

Prepared by  
and return to: Henry Cleaves Day, Esquire  
VSB# 21978  
P. O. Box 1096  
Warrenton, Virginia 20188

Title Insurance: None

Tax Map No.: 6070-66-2971-000

Consideration: Exempt from recordation taxes pursuant to  
the Code of Virginia (1950), as amended,  
Sections 58.1-811 (A) (3) and 58.1-811 (D)  
and from the Circuit Court Clerk's fee  
under Section 17.1-266, Code Section 58.1-809

### **THE BUNTING CONSERVATION EASEMENT**

THIS DEED OF GIFT OF EASEMENT (the "Easement"), made this 29th day September, of 2016, between **JOSIAH BUNTING, III** and **DIANA C. BUNTING**, husband and wife, collectively herein the "Grantor", and the **BOARD OF SUPERVISORS OF FAUQUIER COUNTY**, of the Commonwealth of Virginia, the "Grantee", whose address is 10 Hotel Street, Warrenton, Virginia 20186, the designations Grantor and Grantee, including their successors and assigns.

#### **RECITALS.**

**R-1** Grantor is the owner in fee simple of one (1) certain parcel of real property which are situated near Marshall, Virginia, State Route #762, in Scott Magisterial District of Fauquier County, Virginia, together containing approximately 51.5854 acres, more thoroughly described below, hereinafter referred to as "the Property", and desires to give and convey to Grantee, for the public purpose identified herein, a perpetual conservation and open space easement over the Property as herein set forth.

**R-2** Grantee is the governing body of a political subdivision 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, hereinafter referred to as the “I.R.C.”, and Treasury Regulation §1.170A-14(c)(1), is a public body under Section 10.1-1700, of the Code of Virginia, 1950, as amended, hereinafter referred to as the “Virginia Code” and is willing to accept a perpetual conservation and open space easement over the Property as herein set forth.

**R-3** Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Virginia Code, 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.

**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 Article II ensures that the Property will remain perpetually available for agriculture, livestock production, forest or open space use, all as more particularly set forth below.

**R-5** Pursuant to Sections 10.1-1700 and 10.1-1703 of the Open Space Land Act, this Easement is granted exclusively for conservation purposes under I.R.C. Section 170(h)(1)(C) to preserve open space land, including farm land and forest land, for the scenic enjoyment for the general public and pursuant to a clearly delineated governmental conservation policy, evidenced by the Open-Space Land Act and the Grantee’s Comprehensive Plan, hereinafter referred to as the “Comprehensive Plan,” and this Easement will yield a significant public benefit, all as identified herein; but this Easement is not intended to, nor does not grant to the public, any right of public access.

**R-6** The Property is adjacent to and in the vicinity of other properties under open space easement deeded to the Virginia Outdoors Foundation and to the Grantee under the Open-Space Easement Act.

**R-7** The Property is zoned Rural Agriculture (RA) District and Rural Conservation (RC) District and contains productive agricultural and forestal land.

**R-8** The Comprehensive Plan, as adopted by the Grantee, includes the following goals:

- (i) Encouraging farming;
- (ii) Directing growth to designated service districts and away from rural lands;
- (iii) Protecting environmental, cultural and visual resources; and
- (iv) Providing strict controls over all new development in rural areas.

**R-9** The Comprehensive Plan, as adopted by the Grantee, includes the following goals:

1. Preserve the County's cultural, ecological and environmental resources to ensure the continued quality of life within the County for its residents and visitors.
2. Identify and protect productive agricultural and silvicultural lands.
3. Promote the identification, evaluation, registration and protection of heritage/historic resources, as well as the business opportunities presented by their rehabilitation and reuse.
4. Use conservation easements, Purchase of Development Rights and the Land Use Taxation programs to protect these resources.
5. Safeguard the environment with water and air quality and natural resource management.

- (i) "To recognize the county's traditionally agricultural and rural character and the need for preservation of its open spaces and scenic beauty";
- (ii) "To protect critical environmental resources and to maintain renewable natural resources so that they are not degraded but remain viable for future generations"; and
- (iii) "To protect and promote the agricultural industry."

**R-10** The Restrictions contained in Article II of this Easement preserve open space and protect scenic enjoyment for the general public and further the Comprehensive Plan's objectives by limiting subdivision and buildable lots, restricting building rights and building locations and preserving agricultural lands and the rural character of the Property and the area of the County in which it is located.

**R-11** The Property is in the vicinity of and eligible for inclusion in the Middleburg/Marshall Agricultural and Forestal District as designated by

the Board of Supervisors of Fauquier County, pursuant to the Virginia Agricultural and Forestal Districts Act (§§15.2-4300 et seq. of the Virginia Code).

**R-12** The Agricultural and Forestal District was created pursuant to the Agricultural and Forestal Districts Act, Chapter 43 of Title 15.2, §§15.2-4300 through 15.2-4314 of the Virginia Code, which encourages the conservation, protection, development and improvement of agricultural and forestal lands for the production of food and other agricultural and forestal products as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes and as an economic and environmental resource of major importance. This Easement will protect agricultural and forest land by limiting further subdivision and buildable lots on the Property and further a public purpose of the Grantee by protecting agricultural and forestal lands.

