

NO. 09 2238
 RETURN
 TO
 DATE 12-1-09

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 Hirschler Fleischer
 2100 East Cary Street
 Richmond, Virginia 23223

TAX MAP NO: (Amelia County)
 TM 6-3
 TM 6-5
 a portion of TM 6-6
 a portion of TM 7-2
 a portion of TM 7-4
 an unnumbered parcel lying south of TM 6-3

Note: For Plat
 See Plat Cabinet C
 Slides 119H & 119I

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 November, 2009, Between ISLAND FORD PROPERTIES, LLC a Virginia limited liability company ("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); AMERICAN NATIONAL BANK AND TRUST COMPANY, a national banking association (the "Lender"); and Clement & Wheatley, a Virginia professional corporation, Trustee (the "Trustee").

RECITALS:

R-1 Grantor is the owner in fee simple of real property situated in Amelia County, Virginia, containing in the aggregate approximately 3,486.92 acres, more or less, as further described below (the "Property"), and desires to give and convey to Grantee a perpetual conservation and open-space easement over the Property as herein set forth; and

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 conservation and open-space easement over the Property as herein set forth; and

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; and

R-4 Pursuant to Sections 10.1-1700 and 10.1-1703 of the Open-Space Land Act, the purposes of this Easement include retaining and protecting open-space and natural resource values of the Property, and 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; and

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; and

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 Amelia Comprehensive Plan adopted on May 16, 2001 and amended on June 23, 2005, and the Property is designated as an Agricultural Preservation Area on the Amelia County future land use map; and

R-7 This Easement is intended to constitute (i) a "qualified conservation contribution" as defined in IRC Section 170(h)(1) 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); and

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 will yield a significant public benefit; and

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. Treasury Regulation Section 1.170A-14(d)(4)(iii)(B) notes that such review and acceptance of this Easement by a governmental entity tends to establish a clearly delineated governmental conservation policy as required under IRC Section 170(h)(4)(A)(iii);

f. The Chesapeake 2000 Agreement, in which the Governor of the Commonwealth of Virginia and the Administrator of the United States Environmental Protection Agency acknowledged "that future development will be sustainable only if we protect our natural and rural resource land, limit impervious surfaces and concentrate new growth in existing population centers." A goal of the Chesapeake 2000 Agreement is to "expand the use of voluntary and market-based mechanisms such as easements... to protect and reserve natural resource lands";

g. The 2002-2003 Biennial Report of the Virginia Land Conservation Foundation, dated January 2004, states that meeting Virginia's land preservation goals under the Chesapeake 2000 Agreement "requires the conservation of 432,535 acres by 2010 or 61,791 acres per year"; and

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

a. its comprehensive plan adopted on May 16, 2001 and amended on June 23, 2005 (the "Amelia County Plan"); to which plan the restrictions set forth in this Easement conform and which contains the following statements, goals and policies:

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(see Amelia County Plan, Pages 135-136, 140)

b. The County of Amelia, Virginia's ordinance adopted January 1, 1976, which provides for use value assessment of real estate devoted to agricultural, horticultural or open-space uses, the Property having been approved for use value assessment by the county;

c. Correspondence from the County of Amelia dated August 20, 2009, acknowledging that contribution of the Easement over the Property to Grantee and restriction of the Property as provided in this Easement is consistent with the land use plan of such county; and

R-10 The Property is a large tract of land comprising timberland, ponds, streams, and wetlands along the Appomattox River, is one of the largest contiguous tracts in Amelia County, and protection of the Property under easement preserves the local rural landscape; and

R-11 The Property in the aggregate has significant stream frontage along the Appomattox River (approximately 6.6 miles), Stock Creek (approximately 1.85 miles), in addition to significant frontage on other unnamed intermittent streams, and the protection of the Property in a relatively undeveloped state helps protect the water quality of the Appomattox River, the James River and the Chesapeake Bay; and

R-12 The Property contains a large block of working forestland, which provides raw materials for Virginia's forest products industry, which is a significant contributor to the state economy; and

R-13 The Property has approximately 1.25 miles of frontage along Stony Point Road (State Route 620), approximately 1.69 miles of frontage along Reed Rock Road (State Route 621), and approximately 2.61 miles of frontage along Fowlkes Bridge Road (State Route 644), a substantial portion of the Property is visible from both the Appomattox River and such roads, and members of the general public regularly view a substantial portion of the Property therefrom, therefore the Property satisfies the requirements for "visual public access" as defined in Treasury Regulation Section 1.170A-14(d)(4)(ii)(B); and

