



## Conservation Easement Authority Meeting Agenda

*Community Development Conference Room*

**March 27<sup>th</sup>, 2024**

**5:30 PM – 6:30 PM**

To have your comments read aloud during the “Public Comment” period please either utilize the dedicated email address: [thinkle@shenandoahcountyva.us](mailto:thinkle@shenandoahcountyva.us), or mail in or drop off comments via a physical letter to the County Government Center addressed to the Conservation Easement Authority. You can view the meeting through Microsoft Teams. Please consider submitting comments by 4:00 pm, March 27<sup>th</sup>, 2024.

### **AGENDA**

1. Welcome and Greetings
2. Approve or Amendment of the March 27<sup>th</sup>, 2024 CEA Meeting Agenda
3. Review of the Draft Minutes from February 27<sup>th</sup>, 2024 CEA Meeting Agenda
4. Public Comment
5. Updates:
  - a. CEA PDR 22-02-01: Terry & Linda Baker, Bruebeck Lane
    - i. Offer letter
    - ii. Trail proposal
6. Discussion:
  - a. CEA PDR 22-02-01: Terry & Linda Baker, Bruebeck Lane
  - b. Potential staff training opportunities
7. Next Meeting Topics:
  - a. Easement updates.
  - b. Shenandoah 2045
8. +/-
9. Other Discussion
10. Adjourn
11. Next Meeting of CEA April ?, 2024 5:30 pm.

MINUTES OF MEETING OF THE SHENANDOAH COUNTY CONSERVATION  
EASEMENT AUTHORITY

February 27<sup>th</sup>, 2024

A regular meeting of the Shenandoah County Conservation Easement Authority was held in the Community Development Conference Room, 600 North Main Street, Woodstock, Virginia on February 27th, 2024.

CEA Members present: Chair Dee Hockman, Vice Chair Doug French, Kelly Watkinson, and Planning Commissioner Debbie Keller.

CEA Members absent: Supervisor Josh Stephens and Marla Mooney.

Others Present: Tyler Hinkle County Planner, Lemuel Hancock Director of Community Development, Kim Woodwell Alliance for the Shenandoah Valley, and McKenzie Allen Associate Planner.

Chair Dee Hockman called the CEA meeting to order at 5:30 pm.

1. **Agenda**

Chair Hockman asked if anyone would like to make a motion, Vice Chair French made a motion to approve the agenda as presented. Commissioner Keller seconded the motion. All in favor. This motion carried.

2. **Minutes**

Chair Hockman asked if anyone would like to make a motion, Vice Chair French made a motion to approve the minutes as presented. Commissioner Keller seconded the motion. All in favor. This motion carried.

3. **Appointment of Chair and Vice Chair**

Chair Hockman opened the floor for nominations for Chair and Vice Chair for 2024. All were in agreement that the current Chair and Vice Chair should continue in their positions. This motion carried.

4. **Public Comment**

No comments.

5. **Shenandoah Valley Conservation Collaborative**

Mr. Hinkle refreshed everyone that there is \$4.5 million available for easements in the region and that they are currently working with Kevin Tate on reviewing the potential for Steve Bower's

6. **CEA Funding**

Mr. Hinkle noted that the CEA has \$332,000 to use for conservation purposes across the County and will receive up to an additional \$25,000 for the next fiscal year. He noted that thanks to the diligent work by McKenzie Allen they have been awarded an additional \$48,000 to spend on easements. CEA members thanked Ms. Allen for her work.

7. **Discussion on CEA PDR 22-02-01**

Mr. Hinkle provided an update on the proposed easement and noted that members needed to provide guidance to staff so initial conversations can begin on a formal agreement on the easement. Members spoke about their ideas on the easement and provided direction to staff on finalizing an agreement with the Bakers.

8. **Discussion on CEA DDR 24-02-01**

Ms. Allen provided an overview for a proposed Donation Of Development Rights for 201 parcels off of Dry Run Road in Fort Valley, 130 acres, recently purchased by Cleve Grimes. She noted that staff was seeking guidance on the interest from the CEA on the potential easement. Members expressed interest in working with Mr. Grimes and supported staff in moving forward with this easement.

9. **Discussion on CEA DDR 24-02-02**

Mr. Hinkle provided an overview for a proposed Donation Of Development Rights for a parcel at 488 Harmony Lane for a total of 34.663 acres on Tax Map Number: 043-3-002B. He noted that due to financial circumstances he is asking for the CEA to assist with the upfront due diligence costs. Members asked staff to look into the potential of using the VDACS funds or working with the SVCC on their loan/grant program. He said that they would look into it and provide an update at their next meeting.

10. **Discussion on CEA DDR 24-02-03**

Mr. Hinkle provided an overview for a proposed Donation Of Development Rights for 14 parcels off of Happy Valley Road for a total of 81.49 acres. He noted that the individual may be interested in a conservation easement as they intend to erase all of the property boundaries and an easement could financially be beneficial for them on a tax benefit basis. Members expressed interest in working on placing the property into an easement and said that it was important to protect areas around communities like Orkney Springs.

11. **Shenandoah 2045**

Mr. Hinkle noted that a presentation will be provided to the Planning Commission on March 7<sup>th</sup> and that all members are welcome to attend.

