

Prepared by: W. B. McClung
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TAX MAP NUMBER: 0980001000000080

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

THIS DEED OF GIFT OF EASEMENT, made this 13th day of October, 2006, between TERRANCE A. SECKER and CYNTHIA M. SECKER, herein called together the "Grantors", and the VIRGINIA OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA, herein called the "Grantee", whose address is 203 Governor Street, Suite 302, Richmond, Virginia 23219.

WITNESSETH:

WHEREAS, the Open-Space Land Act of 1966, Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia (1950), as amended (the "Open-Space Act") declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth by curbing urban sprawl and encouraging more desirable and economical development of natural resources, and authorizes the use of easements in gross to maintain the character of open-space land; and

WHEREAS, Chapter 18, Title 10.1, §§10.1-1800 through 10.1-1804 of the Code of Virginia (1950), as amended (the "VOF Statutes") 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

WHEREAS, the Grantors are the owner in fee simple of the real property hereinafter described (the "Property"); and

WHEREAS, the Property possesses significant scenic and open-space values as described in the following paragraphs (the "Open-Space Values"), the preservation of which will benefit the citizens of the Commonwealth; and

WHEREAS, the Property is located in a predominantly agricultural and forested area, is substantially undeveloped and used primarily for agricultural and recreational purposes and provides general open-space and scenic benefits to the local community; and

WHEREAS, the Property is highly visible along State Route 679 (Hops Hill Road), providing scenic enjoyment for the driving public; and

WHEREAS, the Property is within a mile radius of four other properties protected by a conservation easement held by the Grantee and is adjacent to a property proposed for

conservation easement, thereby contributing to the open-space values of such lands under easement; and

WHEREAS, as required under §10.1-1701 of the Open-Space Act, the use of the Property for open-space land conforms to the County of Rockbridge Comprehensive Plan 1996-2016 (the "Comprehensive Plan") because the Property is shown on the Comprehensive Plan's "Rockbridge County Land Use" map as lying within the area designated as "Rural Areas" and such Rural Planning Area has been designated in the Comprehensive Plan's "Land Use Plan" "for the purpose of protecting agricultural, forestal and open space resources and the preservation of the County's traditional rural character." Furthermore, the Comprehensive Plan proposes future land use direction that is more consistent with the "expressed desires of residents to preserve Rockbridge County's rural character and encourage development in areas that are more suitable for development"; the preservation of the Property will further the Comprehensive Plan's goal to "enhance, protect and preserve the ambiance and environmental quality of Rockbridge County while promoting a greater awareness of the scenic beauty and other positive attributes of the Rockbridge County . . . and to maintain areas in their rural state and attempt to protect sensitive and unique land resources from degradation"; and the Comprehensive Plan promotes conservation easements because they provide "meaningful and lasting conservation benefits while keeping the land in private ownership;" and

WHEREAS, this easement is intended to constitute (i) a "qualified conservation contribution" as that term is defined in §170(h)(1) 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, or the corresponding provision of any subsequent Federal tax laws, and the applicable regulations and rulings issued thereunder) (the "IRC"), as more particularly explained below, and (ii) a qualifying "interest in land" under the Virginia Land Conservation Incentives Act of 1999 (§58.1-510 *et seq.* of the Code of Virginia (1950), as amended); and

WHEREAS, this easement is intended to constitute "a restriction (granted in perpetuity) on the use which may be made of real property, which is "a qualified real property interest" under IRC §170(h)(2)(C); and

WHEREAS, Grantee is a "qualified organization" as defined in IRC §170(h)(3), and Grantee is a qualified public body under the Open-Space Act; and

WHEREAS, this easement is granted "exclusively for conservation purposes" under IRC §170(h)(1)(C) because it effects "the preservation of certain open space (including farmland and forest land)"; specifically, the preservation of open space on the property (i) is pursuant to clearly delineated state and local governmental conservation policies that indicate the type of property identified by representatives of the general public as worthy of preservation and (ii) will yield a significant public benefit; and

WHEREAS, the preservation of the Open-Space Values as provided in this easement is pursuant to clearly delineated governmental conservation policies as follows:

The preservation of the Open-Space Values is pursuant to the Open-Space Act, the VOF Statutes, and the Comprehensive Plan, all as more particularly described above; and

