

Instrument No.

070000471

Date: 08/09/2007

Prepared by: Lenhart Obenshain PC
P.O. Box 1287
Harrisonburg, VA 22803

Title Insurance Underwriter insuring this instrument is: None

TAX MAP NO.: 58(A)54 and 58(A)54A

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 17th day of July, 2007, between **ROBERT B. EGGLESTON** and **ELISABETH T. EGGLESTON**, husband and wife, whose address is 1616 Martz Road, Harrisonburg, VA 22802 (*together* "Grantor"); the **VIRGINIA OUTDOORS FOUNDATION**, an agency of the COMMONWEALTH OF VIRGINIA ("VOF"), whose address is 101 North 14th Street, 17th Floor, Richmond, Virginia 23219, Grantee. (The designations "Grantor" and "Grantee" refer to the Grantor and Grantee and their respective successors and assigns);

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of real property abutting on and situated on the north side of U.S. Highway Route No. 250 in Highland County, Virginia, containing in the aggregate 205.711 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

WHEREAS, VOF 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 of 1986, as amended (and corresponding provisions of any subsequent tax laws)(IRC) and Treasury Regulation §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

WHEREAS, Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the Open-Space Land Act), declares that the preservation of open-space land serves a public purpose by curbing urban sprawl, preventing the spread of urban blight and deterioration and encouraging more economic and desirable urban development, helping provide or preserve necessary park, recreational, historic and scenic areas, and conserving 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

WHEREAS, pursuant to Sections 10.1-1700 and 10.1-1703 of the Open-Space Land Act, the purposes of this Easement include retaining and protecting open-space and natural resource values of the

Property, and 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 and open-space use, all as more particularly set forth below; and

WHEREAS, Chapter 525 of the Acts of 1966, Chapter 18, Title 10.1, §§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

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) under IRC 170(h)(4)(A)(iii). Specifically the preservation of open-space on the Property is pursuant to clearly delineated state and local governmental conservation policies and will yield a significant public benefit; and

WHEREAS, this open-space easement in gross constitutes a restriction granted in perpetuity on the use which may be made of the Property, and is in furtherance of and pursuant to the clearly delineated governmental policies set forth below:

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

a. Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth's policy to protect its atmosphere, lands and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

b. The Open-Space Land Act cited above;

c. Chapter 18, of Title 10.1, §§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, §§58.1-510 through 58.1-513 of the Code of Virginia, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth's unique natural resources, wildlife habitats, open spaces and forest resources;

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

a. its comprehensive plan adopted on April 29, 1999 to which plan the restrictions set forth in this deed conform and which has among its stated goals the following:

"Protect the visual quality of land surrounding the McDowell Battlefield via landscape preservation easements, agricultural preservation efforts, preservation tax incentives, interpretive signs, shelters, and materials, etc."; and

"Develop and support incentives and techniques described herein to preserve Highland's rural and historic character (agricultural and forestal districts, conservation easements, land use taxation, historical landmarks designation, Virginia Byway designation and cluster development)"; and

"Work closely with the Shenandoah Valley Battlefield Commission to insure that . . . McDowell is recognized in such a way that Highland will enjoy the economic assets generated by the national effort"; and

"Maintain Highland's predominantly rural character".

b. Section 616.00 of the Highland County Zoning Ordinance, which establishes a historic district, in which the Property is located, and emphasizes the important of preserving the historical assets and heritage of the County.

WHEREAS, in its 1992 study entitled *Study of Civil War Sites in the Shenandoah Valley of Virginia*, the National Park Service of the U.S. Government recommended preservation activities for the McDowell battlefield area, including conservation easements and support for private preservation efforts, which helped form the basis for the Shenandoah Valley Battlefields National Historic District and Commission Act (P.L. 104 333), including among its purposes the preservation of Civil War battlefields in the Shenandoah Valley (including McDowell) and the creation of partnerships among federal, state and local governments and the private sector to preserve significant battlefields and related sites.