**Next Meeting:** March 27<sup>th</sup>, 2024. Meeting adjourned at 6:30 PM

**Minutes recorded by Tyler Hinkle**

*Mission statement of the CEA: "To retain the rural character, ensure agricultural sustainability, and protect historic and natural resources in Shenandoah County by promoting, holding/co-holding and purchasing Voluntary Conservation Easements".*



# PURCHASE OF DEVELOPMENT RIGHTS, #22-02-01

Staff Contact: Tyler Hinkle, County Planner  
Staff Report First Prepared: 1/10/2022  
Amended: 10/3/2022, 3/22/2024

*This report is prepared by the Shenandoah County Office of Community Development to provide information to the Conservation Easement Authority and the Board of Supervisors to assist them in making a decision on this request.*

**Agenda Date:** 3/27/2024  
**Item Type:** Conservation Easement.  
**Applicant:** Terry And Linda Baker  
**Owner:** Terry And Linda Baker

[Consent](#)  
[Regular](#)  
[Closed Session](#)  
[Action](#)  
[Information](#)  
[Public Hearing](#)

**Introduction:** Terry L. and Linda Baker have made the request for a Purchase of Development Rights for 82.633 acres on the property located at 322 Bruebeck Lane, Strasburg, Va 22657 per § 82-9 of the Shenandoah County Conservation Easement Program. The Conservation Easement will involve the preservation of agricultural use of the land, extinguish development rights, protection of the Fishers Hill Battlefield, and ensure the continued character of the property.

Due to an existing bank lien the plan is to tackle the easement in two stages with the first easement covering parcels 014 A 112, 014 A 114, 024 A 003, and 015 A 044 for a total of 47.64 acres and then later there will be a second easement that will cover parcels 014 A 119A and 014 A 113 for a total of 34.993 acres.

A preliminary appraisal was conducted on the two easements by Brian Craig Jones, INC on February 12<sup>th</sup>, 2024. Easement 1 was found to have an easement value of \$330,000 and Easement 2 was found to have an easement value of \$250,000 with the total value being \$580,000.

The Bakers have signed a letter of invitation and offer to purchase with a price of \$205,000 with the additional terms that this purchase is based on the intention to place the parcels 014 A 119A and 014 A 113 into a conservation easement and file a public deed of trail easement with Shenandoah Valley Battlefield Foundation. The Bakers have worked with us to develop a phasing of the implementation of the trail. The draft deed of easement is under review with the County Attorney and we are prepared to take the easement to the Board of Supervisors for decision pending direction from the CEA. Staff is also working to set a date to conduct the Baseline Documentation Report.

**Acres:** 82.633

**Address:** 322 Bruebeck Lane, Strasburg, Va 22657.

**Tax Map Number / Area:** 014 A 119A, 014 A 113, 014 A 112, 014 A 114, 024 A 003, and 015 A 044.

**Past Planning Commission Items:** None.

**Access Easements:** Access easement and public road.

**Percent Donated or using other funding:** 83%

**CEA Scoring:** 36.5 Points

**Public Access:** Yes, parking and 4,500 feet of trail.

**Coholder:** Shenandoah Valley Battlefield Foundation

**Magisterial District:** Davis

**Electoral District:** 5

**Zoning:** A-1 Agriculture

**Use:** Residential and Farm

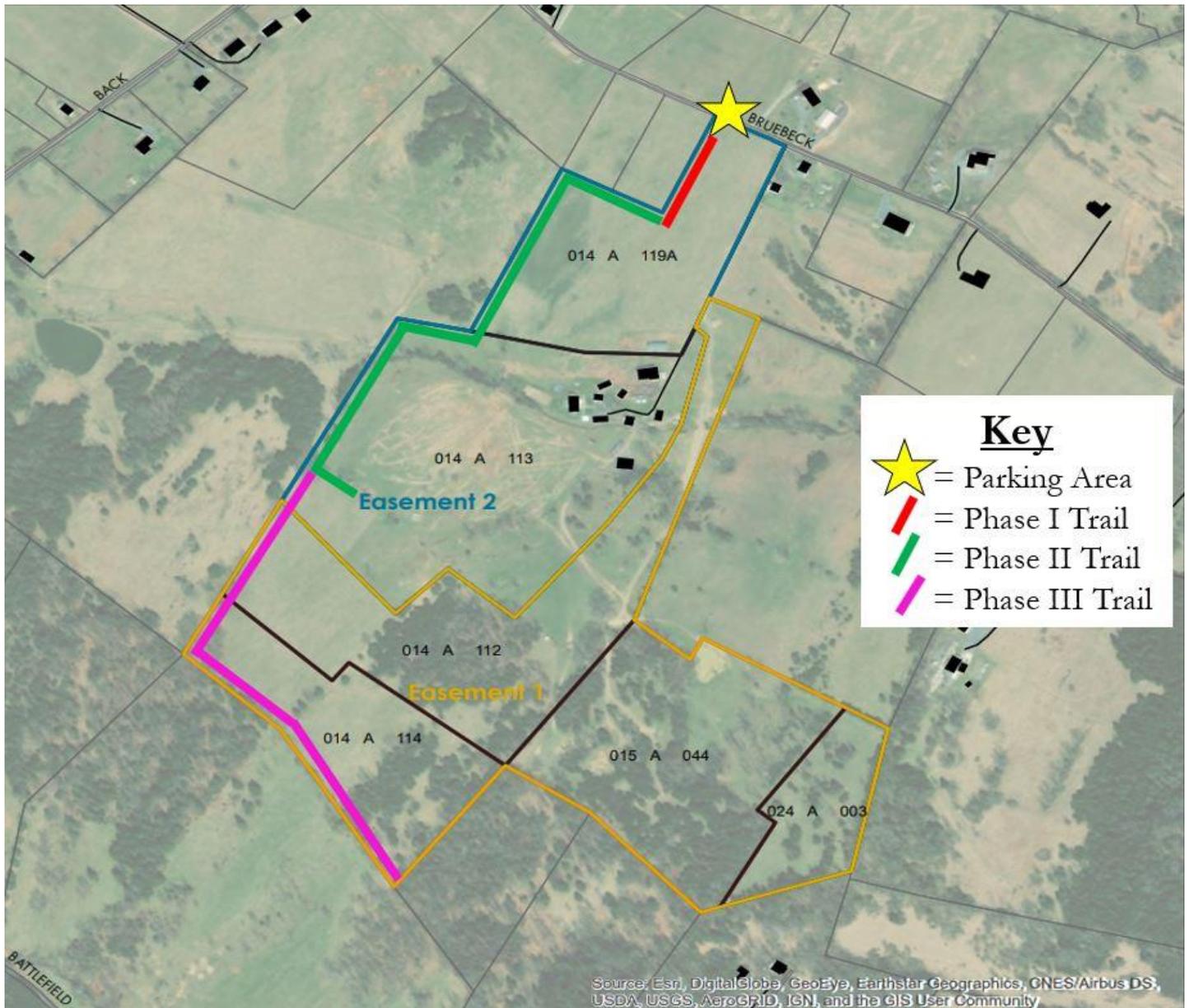
**County Value Per Acre:** \$1,240.42 plus trail easement.