**R-13** The Property is located within the designated Mosby Heritage Area, established in 1995 recognized by the Commonwealth of Virginia, and endorsed by the Grantee, to increase awareness of the historic landscape and the cultural and natural qualities of an approximately eighteen hundred square mile area, linked to John Singleton Mosby, Confederate Civil War hero, and the areas in which he campaigned, the purpose of such area is to encourage preservation of historic landscape and the cultural and natural resources of the area. This Easement will protected the historic landscapes and such resources by limiting further subdivision and buildable lots on the Property and further a public purpose of the Grantee and the Commonwealth of Virginia.

**R-14.** The Property contains frontage on and portions of an unnamed tributary of Cromwell's Run, the "Protected Stream", a tributary of Goose Creek.

**R-15.** The Property is located within the Goose Creek River Watershed, an area designated as worthy of special environmental protection in the Comprehensive Plan as a scenic and environmentally sensitive area. Portions of Goose Creek have been designated a State Scenic River by Act of the General Assembly of the Commonwealth of Virginia under the Virginia Scenic River Act. This Easement, by establishing riparian buffers and restricting forestal activities and thereby furthers the public purposes of Grantee's Comprehensive Plan, the Virginia Scenic Rivers Act, and will yield a significant public benefit.

**R-16** Preservation of the Property will promote, further and is pursuant to the clearly delineated governmental and public policies of Fauquier County envisioned by its Comprehensive Plan and the Open-Space Land Act, will further a public purpose of the Grantee by protecting open space, productive agricultural and forest lands, scenic views, natural resources and the

historic character and fabric of the Rural Agricultural District of the County, and will therefore yield a significant public benefit.

**R-17.** Portions of the Property are visible from Prince Road, Virginia State Route #762, a Virginia Scenic By-Way and a designated Fauquier County Scenic Road, and the Property is identified on Map 2.13, Scenic Roads and Areas of Impact, an area established to permit special treatment and protection of scenic views from the County Scenic Road under the Comprehensive Plan.

**R-18.** The Restrictions contained in Article II of this Easement protect the scenic views and the scenic enjoyment of the general public by restricting buildings and limiting further subdivisions and they further a public purpose of Fauquier County evidenced in its Comprehensive Plan, as well as the public purpose of the Commonwealth to preserve its designated scenic roads.

**R-19** This Easement 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 of the Commonwealth of Virginia set forth below:

- (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;
- (e) Chapter 32, of Title 58.1, §§58.1-3230 through 58.1-3244 of the Code of Virginia, which authorizes special use-value tax assessments for real estate devoted to agricultural, forestal, horticultural and open space use.

**R-20** The Grantor and the Grantee desire to protect in perpetuity the open space values identified in the previous paragraphs, including, but not limited to, conserving and protecting agricultural and forestal lands as natural resources, protecting rural agricultural lands by limiting further subdivisions

and limiting buildings and building lots, protecting water quality and scenic views, protecting the historic resources of the Commonwealth, and intend to accomplish such protection by restricting the use of the Property as hereinafter set forth.

**R-21** The conservation values of the Property are its agricultural, forestal, scenic and natural values, its historic preservation value, and its value as open space land preserved for open space and rural uses, as referenced in I.R.C. Section 170(h)(4)(A)(iii) and Treasury Regulation Section 1.170A-14(d)(4), the “Open Space Values”, and as more particularly described and defined in the preceding Recital paragraphs, and as further documented in an inventory of relevant features of the Property by Grantee, Grantee’s Baseline Documentation Report, the “BDR”, which is further described in Article V below.

**R-22** The Grantee has determined that this Easement will yield significant public benefit to the citizens of Fauquier County and of the Commonwealth as set forth in these Recitals and in Article I below.

**R-23** The conservation purpose of this Easement is to preserve and protect in perpetuity the Open Space Values of the Property and to preserve open space land, scenic and historic values.

**R-24** The Grantee has determined that the restrictions hereinafter set forth in this Easement (the “Restrictions”) will preserve and protect in perpetuity the Open Space Values of the Property, which advance and are consistent with the Grantee’s conservation policies and the public purposes established in its Comprehensive Plan and will therefore yield a significant public benefit.

**R-25** The Grantee has determined that the Restrictions will limit the uses of the Property to those uses which are consistent with, and do not adversely affect, the Open Space Values of the Property, and the historic and scenic values enjoyed by the general public, and the governmental conservation policies of Grantee and the Commonwealth furthered by this Easement.

**R-26** The Grantee, at its meeting of October 13, 2016, adopted a resolution accepting this Easement, hereinafter the “Authorizing Resolution,” and thereby 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.

**R-27** The Grantor intends to convey to the Grantee by this Easement the right to preserve and protect the Open Space Values of the Property in perpetuity and to further the public purposes established in the Comprehensive

Plan and to qualify the grant of such restrictions and associated rights as a qualified conservation contribution under Section 170(h)(2)(C) of the I.R.C.