R-14 The Property lies on the Appomattox River in Amelia County for a distance of approximately 6.6 miles, and the 2007 Virginia Outdoors Plan ("VOP") designates that portion of the Appomattox River as a potential Virginia Scenic River (from the point where Route 608 crosses the Appomattox River (at Venables Bridge in Buckingham County) to the western border of Powhatan County on the Appomattox River, including all of the Appomattox River in Amelia County), and the VOP recommends that such segment of the Appomattox River be evaluated to determine suitability for listing as a Virginia Scenic River (see 2007 Virginia Outdoors Plan, Ch. X, page 507), and because the creeks and streams on the Property flow into the Appomattox River the protection of such creeks and streams provided by this Easement protects the water quality and scenic qualities of the Appomattox River; and

R-15 The Property contains managed timberland, the protection of which will preserve approximately 984 acres of United States Department of Agriculture-designated prime farmland soils and approximately 1919 acres of Soils of Statewide Importance; and

R-16 The County of Amelia has designated the Property as a "Priority Conservation Area" in the County's Comprehensive Plan and as an "Agricultural Preservation Area" as confirmed by letter from the county planner/zoning administrator dated August 20, 2009; and

R-17 The Property lies in close proximity to property also located in Amelia County, Virginia containing in the aggregate approximately 1,710.96 acres, more or less, that is also under a conservation easement held by Grantee, and the protection of the Property along with the tracts of land subject to such easement will further the conservation purposes set forth herein and will protect the continuity of natural habitats in the area of the Property as well as the continuity of a significant viewshed of the scenic, rural and working (farming & forestry) property landscape in the area of the Property; and

R-18 The Property lies in close proximity to property located in Amelia County and Prince Edward County, Virginia, containing in the aggregate approximately 3,379.33 acres, more or less, that is also under a conservation easement held by Grantee, and the protection of the Property along with the tracts of land subject to such easement will further the conservation purposes set forth herein and will protect the continuity of natural habitats in the area of the Property as well as the continuity of a significant viewshed of the scenic, rural and working (farming & forestry) property landscape in the area of the Property; and

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; and

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; and

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; and

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 a

conservation and open-space easement in gross over, and the right in perpetuity to restrict the use of, the Property, which is more particularly described below and consists in the aggregate of approximately 3,486.92 acres, more or less, acres located in Amelia County, Virginia, near Rodophil:

Approximately 3,486.92 acres, more or less, acres located in Amelia County near Rodophil, and more particularly described as follows:

AS SHOWN on that certain plat entitled "Composite Map of Residue of Island Ford" made by Maxey-Hines & Assoc., dated August 25, 2009 (revised November 18, 2009), to attached hereto, incorporated herein and to be recorded with this Easement.

BEING the same property conveyed to Island Ford Properties, LLC, by deed from Malcolm L. Bailey and Richard E. Wallace, dated September 4, 2009, and recorded September 18, 2009, in the Clerk's Office, Circuit Court, Amelia County, Virginia, as Instrument 09-0001781.

The Property is shown as Tax Map Nos. 6-3, 6-5, a portion of 6-6, a portion of 7-2, a portion of 7-4 and an unnumbered parcel lying south of 6-3, among the land records of the County of Amelia, Virginia. Even if the Property consists of more than one parcel for real estate tax or any other purpose, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

SECTION I - PURPOSE

The 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 scenic, open-space, natural values and value as land preserved for rural uses such as agriculture (including livestock production) and forestry and preservation of open space designated by a local government. Pursuant to the Virginia Land Conservation Foundation's (VLCF's) Conservation Value Review Criteria the further purpose of this Easement is preservation of land for forestal use, scenic open space, watershed preservation, and preservation of open space designated by a local government.

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.** The Property shall not be divided or subdivided into, or separately conveyed as, more than eleven (11) parcels. Grantor shall give Grantee written notice prior to making any division of the Property. In the event of a division of the Property as provided in this Paragraph 1, the grantor making the conveyance retains the right to make any further permitted divisions of the Property unless the permitted divisions are allocated by that grantor in the instrument creating the division or other recorded instrument.

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.

In the event that a permitted division of the Property requires a road or street dedication, such dedication shall not be considered a separate conveyance of a portion of the Property or a division or subdivision of the Property and construction of such road or street is permitted.

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

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

(a) **Dwellings.**

- (1) Eleven (11) single-family dwellings, of which none exist on the date of this Easement. 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. In the event of division of the Property as provided in Section II, Paragraph 1, permitted dwellings shall be allocated between or among the parcels in the instrument creating the division or other recorded instrument.

(2) Eleven (11) secondary dwellings, or dwelling units such as barn or garage apartments, of which none exist on the date of this Easement. Such secondary dwellings shall not individually exceed 1,500 square feet of above-ground enclosed living area.