**Percent County Purchase:** 17%

**Adjacent to existing easement:** Yes

**Access Timeframe:** Phased, not at once.

**Outside Funding:** VDACS, VOF (Potential for second easement)



**Review Evaluations:**

**VA Department Of Conservation And Recreation (VDCR):** <https://vanhde.org/content/map>

The Conserve Virginia mapping service known as the Virginia Natural Heritage Data Explorer has designated the property as important for agriculture and forestry, cultural and historic preservation, and water quality improvement. The parcel is listed as having conservation priority for the watershed and it holds a Class III for vulnerability to development.

**Planning & Zoning:**

Based on Shenandoah County’s Chapters One, Two, and Nine of the Comprehensive Plan, the conservation easement is in line with the Comprehensive Plan as it will preserve historic, forestal, and other natural resources while ultimately addressing multiple objectives to achieve growth management.

This proposed easement is just north of an existing easement held by the Virginia Department of Historic Resources and the Shenandoah Valley Battlefields Foundation as part of their Fishers Hill Battlefield conservation efforts.

View Of Indoor Spring And Residence On Parcel 014-A-113



View Of Residence And Signal Knob From Hill On Parcels 014-A-113 And 014-A-112



View Of Great North Mountain On Parcels 014-A-112 And 015-A-044





Terry & Linda Baker  
322 Bruebeck Lane  
Strasburg, VA 22657

March 5<sup>th</sup>, 2024

Dear Mr. & Mrs. Baker,

This Invitation and the Offer which follows (collectively, the “Documents”) are executed pursuant to Chapter 82 of the Code of Shenandoah County, Virginia, in order to effectuate the purposes thereof.

Definitions Applicable to the Documents

- PROPOSED GRANTOR:** Terry L. Baker and Linda D. Baker, Owners of the “Property,” as defined below.
- AUTHORITY:** The Shenandoah County Conservation Easement Authority, an instrumentality of the County of Shenandoah Virginia.
- PROPERTY:** TAX MAP NO. *or* PIN: 014 A 112, 014 A 114, 015 A 044, and 024 A 003
- PURCHASE PRICE:** \$205,000. In no event shall the County or the Authority be liable to pay more than \$205,000, with the intention that half will be reimbursed by The Virginia Department of Agricultural and Consumer Services. This purchase price is contingent upon the results of the Final Appraisal.
- ADDITIONAL TERMS:** Purchase of the Development Rights of this Property is based on the intention of the Grantor placing additional Property, Tax Map No. 014 A 113 and 014 A 119A, into a Conservation Easement, and the filing of a public Deed of Trail Easement.
- RESPONSE DEADLINE:** March 21st, 2024

600 N Main Street, Suite 107 | Woodstock, Virginia 22664 | 540-459-6165

[ShenandoahCountyVA.us/conservation](https://ShenandoahCountyVA.us/conservation)

Further, any terms not defined above shall carry the meanings ascribed to them in Chapter 82 of the Shenandoah County Code.

Invitation

The Authority invites the Proposed Grantor to accept an offer for sale a Conservation Easement, with general warranty of title, in the Property, for the Purchase Price, and upon such additional terms as may be set forth in the Deed of Easement.

To accept this invitation and offer for the above-described Conservation Easement in the Property for sale for the Purchase Price, Proposed Grantor should sign the Offer below and return this form to the Authority's Program Administrator on or before the Response Deadline.

Shenandoah Conservation Easement Authority

Date \_\_\_\_\_

Delila Hockman, Chair

Offer to Sell

I am the Owner of the Property (or I have the authority to bind the Owner) and I offer to sell the above-described Conservation Easement in the Property. In the language of Chapter 82: "I offer to sell a Conservation Easement to the Authority for the Purchase Price subject to the terms set forth in the forgoing Invitation and in the proposed deeds attached."