NOW, THEREFORE, for no consideration to Grantor, but in consideration of the foregoing recitals, being incorporated herein and made a part hereof, and of the mutual covenants herein and the acceptance hereof by Grantee, the Grantor does hereby give, grant and convey to Grantee a conservation and perpetual open space easement, this "Easement", in gross over, and the right in perpetuity to restrict the use of the Property as described below, herein the "Property", consisting of 51.584 acres in one (1) parcels, located in Scott Magisterial District, Fauquier County, and as more thoroughly described as follows:

ALL THAT certain tract or parcel of land containing 51.5854 acres, more or less, situated in Scott Magisterial District, and more particularly described by survey and metes and bounds prepared by Dunn Land Surveys, Inc. entitled " Boundary Survey of the Land of Elizabeth Kernan Quigley and George Morgan Kernan, Jr." dated January 31, 2006 and revised February 1, 2006, which said survey and metes and bounds description is attached to and made a part of a Deed dated February 3, 2006 and recorded February 15, 2006 in the Clerk's Office of the Circuit Court of Fauquier County, Virginia in Deed Book 1203 at page 1098.

AND BEING the same property conveyed to Josiah Bunting, III and Diana C. Bunting by virtue of Deed dated July 28, 2015 from Morris Met and Susan Met, Trustees of the MET Construction Corp. Profit Sharing Trust, recorded in the aforesaid Clerk's Office in Deed Book 1491 at page 2402.

FURTHER, it shall be considered to be one parcel for the purpose of this Conservation Easement, and the terms and conditions of this Easement shall apply to the Property as a whole.

## **ARTICLE I – EASEMENT**

**1.1 INCORPORATION OF RECITALS.** The Recitals in this Easement are incorporated herein and by agreement, each one is made an integral part of this Easement.

**1.2 PURPOSE.** The purpose of this Easement is to preserve and protect the conservation values of the Property, the Open Space Values outlined in the Recitals, in perpetuity by imposing the Restrictions on the use of the Property set forth in Article II, and by providing for their enforcement in Article III, while allowing the Property to be used for all other uses by the owner, as long as such uses do not conflict with, interfere with or significantly impair the

Property's value as open space land preserved for open space and rural uses, including agriculture, livestock production, and forest land, and preservation of open space land designated by Grantee, all as more specifically identified as the Open Space Values described in the Recitals to this Easement and documented in the Baseline Documentation Report identified in Article V.

**1.3 DURATION.** This Easement shall be perpetual. It is an easement in gross which 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 Grantor and the Grantee, and their respective successors, and assigns, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations under this Easement of Grantor, or any owner of the Property succeeding in interest to Grantor, shall terminate upon proper transfer of such landowner's interest in the Property, except that any liability for acts or omissions occurring prior to transfer by landowner shall survive such transfer.

**1.4 DEFINITIONS.**

**1.4.1 Agricultural:** Pertaining to Agriculture as defined in the next paragraph.

**1.4.2 Agriculture:** The following active uses: agronomy, aquaculture, forestry, fisheries, honey production, silviculture, including the harvesting of timber, viniculture, but not viticulture, horticulture, floriculture, animal husbandry, equine and equestrian activities.

**1.4.3 Building:** An assembly of materials having one or more stories and roof, designed primarily for the shelter, support or closure of persons, animals or property of any kind.

**1.4.3.1 Dwelling:** A Building intended to be used for living that contains cooking, sleeping and bathing facilities

**1.4.3.1.1 Primary Dwelling:** The principal Dwelling on the Property.

**1.4.3.1.2 Secondary Dwellings:** A Dwelling, which is detached from, but the use of which is associated with, but subordinate to, the Primary Dwelling, and which is located on the same parcel as the Primary Dwelling.

**1.4.3.2 Farm Buildings:** A Building used for Agriculture or the operation of seasonal markets for the sale of Agricultural products produced on the Property.

**1.4.4 Grantee:** Fauquier County, Virginia and any and all successor holders of this Easement.

**1.4.5 Grantor:** The original grantor herein and any and all successors in title to the Property.

**1.4.6 Ground Area:** The square footage of a Dwelling or Farm Building, inclusive of all roofed decks, porches, stoops, and other attached roofed Structures, as measured at the exterior of the foundation (perimeter load-bearing) walls and/or piers.

**1.4.7 Industrial/Commercial Activities:** Non-residential and non-Agricultural business uses.

**1.4.8 Prior Written Approval:** An approval as defined under the terms of subparagraph 6.4.2.

**1.4.9 Road:** A private way specifically designated and/or built on the Property for the movement of vehicles.

**1.4.10 Structures:** An assembly of materials forming a construction for use (other than Buildings, Roads and Utilities), including, among others, semi-permanent tents, platforms, stagings, observation towers, water tanks, trestles, piers, open sheds, coal bins, shelters, pipelines, energy generators, and railroad tracks, but excluding fencing, mailboxes, gate posts, or permitted signs..

