and enforcement of the terms of this Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. The parties hereby acknowledge that the Baseline Documentation Report contained in the files of Grantee is an accurate representation of the Property and contains a statement signed by Grantor and a representative of Grantee as required by Treasury Regulation 1.170A-14(g)(5)(i).

SECTION V – GENERAL PROVISIONS

1. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions and restrictions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
2. **NO PUBLIC ACCESS AND GRANTOR'S RETENTION OF USE.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Subject to the terms hereof, Grantor retains the exclusive right to such access and use including, but not limited to, the right to hunt, fish, or trap on the Property.
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 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.
4. **ACCEPTANCE.** Grantee accepts this conveyance pursuant to Virginia Code Section 10.1-1801, which acceptance is evidenced by the signature of a Deputy Director or Staff Attorney by authority granted by Grantee's Board of Trustees.
5. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or

regulation. Neither the Property, nor any portion of it, has been or shall be dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; dedicated as open space in, or as part of, any real estate development plan; or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.

6. **CONSTRUCTION.** 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. 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 consistent with the purpose of and not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a "qualified conservation contribution" as that term is defined in IRC Section 170(h)(1) and Treasury Regulation Section 1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.
7. **REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property. Failure of Grantor to comply with this requirement shall not impair the validity of the Easement or limit its enforceability in any way.
8. **NOTICE TO GRANTEE AND GRANTOR.** For the purpose of giving notices hereunder the current address of Grantee is Capitol Place Building, 1108 East Main Street, Suite 700, Richmond, Virginia 23219, and any notice to Grantor shall be given to the recipient at the address at which the real estate tax bill is mailed for the Property or portion thereof that is the subject of the notice and which is currently 3231 Big Back Creek Road, Warm Springs, VA 24484.

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

In addition, Grantor agrees to notify Grantee in writing before exercising any reserved right that Grantor believes may have an adverse effect on the conservation or open-space values or interests associated with the Property (the purpose of requiring such notice is to afford Grantee an adequate opportunity to monitor such activities to ensure that they are carried out in a manner consistent

with the purpose of this Easement; such notice shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement).

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

9. **TAX MATTERS.** The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in Treasury Regulation Section 1.170A-13(c)(5), and that the appraisal is subject to 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, 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.
10. **NO MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.
11. **ASSIGNMENT BY GRANTEE.** Assignment of this Easement is permitted by Virginia Code Section 10.1-1801, but Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (i) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity and (ii) the transferee then qualifies as an eligible donee as defined in IRC Section 170(h)(3) and the applicable Treasury Regulations.
12. **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 the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time. The values applicable for purposes of the calculations required by this Paragraph 12 shall be the values finally determined for purposes of any federal income tax deduction allowed with respect to the conveyance of this Easement.
13. **CONVERSION OR 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, which does not permit loss of open space.

14. **EXTINGUISHMENT.** Notwithstanding the provisions of Section 10.1-1704 of the Open-Space Land Act, should an attempt be made to extinguish this Easement in whole or in part, such extinguishment can be carried out only by judicial proceedings and only if in compliance with Section 10.1-1704 and IRC Section 170 (h) and applicable Treasury Regulations. In a sale or exchange of the Property subsequent to and resulting from an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Section V Paragraph 12 above, but not to be less than the proportion that the value of this Easement at the time of extinguishment bears to the then value of the Property as a whole. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this Easement and the Open-Space Land Act.
15. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property by an amended deed of easement, provided that no amendment shall (i) affect this Easement's perpetual duration, (ii) conflict with or be contrary to or inconsistent with the conservation purpose of this Easement, (iii) reduce the protection of the conservation values, (iv) affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land", (v) affect the status of Grantee as a "qualified organization" or "eligible donee", or (vi) 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 Bath County, Virginia.
16. **JOINT OWNERSHIP.** If Grantor at any time owns the Property or any portion of or interest therein in joint tenancy, tenancy by the entireties, or tenancy in common, all such tenants shall be jointly and severally liable for all obligations of Grantor 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 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.
19. **CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia, resolving any ambiguities or questions of the validity of specific provisions in order to give maximum effect to its conservation purpose.

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

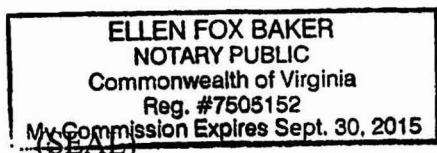
WITNESS the following signatures and seals: [Counterpart signature pages follow.]

[Counterpart signature page 1 of 2]

Edward P. Cook
Grantor

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

The foregoing instrument was acknowledged before me this 24th day of
September, 2012 by Edward P. Cook.



Ellen Fox Baker
Notary Public

My commission expires: 09/30/2015
Registration No. 7505152

Notary Public for the State of Virginia

Robert R. Cook
Notary Public

Notary Public

Notary Public

Notary Public for the State of Virginia

Robert R. Cook
Notary Public

Notary Public for the State of Virginia

ELLEN FOX BAKER
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #2505152
My Commission Expires Sept. 30, 2015

[Counterpart signature page 2 of 2]

Accepted:

VIRGINIA OUTDOORS FOUNDATION,

By: Tamara A. Vance
Tamara A. Vance, Deputy Director

COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF Montgomery, TO WIT:

The foregoing instrument was acknowledged before me this 2nd day of October, 2012, by Tamara A. Vance, a Deputy Director/~~Staff Attorney~~ of the Virginia Outdoors Foundation.



Jennifer D. Hubbard
Notary Public

My commission expires: 30 June 2015
Registration No. 7283689

FOR DEPOSIT ONLY
BATH COUNTY CIRCUIT
RCPT : 12000001940
CASE : 017CLR120000596

INSTRUMENT #120000596
RECORDED IN THE CLERK'S OFFICE OF
BATH COUNTY ON
OCTOBER 5, 2012 AT 03:11PM
M. WAYNE WINEBRINER, CLERK
RECORDED BY: DRW

1500 6/1/2000

1500 6/1/2000

1500 6/1/2000

1500 6/1/2000