WHEREAS, the Property comprises an area where, during the Battle of McDowell, which occurred on the 8th of May 1862, the 12th Ohio had a gun emplacement during the fighting; and

WHEREAS, the Property contains steep slopes along U.S. Highway 250, a State Scenic Road, eligible for designation as a State Scenic Byway, and its upper elevations are especially visible from U.S. 250 south of the town of McDowell; and

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

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

WHEREAS, 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, which values are reflected in Section I; and

WHEREAS, Grantee has determined that the Restrictions will limit use of the Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by the Easement; and

WHEREAS, Grantee, by acceptance of this Easement, designates the Property as property to be retained and used in perpetuity for the preservation and provision of open-space land pursuant to the Open-Space Land Act,

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein and the acceptance by Grantee, Grantor does hereby give, grant and convey to Grantee a conservation and open-space easement in gross (Easement) over, and the right in perpetuity to restrict the use of, the Property, which is described below, and which consists of 205.711 acres, more or less, located in Stonewall Magisterial District, Highland County, Virginia, near the village of McDowell, fronting on State Route U.S. Highway Route No. 250, to-wit:

ALL that certain tract or parcel of land, with the buildings and improvements thereon and all appurtenances thereto belonging, situate in Stonewall Magisterial District, Highland County, Virginia, on the west side of the Bull Pasture Mountain abutting on and on the north side of U.S. Highway Route No. 250, just opposite the area designated as the McDowell Battlefield east of the village of McDowell, adjoining the lands of the Roy Obaugh Estate, Robert E. Neil and others, known as a part of the A. H. Jones lands, bounded and described as follows:

BEGINNING at a chestnut tree, red oak and a locust stump on the top of the mountain, corner with a 190-acre tract of Jones land now owned by Roy Obaugh; thence leaving the said tract, S. 67° E. 61 poles to a white oak and a locust; S. 66° E. 15 poles to a black walnut; thence leaving Fleisher and with the Shull lines S. 7 3/4° W. 10.20 poles to a large white oak; S. 1/4° W. 13 poles to two chestnut stumps; S. 6° W. 12 poles to a bunch of lynnns on a limestone mound; S. 20° W. 18.76 poles to an elm; S. 19 1/4° W. 6.48 poles to two ironwood saplings; S. 40 1/4° W. 11.80 poles to a hickory sapling; S. 28 1/4° W. 21.40 poles to some stones by wire fence; S. 17 3/4° W. 95.60 poles to a post at corner of wire fence; N. 82 1/2° W. 15.60 poles to a post; S. 9° W. 14.40 poles to a point in the S & P Pike and with same; N. 84° W. 46.10 poles to a point in same; thence leaving Pike; N. 11 3/4° E. 3 poles to a stake; N. 63 1/4° W. 33.84 poles to a double black oak; N. 77° W. 91.48 poles to a red oak sapling on a ledge on cliff one pole west of same and at end of wire and lumber fence and with said fence and the line run by I. L. Beverage, N. 51° E. 33.40 poles; N. 72° E. 6 poles; N. 46° E. 12 poles; N. 43° E. 18 poles; N. 32° E. 20 poles; N. 16 3/4° E. 97.20 poles; N. 41 1/2° E. 26 poles; N. 31 1/2° E. 7.40 poles; N. 23.50° E. 6 poles; N. 11° W. 18 poles; N. 12 3/4° E. 22 poles to a gate post in Dark Hollow, on a line of the aforesaid 190-acre Jones tract and with one line of the said tract S. 56 1/4° E. 73.60 poles to the beginning, containing 205.79 acres, more or less.

LESS AND EXCEPT a 0.079 acre tract leased to the County of Highland, Virginia, being more particularly described on a plat entitled "Plat of a 0.079 Acre Portion Of The Property Owned By Curtis T. & Marie S. Wood," dated December 3, 1996, prepared by John Jeffrey Hiner, Land Surveyor.

Being a portion of the property acquired by Grantor from Curtis T. Wood and Marie S. Wood, husband and wife, by deed dated November 20, 2006, of record in the Office of the Clerk of the Circuit Court of Highland County, Virginia, as Instrument No. 060000524.

The Property is shown as Tax Map Nos. 58(A)54 and 58(A)54A among the land records of the County of Highland, 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 its values as open-space land preserved for open-space and rural uses including agriculture, livestock production, and forestry. Primary conservation purposes include: preservation of scenic open space, agricultural and forestal use. Additional conservation purposes include: conservation of open-space lands designated by local governments and historic preservation. 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.** Division of the Property is allowed as follows: The Property shall not be divided into, or separately conveyed as, more than two (2) parcels. Grantor shall give Grantee written notice prior to making any division of the Property.

Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered divisions of the Property, provided that Grantee is made party to the deed creating the 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.