**1.4.11 Utilities:** Facilities for the provision of infrastructure services including wells, water storage tanks; septic systems; electricity and telephone transmission lines; antennas for the transmission and reception of electro-magnetic energy; equipment used to harness natural renewable energy sources, such as sunlight, wind, water, or biomass.

**1.5 NO PUBLIC ACCESS.** Although this Easement in gross will benefit the public as described in the Recitals, the Grantor and the Grantee agree that no right of public access is granted by this Easement and that nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Grantors retain the exclusive right to such access and use, subject to the specific terms of this Easement.

## **ARTICLE II – RESTRICTIONS**

Restrictions are hereby imposed on the use of the Property to protect the Open Space Values of the Property pursuant to the public policies set forth in the Recitals. The acts that the 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:

### **2.1 DIVISION.**

**2.1.1 Subdivision.** The Property shall not be further subdivided, or separately conveyed as more than one (1) parcel.

**2.1.2 Boundary Adjustments.** Boundary line adjustments of the Property with adjoining parcels of land are permitted, upon the Prior Written Approval of Grantee, and shall not be considered a prohibited division, subdivision or separate conveyance of the Property or a portion thereof, provided that the entire adjacent parcel is, or becomes prior to the proposed boundary line adjustment conveyance, subject to a recorded conservation or open space easement held by a qualified holder under either the Virginia Conservation Easement Act or the Virginia Open Space Easement Act. Boundary line adjustments which meet these conditions shall also fulfill all of the requirements of the following subparagraphs.

**2.1.2.1 Deed of BLA.** Grantee shall be made a party to the deed of boundary line adjustment.

**2.1.2.2 Amendment of Easement.** This Easement shall be amended to subject any newly acquired land by boundary adjustment to the terms and conditions of this Easement at transfer. Any land transfer by Grantor by boundary adjustment shall, at transfer, become subject to a recorded conservation or open space easement held by a qualified holder under either the Virginia Conservation Easement Act or the Virginia Open Space Easement Act that is at least as restrictive as this Easement as determined by Grantee in its sole discretion.

**2.1.2.3 No Reduction in Restrictions.** The boundary line adjustment shall not result in the granting of any rights or the release of any Restrictions on any parcels of land whose boundaries are adjusted

**2.1.2.4 Protection of Open Space Values.** The boundary line adjustment shall not adversely affect, be inconsistent with or conflict with, diminish, impair or interfere with the Open Space Values protected by this Easement, or protected by any easement encumbering the other parcel(s) which are party to such boundary line adjustment.

**2.2 BUILDINGS AND STRUCTURES.** No permanent or temporary building or structures may be constructed or maintained on the Property other than as follows:

**2.2.1 Residential Dwelling.** One Primary residential dwelling, herein a “Primary Dwelling”, may be constructed, repaired, renovated, expanded and replaced on each permitted division on the Property, provided that after any and all expansions or alterations no Primary Dwelling shall not exceed three thousand (3,000) square feet of ground area without the Prior Written Approval of the Grantee. Notwithstanding, the Grantee may approve an increase in size of any Primary Dwelling if the Grantee determines that proposed dwelling or addition thereto in excess of such limitation does not diminish the Open Space Values of the Property.

**2.2.2 Secondary Dwellings.** To the extent permitted by the Fauquier County Zoning Ordinance, one (1) secondary residential dwelling, the “Secondary Dwelling”, may be constructed and maintained on the Property. The Secondary Dwelling, may be repaired, renovated, or replaced, provided that after any and all expansions or alterations, the Secondary Dwelling shall not exceed one thousand five hundred (1,500) square feet of ground area or such lesser area as may be afforded by the Zoning Ordinance in effect at the time of such expansion or alteration.

**2.2.3 Non-Residential Outbuildings and Structures.** Any non-residential outbuildings and structures associated with any Primary or Secondary Dwelling permitted in this Article II shall be sized appropriately for use with a single family dwelling, but the aggregate foot print of all such nonresidential buildings and structures for any such Primary or Secondary Dwelling shall not exceed one thousand five hundred (1,500) square feet ground area unless Prior Written Approval shall have been obtained from Grantee.

**2.2.4 Location Restrictions.** No new dwellings, primary or secondary may be constructed within the viewshed of Prince Road, Virginia State Route #762.

**2.2.5 Siting.** Any new permitted structures shall be located and constructed so as to minimize their visibility from Prince Road, Virginia State Route #762 at any season of the year. Acceptable strategies for minimizing visibility include, but are not limited to:

- (a) Screening buildings with appropriately sited evergreen plants;
- (b) Retaining existing forest cover;

- (c) Employing architectural forms, materials and colors that blend with the natural landscape rather than contrast with it; and
- (d) Using the natural topography of the Property to minimize the visual impact of the new structure.