(3) Grantor shall give Grantee 30 days' written notice before beginning construction or enlargement of any dwelling on the Property. In the event of division of the Property as provided in Section II, Paragraph 1, permitted dwellings shall be allocated between or among the parcels in the instrument creating the division or other recorded instrument.

(4) The total enclosed above-ground living area of all dwellings in (a)(1) and (a)(2) above shall not exceed a total of 66,000 square feet of above-ground enclosed living area on the Property as a whole.

(b) Non-residential outbuildings and structures commonly and appropriately incidental to dwellings permitted in Section II Paragraph 2(a) above, and sized appropriately to serve as amenities to single-family residential use, provided that the aggregate footprint of non-residential outbuildings for each permitted dwelling shall not exceed 2,500 square feet in ground area unless prior written approval shall have been obtained from Grantee that a larger footprint is permitted considering the purpose of this Easement and the scale of the proposed outbuilding in relation to the surrounding area.

(c) Farm buildings or structures. Farm buildings or structures, except that a farm building or farm structure exceeding 4,500 square feet in ground area may not be constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the conservation values of the Property. For purposes of this paragraph (c), 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 or ii) below.

(d) The existing lodge building (formerly used as a hunting camp), not to exceed 1,500 square feet in ground area, which may be restored for use as a lodge or hunting camp, provided that if it is used as dwelling, it shall count as one of the permitted dwellings in subparagraphs (a)(1) or (a)(2) above; and non-residential outbuildings commonly or appropriately incidental to such building not to exceed 2,500 square feet in ground area in the aggregate, including but not limited to non-commercial kennel buildings, which size limitation shall not include fenced yard or run area.

(e) Roads. Private roads to serve permitted buildings or structures, private roads to parcels created by permitted divisions of the Property, public

roads required to be constructed in conjunction with permitted divisions or subdivision(s) of the Property, provided that Grantee determines that the construction of such public roads will not impair the conservation values of the Property and gives prior written approval of such construction, and roads with permeable surfaces for other permitted uses, such as farming or forestry.

(I) The parties acknowledge that the Virginia Department of Transportation may undertake the widening or improvement of Stony Point Road (State Route 620), Reed Rock Road (State Route 621), and/or Fowlkes Bridge Road (State Route 644), which may require the use of a portion of the Property. Such use, and any sale of needed land to the Virginia Department of Transportation, shall not be considered a subdivision and shall not be prohibited by this easement provided that (a) such project includes all reasonable action, which may include landscaping and other topographic improvements, to minimize harm to the Property resulting from such use, and (b) the parties are consulted in planning such actions to minimize harm to the Property. Grantee shall not be entitled to any compensation for the purchase of such land for such purpose. Use of the Property for public road projects is limited to the widening or improvement of Stony Point Road (State Route 620), Reed Rock Road (State Route 621), and/or Fowlkes Bridge Road (State Route 644), to a maximum width of fifty (50) feet.

(f) Utilities. Public or private utilities to serve permitted buildings or structures and public or private utilities to serve parcels created by permitted divisions of the Property. Public or private utilities to be constructed in whole or in part to serve other properties shall not cross 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, which approval shall take into consideration the visibility and other impact of such utilities on the conservation values of the Property. Grantor reserves its separate rights to approve such public or private utilities.

(g) Hunting or wildlife observation blinds, stands and similar structures on the Property subject to compliance with all applicable local, state and federal laws, provided that no structures are permitted to be constructed for commercial skeet shooting, a commercial shooting range, or similar purposes.

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

(iii) To protect the scenic values of the Property, no dwelling of any size or other building or structure of any kind exceeding 500 square feet in ground area, or any structure that would substantially obstruct the scenic view from the road, shall be constructed within 500 feet of Stony Point Road, (State Route 620), Fowlkes Bridge Road (State Route 644) and Reed Rock Road (State Route 621), as measured from the centerline for such roads. Entrance gates are permitted. Trees or other natural growth along any such roads from which the public may view the Property shall not be considered an obstruction of the scenic view.

To further protect the scenic values of the Property, no dwelling or other building shall be constructed on the Property within 500 feet of the Appomattox River as measured from the top of the bank.

(iv) The collective footprint of all buildings and structures on the Property, excluding roads, shall not exceed 1% of the total area of the Property, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values 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 (d) above and all other impervious surfaces, excluding roads. In the event of division of the Property, the collective footprint of the buildings and structures and all other impervious surfaces on each parcel, excluding roads, shall not exceed 1% of the total area of such parcel unless otherwise allocated in the instrument of transfer or other recorded instrument.