The Grantee has engaged in rigorous review, considered and evaluated the benefits provided by this easement to the general public, 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 conservation objectives of the Grantee and the Commonwealth of Virginia; Grantors believe that such review and acceptance of this easement by the Grantee, a government agency, tends to establish a clearly delineated governmental policy; and

Rockbridge County has specifically recognized the importance of the continued preservation of the Property as open-space, agricultural, and forest land by providing special assessment of the Property for real property tax purposes under the Rockbridge County Code, which provides for the special assessment of real estate devoted to agricultural use "to encourage the preservation of rural lands and to relieve development pressures that might cause rural land conversion," and the preservation of the open-space character of the Property will further Rockbridge County's clearly-delineated conservation policy as expressed in such special assessment of the Property; and

WHEREAS, preservation of the Open-Space Values as provided in this easement will yield the following significant public benefits, taking into consideration factors suggested in Treas. Reg. §1.170A-14(d)(4)(iv)(A):

Preserving the open-space character of the Property prevents its development, offsetting the threat that development poses to the scenic, natural and historic character of the area; and

The preservation of the open-space character of the Property is consistent with existing conservation programs in the area; and

The preservation of the open-space character of the Property will protect the highly visible view shed from State Route 679 (Hops Hill Road), which provides opportunities for the driving public to appreciate the Property's scenic values; and

The preservation of the open-space character of the Property helps to preserve the scenic local and regional landscape in general, which attracts tourism and commerce to the area and enhances the quality of life for area residents; and

The preservation of the open-space character of the Property prevents excessive development, soil disturbance, and pollution on the Property, thus enhancing water quality as well as aquatic and riparian habitat in Buffalo Creek, Maury River and waters downstream which are part of the James River and Chesapeake Bay Watersheds; and

The preservation of the open-space character of the Property helps in the prevention of excessive water runoff and aids in maintaining water quality of downslope streams and rivers including Buffalo Creek, the Maury River, the James River and the Chesapeake Bay; and

The preservation of the open-space character of the Property enhances the open-space easements presently in place on other properties located near the property; and

WHEREAS, the Grantors and the Grantee desire to protect in perpetuity the Open Space Values herein specified; and

WHEREAS, the Grantors and the Grantee intend to accomplish such protection by restricting the use of the Property as hereinafter set forth; and

WHEREAS, the Grantee has determined that the restrictions hereinafter set forth (the "Restrictions") will preserve and protect in perpetuity the Open Space Values of the Property, which values are reflected in the preceding paragraphs, the Grantee's evaluation of the Property, and the documentation of the condition of the Property as contained in the Grantee's files and records; and

WHEREAS, the conservation purpose of this easement is to preserve and protect in perpetuity the Open Space Values of the Property; and

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

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by the Grantee, the Grantors do hereby give, grant and convey to the Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of, the real estate consisting of 97.76 acres, more or less, described in SCHEDULE "A", located in Natural Bridge Magisterial District, Rockbridge County, Virginia, fronting on State Route 679 (Hops Hill Road), and herein referred to as the "Property:"

The above-described tracts are shown as Tax Map and Parcel number: 0980001000000080 among the land records of Rockbridge County and total 97.76 acres in the aggregate. The Property shall be considered to be one parcel for the purposes of this easement, and the restrictions and covenants of this easement shall apply to the Property as a whole.

AND SUBJECT, HOWEVER, to the restriction that the Grantee may not transfer or convey the open-space easement herein conveyed to the Grantee unless the Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in the conveyance accomplished

by this deed are to be continued in perpetuity, and (2) the transferee is an organization then qualifying as an eligible donee as defined by IRC §170(h)(3).

Restrictions are hereby imposed on use of the Property pursuant to the public policies set forth above. The Grantors covenant that no acts or uses that are inconsistent with the conservation purposes of this easement shall be conducted or undertaken on the Property. The acts that the Grantors covenant to do and not to do upon the Property, and the Restrictions that the Grantee is hereby entitled to enforce, are and shall be as follows:

1. **TRASH.** Accumulation or dumping of trash, refuse, or junk 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, as long as such practices are conducted in accordance with applicable laws and regulations.

2. **SIGNS.** Display of billboards, signs, or other advertisements that are visible from outside the Property is not permitted on or over the Property except to: (i) state the name 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. No such sign shall exceed nine square feet in size.