**2.2.6 Construction and Replacement.** Any residential dwelling permitted hereunder, whether existing as of the donation of this Easement or subsequently constructed as authorized hereunder may be constructed, reconstructed, maintained, repaired, remodeled, restored, enlarged or, if permissible hereunder, demolished and replaced, if located in the existing dwelling's present location, or within one-hundred (100) feet of its present location, or such other location approved by Grantee which does not affect the Open Space Values, subject to the acceptable strategies for minimizing visibility contained in the previous subparagraphs 2.2.4, Location Restrictions, and 2.2.5, Siting.

**2.2.7 Limitation of Structures.** The aggregate ground area of all buildings or structures permitted on the Property shall not exceed One Percent (1%) of the total area of the Property; provided that Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the Open Space Values protected in this Easement, Grantee may approve such increase.

**2.2.8 Farm Structures.** Farm buildings or structures shall be permitted on the Property subject to the restriction contained in the previous paragraph, 2.2.7, except that a new farm building or farm structure, other than those existing at the date of donation of this Easement, exceeding four thousand (4,000) square feet in ground area, or a cumulative total of seven thousand five hundred (7,500) square feet in ground area of additional new farm buildings, may not be constructed on the Property, unless Prior Written Approval of the building or structure exceeding either limitation shall have been 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 Value of the Property.

**2.2.9 Roads and Utilities.** Existing private roads, paved or unpaved, and utilities that serve permitted buildings or structures in paragraph 2.2, Buildings and Structures, or that serve adjacent parcels by recorded easements, and unpaved, farm or forest roads, and logging roads, may be constructed, reconstructed and maintained. New private roads for farming and forestry, and new utilities serving permitted structures, may be constructed and maintained on the Property, upon Prior Written Approval by Grantee.

**2.2.10 Alternative Energy Structures.** Alternative energy structures scaled to provide electrical energy or pump water for permitted dwellings,

structures, and activities on the Property, which limitation shall not be deemed to prohibit the sale of excess power generated incidentally in the operation of such structures and associated equipment.

**2.2.11 Notice.** The owner of the Property, or any portion thereof, shall give Grantee at least thirty (30) days written notice before beginning construction or enlargement of any dwelling or structure permitted on the Property under this Easement.

**2.3. INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Industrial or commercial activities other than the following are prohibited on the Property:

**2.3.1 Agriculture.** Agriculture, as defined herein, as well as related small scale incidental or commercial or industrial operations that Grantee shall approve in writing as being consistent with the Open Space Values of this Easement: provided, however, that large scale industrial or commercial operations such as wineries with onsite retail sales, race tracks or concentrated animal feeding operations (CAFO) feed lots are not permitted.

**2.3.2 Outdoor Activities.** Temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property, and that do not diminish the conservation and Open Space Values herein protected.

**2.3.3 Agricultural Products.** Processing and sale of agricultural products produced on the Property as long as no additional buildings are required to conduct such activities.

**2.3.4 Indoor Activities.** Activities that can be, and in fact are, conducted within permitted buildings without material alteration to their external appearance.

**2.3.5 Power.** The sale of excess power generated incidentally in the operation of approved alternative energy structures and associated equipment as provided in subparagraph 2.2.10.

**2.3.6 Wetlands.** Activities to restore or enhance wetlands or streams or restore, enhance, or develop other ecosystem functions on the Property including, but not limited to, stream bank restoration, wetland and stream mitigation, biological carbon sequestration and biodiversity mitigation, provided that such activities are not in conflict or inconsistent with the conservation purpose of or the restrictions set forth in this Easement and that Prior Written Approval for same shall have been obtained from Grantee. Grantee is not responsible for monitoring any such activities and has no obligation to enforce the provisions of any permit(s), restriction(s), or easement(s) therefor.

**2.3.7 Outdoor Agricultural Activities.** Temporary outdoor activities related to agricultural uses permitted under paragraph 2.3 which involve fifty (50) or more people at any one event, provided that any such activities shall not exceed three (3) consecutive days and further provided that the total of such outdoor events shall not exceed seven (7) events in any twelve (12) month period, unless such events are approved by Grantee in advance in writing.

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

**2.4 MANAGEMENT OF FOREST.** A current, written forest stewardship plan prepared by a professional forester shall be provided to, and approved by, Grantee prior to any commercial timber harvesting. The primary purposes of the forest management plan shall be to maintain a working forest, improve wildlife habitat, maintain the health of the forest and conserve soil and water. At least thirty (30) days before beginning any commercial timber harvesting, a pre-harvest plan or other documentation of the intended harvest shall be submitted to Grantee. Best Management Practices, as defined by the Virginia Department of Forestry in Virginia's Forestry Best Management Practices for Water Quality Guide, shall be used to control erosion and protect water quality when any commercial forestry or land clearing activity is undertaken. Notwithstanding the foregoing, the following shall be permissible on the Property and shall not constitute commercial timber harvesting:

- (i) The cutting and removal of trees for Grantor's domestic consumption;
- (ii) The cutting and removal of trees or brush in connection with the construction of permitted structures, roads, trails and fences and to accommodate other permitted activities hereunder; and
- (iii) The cutting and removal of diseased or dead trees or trees, which, were they not removed, would present a hazard to health or safety.