3. INDUSTRIAL OR COMMERCIAL ACTIVITIES. Industrial or commercial activities are prohibited with the exception of the following:

- (i) agriculture (including livestock production), equine activities and forestry;
- (ii) small-scale incidental commercial or industrial operations related to activities set forth in (i) above that Grantee approves in writing as being consistent with the conservation purpose of this Easement;
- (iii) processing and sale of products produced on the Property as long as no additional buildings are required;
- (iv) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property and that do not diminish the conservation values of the Property herein protected, including but not limited to *de minimis* commercial outdoor recreational activities such as maintaining a hunting and fishing preserve or club; and
- (v) activities that can be and in fact are conducted within permitted buildings without material alteration to their external appearance.

As long as at least five acres of the Property remain in agricultural production, a written conservation plan shall be developed or be in place that stipulates the use of best management practices for water quality protection (such as proper nutrient

management, utilization of cover crops and stabilization of highly erodible lands) on such lands in agricultural use. The plan shall be developed in consultation with a representative of the Piedmont Soil and Water Conservation District or Natural Resources Conservation Service representative, or their successor organizations, and shall be periodically updated and implemented by Grantor. Grantee shall periodically ascertain from the Piedmont Soil and Water Conservation District or the Natural Resources Conservation Service that Grantor is in compliance with the plan.

Temporary outdoor activities involving 100 or more people shall not exceed 7 consecutive days in any 90-day period without prior written approval of Grantee.

Nothing in this paragraph shall prevent Grantor from developing ecosystem functions on the Property including, but not limited to, carbon sinks, stream bank restoration, biodiversity mitigation, carbon sequestration and wetland and stream mitigation (other than creation of wetlands from historically upland property, such as hillsides or sites with no more than one of the following: current or historical evidence of hydric soils, hydrophytic vegetation, or wetland hydrology), provided that such developments 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 for compliance with permit(s), easement(s) and restrictions therefor, and Grantee has no obligation to enforce said permit(s), easement(s) and restrictions.

4. **MANAGEMENT OF FOREST.** Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any timber harvest (other than those in the following paragraph) or land-clearing activity is undertaken. All material timber harvest activities on the Property shall be guided by a Forest Stewardship Management Plan approved by Grantee. A pre-harvest timbering plan that generally identifies the areas on the Property to be harvested for timber and the types of harvesting activities that will occur within such areas shall be submitted to Grantee for approval not less than 30 days in advance of such pre-harvest plan. Grantee's approval of the pre-harvest plan shall be limited to determining whether the pre-harvest plan is consistent with the Forest Stewardship Management Plan for the Property and the purpose of this Easement (which includes forestry). Without limiting the foregoing requirement regarding submission of pre-harvest plans, Grantee shall be notified 30 days prior to the clearing of over 10 acres of forestland for conversion into grassland or crop land or in association with the construction of permitted buildings.

Neither a Forest Stewardship Management Plan nor a pre-harvest plan shall be required for the following permitted non-commercial activities: (i) cutting of trees for the construction of permitted roads, utilities, buildings and structures, (ii) cutting of trees for trail clearing, (iii) cutting of trees for firewood, or for other

domestic uses of Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, (v) removal of invasive species, or (vi) removal of trees as is necessary to facilitate wetland and stream mitigation and restoration on the Property as permitted and limited under Section II, Paragraph 3.

5. **RIPARIAN BUFFER.** To protect water quality, riparian buffer strips shall be maintained as follows: a one hundred (100) foot buffer strip shall be maintained along the edge of the Appomattox River, and a thirty five (35) foot buffer strip along each edge of Stock Creek and any perennial stream or lakes, ponds, or other waterbodies with perennial outflow on the Property, each as measured from the tops of the banks.

(i) Within the buffer strips there shall be (a) no buildings, roads other than those permitted in subsection (ii) below, substantial structures, or other improvements with impervious surfaces constructed or placed, (b) no storage or dumping of compost, manure, fertilizers, chemicals, machinery or equipment, (c) 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, except that, within the portion of the Appomattox River buffer that is no closer than 50 feet from the bank of the Appomattox River select cutting, but not clear cutting, is permitted, and (d) 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, and (e) limited mowing not more than once per calendar year to control non-native or invasive species or protect trees and other plants planted in the buffer strips is permitted. Native trees and plants may be planted in the buffers. Livestock shall be excluded from the buffer strips except that livestock may be periodically moved to new pasture by crossing a stream. Regular livestock crossings not in existence at the date of this easement shall be consistent with the Agricultural Conservation Plan as required in Section II, Paragraph 3 above.