3-20-24  
Date

Gerry S. Baker  
Owner Signature

Terry L. Baker  
Owner Name

March 20, 2024  
Date

Linda D. Baker  
Owner Signature

Linda D. Baker  
Owner Name

Prepared by: **Your attorney's name here.**

Return to: Shenandoah County Conservation Easement Authority  
600 N Main Street,  
Suite 107,  
Woodstock, Virginia 22664

TAX MAP NO. *or* PIN: 014 A 112, 014 A 114, 015 A 044, and 024 A 003

Exempt 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 fees under Sections 17.1-266 and  
17.1-279

THIS DEED OF GIFT OF EASEMENT (this  
"Easement"), made this **DAY** day of **MONTH**, 2023, by and  
between TERRY L. BAKER (also known as TERRY LYNN  
BAKER) and LINDA D. BAKER (also known as LINDA DIANE  
BAKER), ("Grantor"); SHENANDOAH VALLEY  
BATTLEFIELDS FOUNDATION, a Virginia nonstock, nonprofit  
charitable corporation ("SVBF") and the SHENANDOAH  
COUNTY CONSERVATION EASEMENT AUTHORITY, a  
public entity ("CEA") ("Grantee") (the designations "Grantor" and  
"Grantee" refer to Grantor and Grantee and their respective  
successors and assigns); and, as a third party with rights to enforce  
this Easement, the SHENANDOAH COUNTY BOARD OF  
SUPERVISORS, a public entity ("Board") indexed as an  
additional Grantee; witnesseth:

**RECITALS:**

**R-1** Grantor is the owner in fee simple of certain real property  
situated in Shenandoah County, Virginia, containing 47.64 acres,  
more or less, as further described below (the "Property"), and  
desires to give, grant, and convey to Grantee a perpetual open-  
space easement over the Property as set forth herein.

**R-2** The Virginia Conservation Easement Act (Chapter 10.1 of  
Title 10.1, Sections 10.1-1009 through 10.1-1016 of the Code of  
Virginia (1950), as amended) (the "Conservation Easement Act")  
provides for the conveyance of a conservation easement to a  
charitable organization which has been declared exempt from  
taxation pursuant to Section 501(c)(3) of the Internal Revenue

Code of 1986, as amended (the “Internal Revenue Code”), to (i) retain or protecting the natural or open-space values of real property; (ii) assure the availability of real property for agricultural, forestal, recreational, or open-space use; (iii) protect natural resources; (iv) maintain or enhancing air or water quality; and (v) preserve the historic, architectural, and archaeological aspects of real property.

**R-3** Chapter 461 of the Virginia Acts of 1966 provides in part “that the provision and preservation of permanent open-space land are necessary to help curb urban sprawl, to prevent the spread of urban blight and deterioration, to encourage and assist more economic and desirable urban development, to help provide or preserve necessary park, recreational, historic, and scenic areas, and to conserve land and other natural resources” and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land. The balance of the Chapter is codified in Chapter 17, Title 10.1, Sections 10.1-1700 through 10.1-1705 of the Code of Virginia (1950), as amended, (the “Open-Space Land Act”).

**R-4** Pursuant to the Open-Space Land Act, the purposes of this Easement (as defined below in Section I) include retaining and protecting open-space and natural resource values of the Property, and the limitation on division, construction of buildings and other structures, and commercial and industrial uses contained in Section II ensures that the Property will remain perpetually available for agricultural, forestal, or open-space use, all as more particularly set forth below.

**R-5** SVBF is a qualified and permissible “holder” of a conservation easement under the Conservation Easement Act as a charitable corporation which has been declared exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and has had its principal office in the Commonwealth of Virginia for at least five (5) years. Grantee is also a “qualified organization” and “eligible donee” under Section 170(h)(3) of the Internal Revenue Code and Treasury Regulation Section 1.170A-14(c)(1) and is willing to accept a perpetual conservation easement over the Property as herein set forth.

**R-6** CEA, a body politic and corporate organized under the laws of the Commonwealth of Virginia for the purpose of acquiring conservation easements, as a means of assisting in the preservation of farm and forest land, open space, scenic vistas, historic sites, water resources, environmentally sensitive lands, and Shenandoah County’s rural character, is a “qualified organization” and “eligible donee” under Section 170(h)(3) of the Internal Revenue Code and Treasury Regulation Section 1.170A-14(c)(1) and is willing to accept a perpetual conservation easement over the Property as herein set forth.

**R-7** The Shenandoah County Board of Supervisors (the “Board”) has enacted an ordinance that authorizes, in accordance with the Open-Space Land Act and other applicable law, CEA to accept, subject to approval by the Board, donations of conservations easements from landowners; sets forth a clear, consistent, and equitable administrative process governing such purchases; and outlines the goals and purposes of Shenandoah County’s land preservation program.

**R-8** As required under Section 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the County of Shenandoah Comprehensive Plan adopted on June 28<sup>th</sup>, 2005, and revised in June of 2019, and the Property is located within an area that is designated as Agriculture on Shenandoah County’s future land use map.

**R-9** This Easement is intended to constitute (i) a “qualified conservation contribution” as defined in IRC Section 170(h)(1) and as more particularly explained below, and (ii) a qualifying “interest in land” under the Virginia Land Conservation Incentives Act of 1999 (Section 58.1-510 *et seq.* of the Code of Virginia (1950), as amended).