**2.5 GRADING, BLASTING, MINING.** Grading, blasting or earth removal shall not materially alter the topography of the Property except for (i) dam construction to create private ponds; and (ii) wetlands or stream bank restoration and erosion control pursuant to a government permit, or (iii) as required in the construction of permitted buildings, structures, private roads, and utilities as permitted in this Article II. Grading, blasting or earth removal in excess of one (1) acre for the purposes permitted in this paragraph shall require Prior Written Approval of Grantee. 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. 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. Notwithstanding the foregoing, the removal of surface rocks or boulders for agricultural purposes is permitted. In addition, any conversion of forested property shall be governed by the following practices:

- (i) Clearing shall be done when the soil moisture content is such that soil structural damage or compaction is minimized.
- (ii) A 50-foot wide undisturbed area will be left between the area being cleared and all wetlands, water bodies and perennial streams except where greater riparian buffers are required herein.
- (iii) Temporary cover will be established as necessary to control sheet and rill and/or wind erosion on the cleared area until the planned land use is in place.
- (iv) The cleared area shall be left in a neat and slightly condition that will facilitate the planned use and treatment of the land.
- (v) Clearing debris shall not be pushed into standing or green timber. Debris piles shall not be closer than 100 feet from adjacent woodland, buildings or roads.

**2.6 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.

**2.7 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 of the Property, its age and its address and/or the name and 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;
- (vi) Recognize historic status or participation in a conservation program; or
- (vii) Endorse political candidates.

No such sign shall exceed six (6) square feet in size.

## **2.8 RIPARIAN BUFFERS.**

**2.8.1. Size, Location, and Prohibited Uses.** In addition to other restrictions contained herein, to protect water quality, a thirty-five (35) foot buffer strip shall be maintained in vegetated cover, including, but not limited to forest, shrubs and/or grasses, along the edge of the Protected Stream, as measured from the top of each bank of the Protected Stream, herein the “Riparian Buffer”. Within the Riparian Buffers there shall not be any (a) buildings or other substantial structures constructed; (b) storage of compost, manure, fertilizers, chemicals, machinery or equipment; (c) removal of trees, except that, with Prior Written Approval, the removal of invasive species or removal of dead, diseased or dying trees or trees posing a human health or safety hazard; and (d) plowing, cultivation, grading or other earth-disturbing activity, except as may be reasonably necessary for the activities permitted in the following paragraph 2.8.2, “Permitted Uses.”

**2.8.2 Permitted Uses.** Permitted within the Riparian Buffers are (a) erosion control or restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under paragraph 2.3.6 above; (b) fencing; (c) construction and maintenance of stream crossings (including improvements over the Riparian Buffers to access crossings) for pedestrians, livestock and vehicles, which crossings minimize obstruction of water flow; (d) creation and maintenance of trails with unimproved surfaces; (e) creation and maintenance of wildlife plots and natural heritage habitat; (f) planting of trees, shrubs, grasses, or other vegetation; and (g) clearing, grading and dam construction to create farm ponds and for construction and maintenance of piers and access thereto.

**2.8.3 Meander.** Should the Protected Stream meander or change course naturally, or as a result of the restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under paragraph 2.3.6 above, the Riparian Buffers created hereunder shall remain the same width, but move relative to the movement of the Protected Stream. In such event any buildings or structures or fencing that were outside of the original buffer strips and are determined to be within the new buffer strip shall not be considered in violation of the Restrictions contained in this Easement and may be maintained at such locations.

**2.8.4 Livestock Watering Facilities.** Livestock watering facilities, which draw water from, and return it to the Protected Stream may be constructed with Prior Written Approval. The livestock watering facilities must be located outside of the Riparian Buffers; however, the pipelines serving

such watering facilities are permitted to be installed in the Riparian Buffers. Any such facilities shall be of a design approved and permitted by the USDA, Natural Resources Conservation Services, or its successor organization.

**2.8.5 Roads.** No new Roads shall be constructed within the Riparian Buffers created herein; except, that Roads to parcels created by permitted divisions may be constructed as crossings of the Riparian Buffers with Prior Written Approval.

**2.9 INCONSISTENT USES.** Grantor covenants and agrees that the retained rights and uses in this Article II shall not be exercised in a manner that is inconsistent with the conservation purposes of this Easement.

### **ARTICLE III – ENFORCEMENT**

**3.1 RIGHT OF INSPECTION.** Grantor covenants and agrees that representatives or agents 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 the Restrictions contained herein with notice to the Grantor or Grantor' representative being given at the earliest practicable time.

**3.2 ENFORCEMENT.** The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and restrictions herein contained. Grantor hereby grants and conveys to Grantee the right to bring a judicial proceeding 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.

**3.3 NATURAL CAUSES.** 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.

**3.4 NO PUBLIC ENFORCEMENT RIGHTS.** Grantor and Grantee agree that this Easement does not create, and shall not be construed to create, any rights of the general public to maintain any action for enforcement against Grantor, or their successors or assigns, for any violation of the terms of this Easement.