2. **BUILDINGS AND STRUCTURES.** No buildings or structures other than the following are permitted on the Property:

(i) two (2) single-family dwellings, of which only one (1) exists on the Property on the date of this Easement. Such dwellings shall not collectively exceed 7,000 square feet of above-ground enclosed living area (basements, porches, unheated garages and decks not being counted in the square footage) without Grantee's prior review and written approval; and

(ii) one (1) secondary dwelling, or dwelling unit such as barn or garage apartment, which does not exist on the date of this Easement. Such dwelling shall not exceed 2,000 square feet of above-ground enclosed living area; and

(iii) non-residential outbuildings and structures commonly and appropriately incidental to the dwellings permitted in subsections (i) and (ii) of this paragraph, and sized appropriately to serve as an amenity to single-family residential use, provided that the aggregate footprint of such non-residential outbuildings and structures for each permitted dwelling shall not exceed 1,500 square feet in ground area unless prior written approval shall have been obtained from Grantee that a larger footprint is permitted considering the purpose of this Easement and the scale of the proposed outbuilding or structure in relation to the surrounding area; and

(iv) farm buildings or structures, except that a farm building or farm structure exceeding 3,500 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 subparagraph, a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in paragraph 3(i). The total ground area of enclosed farm buildings on the Property, excluding the existing barn comprised of approximately 730 square feet, shall not exceed a combined total of 20,000 square feet in ground area without the prior consent of Grantee.

No buildings (residential or non-residential) shall be constructed within the setback area along U.S. Highway 250, which is intended to mean that no such buildings can be constructed closer to the existing right-of-way of U.S. Highway 250 than the closest portion of the existing residence, which setback is shown in the baseline documentation report.

Any new structure built above the 2,600 foot contour line as shown on the United States Geological Survey topographical map, McDowell and Monterey SE quadrants, shall either be built within the building envelopes as shown on EXHIBIT A, attached hereto, or be subject to siting approval by the Grantee. Criteria for approval shall primarily be to protect the public viewshed from U.S. Highway 250.

In the event of division of the Property as provided in paragraph 1, permitted dwellings and farm building square footage shall be allocated between the parcels in the instrument creating the division.

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

Private roads and utilities to serve permitted buildings or structures, private roads and utilities to parcels created by permitted divisions of the Property and roads with permeable surfaces for other permitted uses, such as farming or forestry, may be constructed and maintained. Public or private utilities crossing the Property, whose construction and maintenance Grantee determines will not impair the Property's conservation values may be constructed and maintained if Grantee gives its prior written approval.

3. **INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Industrial or commercial activities other than the following are prohibited: (i) agriculture, livestock production (animal husbandry), equine activities and forestry, and related small-scale incidental commercial or industrial operations that Grantee approves in writing as being consistent with the conservation values of this Easement; (ii)

processing and sale of products produced on the Property as long as no additional buildings beyond those allowed are required; (iii) 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 (iv) activities that can be and in fact are conducted within permitted buildings without material alteration to their external appearance. Temporary outdoor activities involving 100 or more people shall not exceed 7 consecutive days in any 90-day period without prior written approval of the Grantee.

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 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 the VA Department of Forestry or VOF. A pre-harvest plan consistent with the Forest Stewardship Management Plan shall be submitted to Grantee for approval 30 days before beginning any material timber harvest. The objectives of the Forest Stewardship Management Plan may include, but are not limited to, aesthetics, recreation, historic and cultural resource preservation, natural area preservation, or any combination thereof. Grantee shall be notified 30 days prior to the clearing of over 10 acres of forestland for grassland, crop land, or in association with the construction of permitted structures.

Non-commercial *de minimis* harvest of trees for trail clearing, firewood or Grantor's domestic use, trees that pose an imminent hazard to human health or safety, or removal of invasive species shall not require a Forest Stewardship Management Plan.

5. **GRADING, BLASTING, MINING.** Grading, blasting or earth removal shall not materially alter the topography of the Property except for (i) dam construction to create ponds, (ii) wetlands or stream bank restoration pursuant to a government permit, (iii) erosion and sediment control pursuant to a government-required erosion and sediment control plan, or (iv) as required in the construction of permitted buildings, structures, roads, and utilities. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in such construction. Grading, blasting or earth removal in excess of one acre for the purposes set forth in subparagraphs (i) through (iv) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities shall not constitute a material alteration. Surface mining, subsurface mining, dredging on or from the Property, or drilling for oil or gas on the Property is prohibited.
6. **ACCUMULATION OF TRASH.** Accumulation or dumping of trash, refuse, junk or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the Property.
7. **SIGNS.** 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 signs visible from outside the Property shall exceed nine square feet in size.