**R-10** This Easement is intended to be a grant “exclusively for conservation purposes” under IRC Section 170(h)(1)(C), because it effects “the preservation of open space (including farmland and forest land)” under IRC Section 170(h)(4)(A)(iii); specifically, the preservation of open space on the Property is pursuant to clearly delineated state and local governmental conservation policies, and will yield a significant public benefit and is for (1) the protection of a relatively natural habitat of wildlife or plants or similar ecosystem, under IRC Section 170(h)(4)(A)(ii) *and/or* (2) the preservation of an historically important land area under IRC Section 170(h)(4)(A)(iv).]

**R-11** This conservation easement in gross constitutes a restriction granted in perpetuity on the use that may be made of the Property and is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below:

**(i) Land use policies of the United States of America as delineated in:**

a. The Shenandoah Valley Battlefields National Historic District and Commission Act (P. L. 104-333 as amended), under which the United States Congress has authorized funds for the preservation and protection of ten Civil War battlefields in the Shenandoah Valley Battlefields National Historic District of Virginia, including the Cross Keys battlefield in Rockingham County, and

has given the Shenandoah Valley Battlefields Foundation authority to acquire land or interest therein, from a willing donor.

b. The “Civil War Sites Study Act of 1990” (Pub. L. 101-628, Title XII Sections 1201-1210, as amended by 16 U.S.C. § 1a-5) authorized the establishment of the Civil War Sites Advisory Commission (“CWSAC”). The fifteen-member Commission, appointed by the Secretary of the Interior, was asked to prepare a study that identified the nation’s historically significant Civil War sites; determined their relative importance and condition; assessed threats to their integrity; and recommended alternatives for preserving and interpreting the sites. In 1993, the CWSAC issued its report to Congress, titled “The Report on the Nation’s Civil War Battlefields”, which prioritized the importance, condition of, and the threats to American Civil War battlefields.

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

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

b. The Open-Space Land Act cited above;

c. Chapter 18, of Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia (1950), as amended, cited above;

d. The provisions of Section 10.1-2202.4 of the Code of Virginia, which establishes the “Virginia Battlefield Preservation Fund”, evincing a Commonwealth of Virginia policy to preserve and protect battlefield property within the Commonwealth.

e. The provisions of Section 10.1-2204 of the Code of Virginia, which expressly authorizes the Virginia Department of Historic Resources to acquire battlefield sites for the purpose of historic preservation of such sites.

f. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, Sections 58.1-510 through 58.1-513 of the Code of Virginia (1950), as amended, cited above,

which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth's unique natural resources, wildlife habitats, open spaces, and forested resources;

g. Grantee's formal practices in reviewing and accepting this Easement. Grantee has engaged in a rigorous review, considered and evaluated the benefits provided by this Easement to the general public as set forth in these recitals, and has concluded that the protection afforded the open-space character of the Property by this Easement will yield a significant public benefit and further the open-space conservation objectives of Grantee and the Commonwealth of Virginia. Treasury Regulations Section 1.170A-14(d)(4)(iii)(B) states that such review and acceptance of a conservation easement by a governmental entity tends to establish a clearly delineated governmental conservation policy as required under IRC Section 170(h)(4)(A)(iii);

h. The Commonwealth of Virginia's state land conservation strategy of identifying and protecting high-value lands and conservation sites as shown on the ConserveVirginia Map. The Property or a portion thereof is located on the ConserveVirginia Map under the Cultural & Historic Preservation and Water Quality Improvement categories; and

**(iii) Land use policies of Shenandoah County as delineated in:**

a. its comprehensive plan adopted on June 28, 2005 and revised in July of 2016 (the "Plan"), to which plan the restrictions set forth in this Easement conform and which contains the following:

(1) The Plan contains the objectives to "Protect and enhance battlefield sites throughout the County"; and to "maintain the rural and open space character of areas outside of public service areas."

(2) The Plan also includes a strategy to "encourag[e] the use of conservation, scenic, historic and other voluntary easements to permanently preserve land."

b. Section 146-65 *et seq.* of the Shenandoah County Code, which provides for use value assessment of real estate devoted to agricultural, forestal, horticultural or open-space uses, the Property having been approved for use value assessment by the county;

c. Correspondence dated **INSERT LETTER DATE** from Shenandoah County acknowledging that contribution

of this Easement to Grantee and the restrictions set forth herein conform to the land use plan and policies of the county.

**R-12** The Property is within view of a portion of State Route 806 (on Bruebeck Lane) in Shenandoah County. Protection of the Property helps protect the viewshed for the public users of these roads, including the viewshed of the area referred to as Signal Knob.

**R-13** The Property is shown, in part, to be under Classes III and IV designation on the Virginia Department of Conservation and Recreation's ("DCR") Agricultural Model.

**R-14** The Property is shown, in part, to be classified as Class 4 on DCR's Land-Based Recreation Need Assessment.

**R-15** The Property is located in the Fisher's Hill Battlefield and the entire Property is located in the Fisher's Hill Battlefield Study Area.

**R-16** This Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in these recitals and in Section I below.

**R-17** Grantor and Grantee desire to protect in perpetuity the conservation values of the Property as specified in Section I by restricting the use of the Property as set forth in Section II.

**R-18** Grantee has determined that the restrictions set forth in Section II (the "Restrictions") will preserve and protect in perpetuity the conservation values of the Property and will limit use of the Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by this Easement.