**3.5 FAILURE TO ENFORCE.** The failure of Grantee to enforce any term of this Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantor from thereby complying with any such term. Furthermore, the Grantor hereby waives any defense of waiver, laches, estoppel, or prescription.

#### **ARTICLE IV – AMENDMENT**

**4.1. GRANTEE’S PROPERTY RIGHT.** Grantor covenants and agrees that the donation of this Easement gives rise to a property right, immediately vested in 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 values applicable for purposes of the calculations required by this paragraph 4.1 shall be the values finally determined for purposes of any federal income tax deduction allowed with respect to the conveyance of this Easement, provided an income tax deduction is sought.

**4.2 EXTINGUISHMENT, CONVERSION, DIVERSION.** Grantor and Grantee covenant and agree (i) that this Easement is perpetual and shall not be extinguished; and (ii) that no part of the Property may be converted or diverted from its open space use except in compliance with the provisions of Virginia Code Section 10.1-1704, or any successor provisions, of the Open Space Land Act. Nevertheless, should any attempt be made to extinguish the Easement, any such extinguishment can be made only by judicial proceedings and only if such extinguishment also complies with Virginia Code Section 10.1-1704 and the provisions of Section 170 of the I.R.C. and the applicable Treasury Regulations. 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 the perpetual conservation restriction computed as set forth in paragraph 4.1 above, 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. Grantee covenants and agrees to 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.

**4.3 AMENDMENT.** Grantor and Grantee, or Grantee and the then owner of the Property, may amend or modify the Easement to strengthen its terms, increase protection of the Property's Open Space Values, add to the restricted property, provided that no amendment shall be allowed which affects the Easement's perpetual duration or reduces the Property's Open Space Values. No amendment or modification shall be effective unless documented in a notarized writing executed by Grantee and the then owner of the Property and recorded among the land records of Fauquier County, Virginia.

## **ARTICLE V – DOCUMENTATION**

**5.1 DOCUMENTATION.** Documentation retained in the office of Grantee including, but not limited to the Baseline Documentation Report, the "BDR", 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. Grantor has made available to Grantee, prior to the donation, the BDR which is documentation sufficient to establish the condition of the Property at the time of the gift. The parties hereby acknowledge that the BDR supplied and contained in the files of Grantee is an accurate representation of the Property.

## **ARTICLE VI – GENERAL PROVISIONS**

**6.1 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 customary utility or access easements, including but not limited to, any mortgages not subordinated to this Easement.

**6.2 ACCEPTANCE.** Acceptance of this conveyance by Grantee is authorized by Virginia Code Section 10.1-1701 and is evidenced by the signature of Paul McCulla, County Administrator, by authority granted by Grantee's Board, in its Authorizing Resolution.

**6.3 ASSIGNMENT BY GRANTEE.** Grantee may transfer or convey this Easement to a public body, as the same is defined by the Open Space Land Act, but only if Grantee conditions such transfer or conveyance on the requirements that:

- (i) All restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity;

- (ii) The transferee agrees not to convert or divert the Property from open space land uses except as permissible under Section 170 of the I.R.C., as amended, and under Section 10.1-1704 of the Open Space Land Act;
- (iii) The transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the I.R.C., as amended, and the applicable Treasury Regulations; and
- (iv) The transferee records among the land records where the Easement is recorded an assignment of the Easement and provides written notice of such assignment to the Grantor or the then current owner of the Property.

## **6.4 NOTICES AND APPROVALS.**

**6.4.1 Notices.** Grantor shall notify Grantee in writing at, or prior to, closing on any inter vivos transfer or sale of the Property. Any notices, requests for approval or other communications to Grantee or any notices, responses to requests for approval or other communications to Grantor under any section of this Easement shall be in writing and sent to the following addresses or to such addresses as may hereafter be specified in writing:

<u>Grantee:</u> Board of Supervisors of Fauquier County 10 Hotel Street Warrenton, Virginia 20186	<u>Grantor:</u> Josiah Bunting, III Diana C. Bunting 3565 Prince Road Marshall, Virginia 20115
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Upon any inter vivos transfer, all notices thereafter shall be sent to the owner of the Property at the address at which the real estate tax bill is mailed.

**6.4.2 Exercise of Retained Rights.** In addition, Grantor agrees to notify Grantee in writing before exercising any reserved right that Grantor believes may have an adverse effect on the Open Space Values or interests associated with the Property (the purpose of requiring such notice is to afford Grantee an adequate opportunity to monitor such activities to ensure that they are carried out in a manner consistent with the purpose of this Easement; such notice shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement). Failure of Grantor to comply with these requirements shall not impair the validity of the Easement or limit its enforceability in any way.