(ii) Notwithstanding the foregoing, permitted within the buffer strips are (a) wetland or stream bank restoration, or erosion control, pursuant to a government permit, (b) fencing along or within the buffer strips, (c) construction and maintenance of improved stream crossings and related improved roadways containing graded and pervious roadbeds of 35 feet or less in width, which crossings should minimize obstruction of water flow, and which roadways should pass through the buffer strip in a manner that limits the linear extent of its intersection with the buffer strip, (i.e., cross the buffer strip itself at as close to a ninety degree angle as possible), and the construction of which should minimize the erosion and sedimentation during and after the roadway construction; provided that not more than eleven such crossings and related roadways shall be permitted without prior written approval of Grantee, whose approval, shall take into consideration the impact of the crossings and related roadways on water quality and obstruction of water flow, while permitting reasonable access to permitted buildings and structures; (d) livestock crossings consistent with an

Agricultural Conservation Plan as required in Section II, Paragraph 3 above; (e) creation and maintenance of unimproved trails and associated crossings with pervious surfaces (e) planting of non-invasive species; (f) dam construction to create ponds; and (g) soil disturbances or excavations in connection with investigations of cultural and/or archeological undertaken in consultation with the Virginia Department of Historic Resources.

(iii) Should the Appomattox River, Stock Creek or any perennial stream on the Property meander or change course naturally, the buffer strips shall remain the same width, but move relative to the movement of the Appomattox River, Stock Creek or perennial streams on the Property. 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.** Grading, blasting, filling or earth removal shall not materially alter the topography of the Property except for (i) dam construction to create ponds, (ii) wetlands or stream bank mitigation and restoration pursuant to a government permit as required, (iii) erosion and sediment control pursuant to an erosion and sediment control plan, or (iv) as required in the construction of permitted buildings, structures, roads, and utilities. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in such construction. Grading, blasting, filling or earth removal in excess of one acre for the purposes set forth in subparagraphs (i) through (iv) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities shall not constitute a material alteration. Surface mining, subsurface mining, dredging on or from the Property, or drilling for oil or gas on the Property is prohibited.
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.** Display of billboards, signs, or other advertisements is not permitted on or over the Property except to: (i) state the name and/or address of the owners of the Property, (ii) advertise the sale or lease of the Property, (iii) advertise the sale of goods or services produced incidentally to a permitted use of the Property, (iv) provide notice necessary for the protection of the Property, (v) give directions to visitors, or (vi) recognize historic status or participation in a conservation program. Temporary political signs are allowed. No sign visible from outside the Property shall exceed nine 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 has the right to bring an action at law or in equity to enforce the Restrictions contained herein. This right specifically includes the right (i) to require restoration of the Property to its condition at the time of the donation or to its condition prior to the violation, provided that such prior condition was in compliance with the Restrictions set forth herein; (ii) to recover any damages arising from non-compliance; and (iii) to enjoin non-compliance by *ex parte* temporary or permanent injunction. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and 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.

SECTION IV - DOCUMENTATION

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

SECTION 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.** Acceptance of this conveyance by Grantee is authorized by Virginia Code Section 10.1-1801 and is evidenced by the signature of a Deputy Director, 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 c/o S&M Brands, 3662 Ontario Road, Suite B, Keysville, Virginia 23947, with a copy to Grantor at 1212 Friendship Church Road, Drakes Branch, Virginia 23937. Failure to comply with this requirement shall not impair the validity of the Easement or limit its enforceability in any way.

Grantor agrees to notify Grantee in writing (i) 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); and (ii) 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.

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, or that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement

and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.

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.** 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.
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 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, 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" or (v) affect the status of Grantee as a "qualified organization" or "eligible donee."

No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded among the land records of the County of Amelia, Virginia.

16. **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.
17. **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.
18. **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.
19. **RECORDING.** This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of Amelia, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.
20. **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.
21. **SUBORDINATION.** American National Bank and Trust Company, a national banking association (herein the "Lender"), is the Noteholder under a certain Deed of Trust dated October 18, 2004, and recorded October 19, 2004, in the Clerk's Office of the Circuit Court of Amelia County, Virginia, as Instrument No. 040002462, in Deed Book 271 at Page 9166 (the "Deed of Trust"), which subjects the Property to the Lender's lien. The Lender hereby consents to the terms and intent of this Easement, and agrees that the lien represented by said Deed of Trust shall be held subject to this Easement and joins in this Easement to reflect its direction to the Trustee to execute this Easement to give effect to the subordination of such Deed of Trust to this Easement.

WITNESS the following signatures and seals:

[Counterpart signature pages follow]