**R-19** 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 Conservation Easement Act.

**NOW, THEREFORE**, in consideration of the foregoing recitals, incorporated herein and made a part hereof, and in consideration of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant, and convey to Grantee for the public purposes set forth in Section I below an open-space easement in gross (this "Easement") over, and the right in perpetuity to restrict the use of, the Property, which is described below and consists of 47.64 acres, more or less, located in Shenandoah County, Virginia, near Strasburg, fronting on State Route 806, to-wit:

**INSERT LEGAL DESCRIPTION OF PARCELS**

**Commented [TH1]:** Your attorney will provide a legal description for all your parcels here.

The Property is shown as Tax Map No. [or PIN] 024 A 003, 015 A 044, 014 A 112, and 014 A 114 among the land records of the County of Shenandoah, Virginia. Even though the Property currently consists of four parcels for real estate tax purposes and it may have been acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions of this Easement will apply to the Property as a whole and will bind Grantor and Grantor's successors in interest in perpetuity.

**SECTION I - PURPOSES**

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

Pursuant to the Virginia Land Conservation Foundation's Conservation Value Review Criteria, the further conservation purpose of this Easement is preservation of land for agricultural use, forestal use, natural habitat and biological diversity, historic preservation, watershed preservation, and preservation of scenic open space.

Grantor covenants that no acts or uses are currently being conducted or will be conducted on the Property which are: (i) inconsistent with the conservation purposes of the donation or (ii) consistent with the conservation purposes of the donation, but destructive of other significant conservation interests unless such acts or uses are necessary for the protection of the Conservation Values.

**SECTION II – RESTRICTIONS**

Restrictions are hereby imposed on the uses 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 as follows:

**1. DIVISION.**

**(i) The Property shall be maintained as a whole, and separate conveyance of a portion of the Property is prohibited, regardless of the number of tax map parcels or tracts it currently encompasses and regardless of the subdivision regulations of Shenandoah County as they now exist or may change from time to time.**

(ii) The taking, conveyance, or dedication of a *de minimis* portion of the Property adjacent to State Route(s) 806 for minor road improvements will not be considered a division of the Property, and neither the taking, conveyance or dedication of such a *de minimis* portion of the Property nor the use of the portion of the Property so acquired will be prohibited by this Easement, provided that Grantee approves such taking, conveyance, or dedication, which approval will be contingent upon the project including all reasonable actions, such as making landscaping or topographic improvements, to minimize the project's impact on the Property and prevent harm to its Conservation Values. Grantor reserves its separate right to approve such conveyance or dedication. Taking, conveyance, or dedication and use of the Property for such a project is limited to minor improvements to Route(s) 806 in its/their present alignment(s), including, but not limited to, maintenance, correction, repair, or upgrading of the existing public road(s). Such improvements could include, but are not limited to, (a) the addition or renovation of ditches, box culverts, drainage swales, side slopes, or curbing, (b) road re-grading, or (c) enhancements, such as pull-offs, bike lanes, trails, and restoration projects. For purposes of this paragraph, "minor road improvements" does not include the addition of new travel lanes, except bike lanes. Any portion of the Property acquired from Grantor pursuant to this paragraph will remain subject to the terms and restrictions of this Easement.

(iii) In the event that the/a permitted division of the Property requires a road or street dedication, such dedication will not be considered a separate conveyance of a portion of the Property or a division of the Property, and this Easement will remain in force with respect to the dedicated portion.

## **2. IMPERVIOUS COVERAGE LIMITATIONS.**

(i) Impervious coverage is the roof area measured in square feet of all buildings and structures with roofs and the ground area measured in square feet of all impervious structures or surfaces without a roof including, but not limited to, paved parking or patio areas, paved basketball or tennis courts, or swimming pools, but not including roads,

driveways, or linear surfaces such as fences or walls. Total impervious ground coverage, including that of both existing and additional improvements, may not exceed 20,000 square feet.

(ii) If Grantor can demonstrate that an increase in the collective impervious coverage would result in increased protection of the Conservation Values of the Property, Grantee may approve such increase.

### **3. BUILDINGS, STRUCTURES, ROADS, AND UTILITIES**

No buildings, structures, roads or utilities, other than the following, are permitted on the Property, provided, however, that certain permitted buildings and structures are permitted subject to the siting restrictions set forth in Section II, Paragraph 2(iii) below:

- (i) **Buildings and structures.**
  - (a) Existing and new buildings and structures on the Property with the right to construct, use, enlarge, maintain, and replace such buildings and structures, all subject to the impervious coverage limitations set forth in Section II Paragraph 2 above and the siting restrictions set forth in Section II Paragraph 3(ii) below.
  - (b) No more than one detached (freestanding) dwellings may be maintained or constructed on the Property.
  - (c) Any new building or structure exceeding 10,000 square feet in ground area must have Grantee's prior review and written approval, which approval will take into consideration the impact of the size, height, and siting of the proposed building or structure on the Conservation Values of the Property.
  - (d) No building may exceed 25 feet in height, measured from the average grade of the foundation thereof except for cupolas, chimneys, antennas, silos, or other structural features having the prior written approval of Grantee.
- (ii) **Siting of buildings and structures.** All new buildings and structures on the Property exceeding

500 square feet in ground area other than renewable energy facilities must be located in specific areas of the Property designated as "Building Envelopes". Grantor and Grantee have identified such Building Envelopes as shown on the sketch attached hereto as Exhibit A. Such buildings and structures are supportive of the permitted activities on the Property, and the location of any such buildings and structures in Building Envelopes is intended to support the conservation purposes of this Easement and to help prevent adverse impact on the Conservation Values of the Property. Any detached (freestanding) dwelling must be located in a Building Envelope.