3. **DIVISION.** Division or subdivision of the Property in any manner is prohibited: the Property may not be sold or conveyed except as a whole.

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

1. The entire adjacent parcel is subject to an existing, recorded open-space easement conveyed to the Grantee;

2. The proposed boundary line adjustment is reviewed and approved in advance by the Board of Trustees of the Grantee.

4. **MANAGEMENT OF FOREST.** Commercial timber harvesting shall be in accord with a forest stewardship plan approved by the Grantee. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when commercial forestry activity is undertaken. A pre-harvest plan consistent with the forest stewardship plan shall be submitted to the Grantee at least 30 days prior to beginning such commercial timber harvesting.

The objectives of the forest stewardship plan shall be to (a), improve wildlife habitat, (b) maintain the health of the forest, (c) maintain a scenic forest and (d) conserve soil and water.

Notwithstanding the foregoing, the following shall be permissible on the Property and shall not constitute commercial timber harvesting:

- (i) limited timbering for Grantors' domestic consumption including, without limitation, the cutting of firewood;
- (ii) the cutting and removal of trees or brush in connection with the construction of fences or the maintenance of fences, fence rows and roads; or
- (iii) the cutting and removal of trees that are diseased or have died naturally or which, were they not removed, would present a hazard to human or livestock health or safety, including salvage timbering necessitated by natural disaster, insect infestation or disease.

5. GRADING, BLASTING, MINING. Grading, blasting or earth removal shall not materially alter the topography of the Property except for dam construction to create private ponds, or as required in the construction of permitted buildings, structures, connecting private roads, and utilities as described in Paragraph 6. Generally accepted agricultural activities shall not constitute any such material alteration. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in the construction of permitted buildings and private roads. Notwithstanding the foregoing, no grading, blasting, or earth removal is permitted on the Property if it will materially diminish or impair the Open Space Values of the Property. Mining on the Property by surface mining or any other method is prohibited. Notwithstanding the foregoing, the removal of surface rocks or boulders as required for agricultural purposes is permitted.

6. BUILDINGS AND STRUCTURES. No permanent or temporary building or structure may be built or maintained on the Property other than:

(i) one single family dwelling not to exceed 3,500 square feet of above-grade livable space and non-residential outbuildings or structures commonly and appropriately incidental thereto; and

(ii) farm buildings or structures, except that a farm building or structure exceeding 2,500 square feet in ground area may not be constructed on the Property unless prior written approval for the building or structure is obtained from the Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the Open-Space Values of the Property; for the purposes of this subparagraph a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in paragraph 7(i). The total square

footage of all farm buildings or structures may not exceed 5,000 square feet of ground area unless prior written approval is obtained from Grantee; and

(iii) the dwelling shall be set back not less than 2,000 feet from State Route 679 (Hops Hill Road).

Private roads and utilities that serve permitted buildings or structures in this Paragraph 6 may be constructed.

7. INDUSTRIAL OR COMMERCIAL ACTIVITIES. Industrial or commercial activities other than the following are prohibited: (i) agriculture, viticulture, aquaculture, silviculture, horticulture, and equine activities, (ii) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property, and that do not diminish the conservation values herein protected, and (iii) activities that can be and in fact are conducted within permitted buildings without material alteration to the external appearance thereof. Temporary outdoor activities involving 100 or more people shall not exceed seven days in duration unless approved by the Grantee in advance in writing. Nothing herein shall be construed to prohibit hunting.

8. ENFORCEMENT. Representatives of the Grantee may enter the Property from time to time for purposes of inspection and enforcement of the terms of this easement after permission from or reasonable notice to the owner or the owner's representative. The Grantee has the right to bring an action at law or in equity to enforce the Restrictions contained herein. The Grantee's enforcement right specifically includes the right, when non-compliance with the terms of this easement causes injury to the Property, to require restoration of the Property to its condition at the time of the donation of this easement or, in the discretion of the Grantee, to require restoration of the Property to its condition prior to the violation provided that such prior condition was in compliance with the terms of this easement. The Grantee's enforcement right also specifically includes the right to recover any damages arising from non-compliance and to enjoin non-compliance by *ex parte* temporary or permanent injunction. If the court determines that the Grantors failed to comply with this easement, the Grantors shall reimburse the Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorney's fees, in addition to any other payments ordered by such court. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this easement by any prior failure to act and the Grantors hereby waive any defenses of waiver, estoppel or laches with respect to any failure to act by the Grantee.