8. **RIPARIAN BUFFER.** To protect water quality there shall be no plowing, cultivation or other earth disturbing activity in a 100-foot buffer strip along each edge of the two intermittent streams shown in the baseline documentation report as measured from the top of the bank, except as may be reasonably necessary for (i) wetland or stream bank restoration, or erosion control, pursuant to a government permit, (ii) fencing along or within the buffer area, (iii) construction and maintenance of stream crossings that do not obstruct water flow, (iv) creation and maintenance of foot or horse trails with unimproved surfaces, and (v) dam construction to create ponds. Within this buffer strip there shall be (a) no buildings or other substantial structures constructed, (b) no storage of compost, manure, fertilizers, chemicals, machinery or equipment, and (c) no removal of trees except removal of invasive species, removal of dead, diseased or dying trees or trees posing an imminent human health or safety hazard. Mowing within buffer areas is permitted.

SECTION III – ENFORCEMENT

1. **RIGHT OF INSPECTION.** Representatives of 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 Grantor or the 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 the 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 to require restoration of the Property to a condition of compliance with the terms of this Easement as existed on the date of the gift of the Easement, except to the extent such condition thereafter changed in a manner consistent with the Restrictions; to recover any damages arising from non-compliance, and 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 reasonable 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 or change to the condition of the Property caused by fire, flood, storm, Act of God, governmental act or other cause outside of Grantor's control or any prudent action taken by Grantor to avoid, abate, prevent or mitigate damage or changes to the Property from such causes.

SECTION IV – DOCUMENTATION

Documentation retained in the office of VOF 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 VOF 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. Landowner's rights and obligations under this Easement terminate upon proper transfer of Landowner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
2. **NO PUBLIC ACCESS.** 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. Grantor retains the exclusive right to such access and use, subject to the terms hereof.
3. **TITLE.** Grantor covenants and warrants that Grantor has good title to the Property, that Grantor has all right and authority to grant and convey this Easement and that the Property is free and clear of all encumbrances (other than utility and access easements) including, but not limited to, any mortgages not subordinated to this easement.
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 VOF's Board of Trustees.
5. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property which is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage or open-space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, 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 not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a "qualified conservation contribution" as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations §1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.

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.
8. **NOTICE TO GRANTEE.** 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; 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 IRS regulations (see 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. **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 (1) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity and (2) the transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the IRC as amended and 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. **EXTINGUISHMENT, CONVERSION, DIVERSION.** Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted

from its open-space use except in compliance with the provisions of Section 10.1-1704 of the Open-Space Land Act. Nevertheless, should an attempt be made to extinguish this Easement, such extinguishment can be made only by judicial proceedings and only if in compliance with Section 10.1-1704. In any sale or exchange of the Property subsequent to an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Section 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.

14. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property, provided that no amendment shall affect this Easement's perpetual duration or reduce the Property's conservation values. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded among the land records of the County of Highland, Virginia.
15. **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.
16. **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.
17. **CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.
18. **RECORDING.** This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of Highland, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.

WITNESS the following signatures and seals:

[Counterpart signature pages follow]

[Counterpart signature page 1 of 2]

Robert B. Eggleston
Robert B. Eggleston, Grantor

Elisabeth T. Eggleston
Elisabeth T. Eggleston, Grantor

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

The foregoing instrument was acknowledged before me this 17th day of July, 2007, by Robert B. Eggleston.



Lisa Anne Hawkins
Notary Public

My commission expires: 9/30/2010

Notary Public Registration no.: 322342

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

The foregoing instrument was acknowledged before me this 17th day of July, 2007, by Elisabeth T. Eggleston.



Lisa Anne Hawkins
Notary Public

My commission expires: 9/30/2010

Notary Public Registration no.: 322342

Accepted:

VIRGINIA OUTDOORS FOUNDATION,
an Agency of the Commonwealth of Virginia, Grantee

By: Tamara A. Vance
Name: Tamara A. Vance
Its: Deputy Director

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

The foregoing instrument was acknowledged before me this 2nd day of
August 2007, by Tamara A. Vance, a Deputy Director of the Virginia Outdoors
Foundation.