(iii) **Roads, driveways and trails.**

(a) Private roads and driveways to serve permitted buildings or structures and roads with permeable surfaces for permitted uses and activities.

(b) Private roads or driveways and access easements over the Property to serve adjacent properties, provided that such roads or driveways have the prior written approval of Grantee, which approval shall take into consideration the impact of the roads or driveways on the conservation values of the Property.

(c) Trails with pervious surfaces, including, but not limited to, hiking, biking, and equestrian trails, provided that any such trail shall not exceed six (6) feet in width without Grantee's prior written approval; and, but not limited to, hiking, biking, and equestrian trails.

(d) Public roads required to be constructed and dedicated in conjunction with (the) permitted division(s) of the Property, provided that Grantee determines that the construction, maintenance, and dedication of such public roads will not impair the Conservation Values of the Property and gives prior written approval of such construction. Any such dedication will not be considered a separate conveyance of a portion of the Property or an additional division of the Property, and this Easement will remain in effect with respect to the portion of the Property so dedicated.

(iv) **Utilities and renewable energy facilities.**

(a) Public or private utilities within existing rights-of-way therefor, consistent with any recorded instrument granting such rights-of-way;

(b) Public or private utilities and renewable energy facilities used to harness natural renewable energy sources such as sunlight, wind, water, or biomass to serve permitted buildings, structures, or activities on the Property. Such limitation will not prohibit the sale of excess power generated incidentally in the operation of renewable energy facilities; and

(c) Public or private utilities, including renewable energy facilities as described above, to be constructed in whole or in part to serve other properties, provided Grantee, in its sole discretion, gives its prior written approval.

(d) Grantor reserves its separate right to approve any public or private utilities.

(v) **Signs.** Signs not exceeding 32 square feet in area.

#### **4. ACTIVITIES PERMITTED ON THE PROPERTY.**

No activities other than the following are permitted on the Property:

- (i) Agricultural, forestal and equine activities, including processing of agricultural and forestal products;
- (ii) Residential activities compatible with the limitations on buildings, structures, impervious surfaces, and ground disturbance contained herein and local, state, and federal regulations;
- (iii) Commercial activities compatible with the limitations in this Easement including without limitation the limitations on buildings, structures, impervious surfaces, and ground disturbance contained herein and local, state, and federal regulations, provided, however, that such commercial activities may not be inconsistent with the conservation purposes of this Easement provided all runoff is treated on site and no commercial signage is permitted on the site;
- (iv) Management of wildlife;

- (v) Natural resource-based educational and scientific activities, provided that they are consistent with the conservation purposes of the Easement and do not impair the conservation values protected herein; and
- (vi) Development of ecosystem functions on the land, including necessary equipment and structures with the prior written approval of Grantee, taking into consideration the effect of such development on the Conservation Values of the Property; and
- (vii) Events including but not limited to weddings, festivals, reenactments, and historical activities; and
- (viii) Outdoor recreational activities requiring little or no surface alteration of the land, including hunting and fishing.
- (ix) Burial grounds or cemetery.
- (x) Notwithstanding any other provision of this Easement, no commercial recreational use (except for *de minimis* commercial recreational uses) shall be allowed on the Property.

**5. MANAGEMENT OF FOREST.**

At least 90 percent (90%) of the 21.71 forested acreage of the Property as of the date of the execution of this Easement shall remain in forest cover in perpetuity and shall not be converted to another land cover. Removal of forest cover attributable to wildfire, flood, weather, earthquake, disease, or other measures beyond Grantor's reasonable control shall not be considered a violation so long as reasonable efforts are made to re-establish forest cover by planting or natural regeneration. Best Management Practices ("BMPs"), as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material timber harvest or land-clearing activity is undertaken. A pre-harvest plan shall be submitted to Grantee for approval no later than fourteen (14) days before beginning any material timber harvest, which approval shall take into consideration whether or not the pre-harvest plan is consistent with the terms of this Easement and its conservation purposes. The pre-harvest plan shall describe the BMPs to be used in sufficient detail to ensure that water quality will be protected.

The following activities do not constitute material timber harvesting or land clearing and do not require the use of BMPs or a pre-harvest plan: the cutting, clearing, or removal of trees on less than one (1) acre of the Property at any one time (i) for the construction or maintenance of permitted roads trails,, utilities, buildings, structures, or ponds, (ii) for firewood for Grantor's domestic use, (ii) which are invasive species; (iii) which pose a threat to the health or safety of persons, or property; (iv) which are dead, diseased, or dying; or (v) for other permitted activities on the Property, except timber harvesting or land clearing

All cutting, clearing, or removal of trees must comply with all other restrictions set forth in this Easement involving protected areas of the Property.

**6. PROTECTION OF WATERS.**

To protect water quality and natural habitat, the following must be maintained on the Property:

A 100-foot riparian buffer along the edge of pond and stream on the Property, as measured from the top of the bank of the pond or stream. Subsequent to the Effective Date, the pond or stream may meander or change course naturally, or as a result of the restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 4 (vi) above. In such event, the riparian buffer shall remain the same width, but move relative to the movement of the pond or stream. Any buildings or structures that were outside of the original riparian buffer and are determined to be within the new riparian buffer shall not be considered in violation of these restrictions and may be maintained and replaced at such locations, but not enlarged.