**6.4.3 Prior Written Approval.** In any case where the terms of this Easement require approval of the Grantee, Grantor shall make a written request for such approval to the Grantee, herein “Prior Written Approval”. Unless otherwise provided for in the Easement, the Grantee shall have sixty (60) days from the receipt of a request for Prior Written Approval, or such longer period

as the parties may agree in writing, within which to review such request and grant approval. Failure by Grantee to respond within sixty (60) days shall constitute denial. In considering whether or not to grant any Prior Written Approval to the Grantor, the Grantee shall determine in each instance whether the proposed activity on, use or development of the Property (including the size, setting or height of the proposed Building or Structure) will not adversely affect, is not inconsistent with, and does not conflict with, diminish, impair or interfere with the Open Space Values. These determinations will be in the sole discretion of the Grantee. Should the Grantee determine that the granting of Prior Written Approval would authorize an activity, use or development that would adversely affect, be inconsistent with, conflict with, diminish, impair or interfere with the Open Space Values, the Grantee may deny to grant such approval. These determinations will be in the sole discretion of the Grantee.

**6.4.4 Impermissible Private Benefit.** Any Prior Written Approval shall not result in impermissible private benefit to the Grantor.

**6.5 INCLUSION OF TERMS 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.

**6.6 CONSTRUCTION.** Any general rule of construction or legal principle 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 to protect and preserve Open Space Values. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement to protect the Open Space Values 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 Section 170(h)(1) of the I.R.C. 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.

**6.7 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.

**6.8 ZONING ORDINANCE.** Notwithstanding any other provision of this Easement, Grantee's Zoning Ordinance shall apply to the Property and shall take precedence over this Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Easement.

**6.9 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.

**6.10 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, audit and challenge by all appropriate tax authorities. The 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.

**6.11 WARRANTIES.** THE COUNTY OF FAUQUIER AND ANY CO-HOLDER MAKE NO EXPRESS OR IMPLIED WARRANTIES REGARDING WHETHER ANY TAX BENEFITS WILL BE AVAILABLE TO GRANTOR FROM THE DONATION OR ANY PARTIAL DONATION OF THIS EASEMENT, NOR WHETHER ANY SUCH TAX BENEFITS MIGHT BE TRANSFERABLE, NOR WHETHER THERE WILL BE ANY MARKET FOR ANY TAX BENEFITS WHICH MIGHT BE TRANSFERABLE, NOR WHETHER THIS DEED OR ANY OTHER FORM OR DOCUMENTATION PREPARED BY THE COUNTY WILL SATISFY ANY STATE OR FEDERAL REQUIREMENT, LAW OR REGULATION RELATED TO TAX CREDITS OR DEDUCTIONS FOR THE DONATION OR PARTIAL DONATION OF THIS EASEMENT.

**6.12 RIGHT TO DESIGNATE EASEMENT CO-HOLDER.** Grantee shall have the right, in its sole discretion, now and at any time in the future, to transfer part or all interest it has under this Easement to a public body as the same is defined in Section 10.1-1700 of the Open Space Land Act. Such transfer shall not require the consent of the Grantor or any trustee under a deed of trust which has been subordinated to this Easement, but shall be subject to the conditions and requirements of paragraph 6.3.

**6.13 SEVERABILITY.** 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.

**6.14 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.

**6.15 CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.

**6.16 RECORDING.** This Easement shall be recorded in the land records office of the Circuit Court of Fauquier County, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.

[SIGNATURES BEGIN ON THE NEXT PAGE]

WITNESS the following signatures and seals:

**GRANTOR:**

\_\_\_\_\_(SEAL)  
Josiah Bunting, III

COMMONWEALTH OF VIRGINIA,  
CITY / COUNTY OF \_\_\_\_\_, TO WIT:

I, \_\_\_\_\_, a Notary Public for the Commonwealth aforesaid,  
hereby certify that Josiah Bunting, III personally appeared before me this day and acknowledged  
the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_(SEAL)  
Notary Public

My commission expires: \_\_\_\_\_  
Notary I.D. \_\_\_\_\_

\_\_\_\_\_(SEAL)  
Diana C. Bunting

COMMONWEALTH OF VIRGINIA,  
CITY / COUNTY OF \_\_\_\_\_, TO WIT:

I, \_\_\_\_\_, a Notary Public for the Commonwealth aforesaid,  
hereby certify that Diana C. Bunting personally appeared before me this day and acknowledged  
the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_(SEAL)  
Notary Public

My commission expires: \_\_\_\_\_  
Notary I.D. \_\_\_\_\_

ACCEPTED:

**GRANTEE:**

BOARD OF SUPERVISORS OF FAUQUIER  
COUNTY, VIRGINIA  
a body corporate and politic

Approved as to form

by: \_\_\_\_\_  
Kevin Burke, County Attorney

by: \_\_\_\_\_  
Paul McCulla  
Its County Administrator

COMMONWEALTH OF VIRGINIA,  
COUNTY OF FAUQUIER, TO WIT:

I, \_\_\_\_\_, a Notary Public for the Commonwealth  
aforesaid, hereby certify that Paul McCulla, Fauquier County Administrator, personally appeared  
before me this day and acknowledged the foregoing instrument on behalf of the Board of  
Supervisors of Fauquier County, Virginia.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
Notary Public (SEAL)

My commission expires: \_\_\_\_\_  
Notary I.D. \_\_\_\_\_