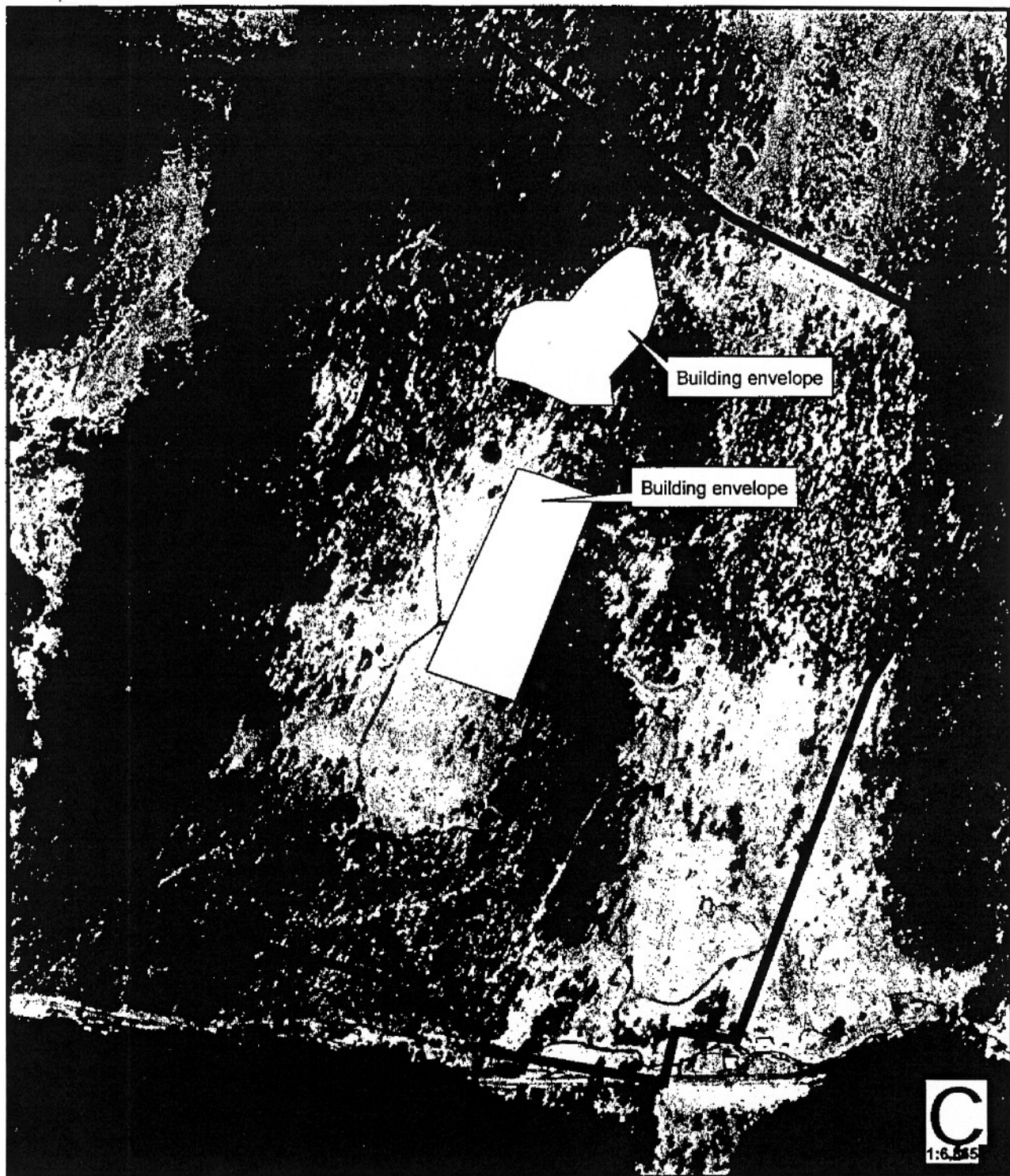
[Signature]
Notary Public ANNA G. CHISHOLM

(SEAL)

My commission expires: 31 OCT 2011

Notary Public Registration no.: 281506

00134681-2



Virginia Outdoors Foundation
Board of Trustees
Meeting Date: March 2007
Prepared by: Tracy Campbell
Date: January 27, 2007
Map for display purposes only

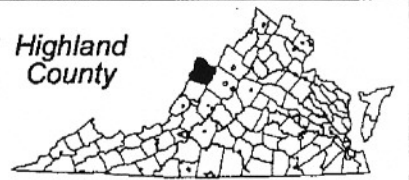
Exhibit A, Bldg envelopes for farm buildings

Legend:

-  PROPOSED VOF EASEMENT
-  EXISTING VOF EASEMENT
-  COUNTY BOUNDARY

0 0.0375 0.075 0.15 Miles

Highland
County



USGS Quadrangle: McDowell, Monterey SE

This instrument was

delivered by hand

to Christy W. Court Square Title

at Staunton, VA

on 08/09/2007

INSTRUMENT #070000471
RECORDED IN THE CLERK'S OFFICE OF
COUNTY OF HIGHLAND ON
AUGUST 9, 2007 AT 10:01AM
SUE K. DUDLEY, CLERK

RECORDED BY: DAF

Lorisa A. Folke, D.C.