9. NOTICES TO GRANTEE. The Grantors shall notify the Grantee in writing prior to undertaking any activity on the Property that may be inconsistent with the Open-Space Values or the Restrictions. The Grantors shall notify the Grantee in writing at, or prior to, closing on any *inter vivos* transfer or sale of the Property. This deed of easement shall be referenced by deed book and page number, or instrument number, in any deed conveying any interest in the Property.

10. EXTINGUISHMENT. The Grantors and the Grantee intend that this easement be perpetual and not be extinguished. Restrictions set forth in the easement can be extinguished only by judicial proceeding and only if such extinguishment also complies with the requirements of section 10.1-1704 of the Virginia Code. In any sale or exchange of the Property subsequent to such extinguishment, the Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of the perpetual conservation restriction computed as set forth below, but not to be less than the proportionate value that the perpetual conservation restriction at the time of the extinguishment bears to the then value of the Property as a whole. The Grantors agree that the donation of the perpetual conservation restriction in this easement gives rise to a property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time. The Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purposes of this easement and of the Open-Space Land Act. The Property may not be converted or diverted from open-space uses as herein defined except in accordance with Virginia Code Section 10.1-1704.

11. DOCUMENTATION. Documentation retained in the offices of the Grantee describes the condition and character of the Property at the time of the gift. The Documentation may be used to determine compliance with and enforcement of the terms of the easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination.

The Grantors warrant that the Grantors have made available to the Grantee, prior to the time the donation is made, documentation sufficient to establish the condition of the Property at the time of the gift. Such documentation is designed to protect the conservation interests associated with the Property, which, although protected in perpetuity by the easement, could be adversely affected by the exercise of the reserved rights. The parties hereby acknowledge that the documentation supplied and contained in the files of the Grantee is an accurate representation of the Property.

12. SUCCESSORS IN INTEREST. The covenants, terms, conditions and restrictions contained in this easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

13. ENTIRE AGREEMENT. This instrument sets forth the entire agreement of the parties with respect to the easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement. This easement shall not be construed to permit any use of the Property which is otherwise prohibited by federal, state, or local law or regulation.

If any provision of this deed or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this easement shall not be affected thereby.

Although this easement in gross will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. The Grantors retain the exclusive right to such access and use, subject to the terms hereof.

The parties hereto agree and understand that any value of this easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations (see section 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Virginia Outdoors Foundation makes no express or implied warranties that any tax benefits will be available to Grantors 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. The parties hereto intend that the easement conveyed herein shall be a qualified conservation contribution within the meaning of Section 170(h) of the Internal Revenue Code of 1986, as amended, 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. By its execution hereof, the Grantee acknowledges and confirms receipt of the Easement and further acknowledges that the Grantee has not provided any goods or services to the Grantors in consideration of the grant of the Easement.

Acceptance of this conveyance by the Grantee is authorized by section 10.1-1801 of the Code of Virginia and is evidenced by the signature of its Deputy Director hereto.

WITNESS the following signatures and seals.

Terrance A. Secker
Terrance A. Secker, Grantor

Cynthia M. Secker
Cynthia M. Secker, Grantor

COMMONWEALTH OF VIRGINIA,
COUNTY OF ROCKBRIDGE, TO WIT:

I, Stacy M. Swisher, a Notary Public for the Commonwealth aforesaid, hereby certify that Terrance A. Secker and Cynthia M. Secker, Grantors, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 13th day of October, 2006.

Stacy M. Swisher
Notary Public

My commission expires: June 3, 2009 (SEAL)

Accepted:
VIRGINIA OUTDOORS FOUNDATION,

By: Tamara A Vance

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

I, Anna G Chisholm, a Notary Public for the Commonwealth aforesaid, hereby certify that Tamara A. Vance, Deputy Director of the Virginia Outdoors Foundation, personally appeared before me this day and acknowledged the foregoing instrument on behalf of the Virginia Outdoors Foundation.

WITNESS my hand and official seal this 23rd day of October, 2006.

[Signature]
Notary Public

My commission expires: 31 OCT 2007 (SEAL)