- (i) **PROHIBITED ACTIVITIES.** The following activities are prohibited within the riparian buffer(s) and/or the RPZ(s):
  - (a) Storage of compost, manure, fertilizers, or chemicals;
  - (b) Construction of buildings or structures except as set forth in subparagraph (ii) below;
  - (c) Construction, maintenance, or paving of roads except as set forth in subparagraph (ii) below;

- (d) Removal of trees except (1) removal of invasive species, (2) removal of dead, diseased or dying trees, including salvage harvests in response to a natural disaster, (3) removal of trees posing a threat to human or livestock health or safety, (4) minimal removal of trees for creation of small wildlife plots, (5) removal of trees for construction and maintenance of permitted roads, stream crossings or other structures permitted in subparagraph (ii) below, and (6) harvesting of trees with submission of a pre-harvest plan and compliance with Best Management Practices for Water Quality Guide as promulgated by the Virginia Department of Forestry; and
- (e) Plowing cultivation, filling, dumping, or other earth-disturbing activities except as may be necessary for the activities permitted in subparagraph (ii) below.
- (ii) PERMITTED ACTIVITIES. The following activities are permitted within the riparian buffer(s) and/or the RPZ(s):
  - (a) Fencing along or within such area(s);
  - (b) Construction and maintenance of stream crossings for pedestrians, livestock, and vehicles, which crossings minimize obstruction of water flow;
  - (c) Creation and maintenance of improvements over such area(s) to access crossings;
  - (d) Creation and maintenance of trails;
  - (e) Maintenance of existing roads;
  - (f) Creation and maintenance of natural habitat and small wildlife plots;
  - (g) Planting of trees, shrubs, grasses, and other vegetation; and
  - (h) Development of ecosystem functions on the land, including necessary equipment and structures, with the prior written approval of Grantee as permitted in Section II, Paragraph 5 (iii) above.

- (i) Creation and maintenance of new trails and roads without hard surfaces, provided that any such trail shall not exceed six (6) feet in width and the location thereof shall be subject to Grantee's prior written approval, and maintenance of existing and new permitted trails and roads;
- (j) Livestock grazing until a fence is constructed to prevent the use of the seasonal streams by livestock.
- (iii) In addition, livestock must be excluded from the riparian buffer(s) at the time of fence construction along the seasonal streams, pond, and/or the RPZ(s) except (a) during times of drought or other emergencies, (b) for stream crossings or (c) for watering at limited access points.

**7. LANDSCAPE ALTERATION, EXCAVATION, AND MINING.**

- (i) Grading, blasting, filling, excavation, or earth removal may not materially alter the topography of the Property except (a) for clearing, grading, and dam construction to create and maintain ponds (but not storm water retention or detention ponds to serve other properties), (b) for restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 4 (vi) above, (c) as required in the construction of permitted buildings, structures, driveways, roads, trails, and utilities, or (d) for erosion and sediment control pursuant to an erosion and sediment control plan.
- (ii) Grading, blasting, filling, or earth removal in excess of one acre for the purposes set forth in subparagraph (i) above require 30 days' prior notice to Grantee.
- (iii) Generally accepted agricultural activities will not constitute a material alteration of the topography.
- (iv) Surface mining on the Property, subsurface mining from the surface of the Property, and drilling for oil or gas or other minerals on the Property are prohibited. Dredging on or from the Property is prohibited,

except for creation and maintenance of any ponds on the Property.

**8. 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 wildlife management practices, such as creation of brush piles or the accumulation of farm equipment and materials, or material stockpiles so long as they remain out of the public view from a public right of way. For the purposes of this easement, machinery parts of any kind or condition shall be considered either a material stockpile or farm equipment or materials based on the type of machinery parts but shall not leak chemicals such as fuel into the soils.

**9. ARCHAEOLOGICAL RESOURCES GENERALLY:**

(a) A Ground Disturbing Activity may require archaeological survey or investigation, if, in the opinion of Grantee SVBF, such ground disturbing activity or earth removal may impact archaeologically significant deposits, sites, or features on the Property, whether known or unknown as of the Effective Date. The following agricultural activities are exempt from this requirement:

(i) cultivation of agricultural fields, including plowing, tilling, disking, harrowing, and use of harvesting machinery;

(ii) use of aboveground irrigation equipment that does not involve Ground Disturbing Activities subject to the terms of this Section 9.

(b) New buried irrigation lines necessary or convenient for the continued agricultural use of the Property may be installed on the Property, subject to the terms of Article II, and provided the prior written approval of Grantee SVBF has been obtained for the attendant Ground Disturbing Activity.

(c) In determining whether to require an archaeological survey under this Section, and in addition to other factors that the Grantee is required or permitted to consider hereunder, the Grantee shall consider the likelihood that any archaeological resources on the portion of the Property affected were already disturbed by activities on the Property before the Effective Date, and, if so, whether the proposed Ground Disturbing Activity is likely to increase the negative impact on such resources under the circumstances.

(d) Archaeological Survey and Investigation may be undertaken on the Property only if a scope of work for such survey

or investigation is reviewed and approved in writing in advance by Grantee and under the supervision of a professionally qualified archaeologist meeting or exceeding the *Secretary of the Interior's Professional Qualifications Standards*. All Archaeological Survey and Investigation must be completed prior to the commencement of the proposed Ground Disturbing Activity. Grantor shall be responsible for all costs and expenses associated with any archaeological survey and investigation being undertaken because of Grantor's proposal to engage in Ground Disturbing Activity.

**10. TREATMENT OF ARTIFACTS:** Artifacts, both prehistoric and historic, recovered from Archaeological Survey and Investigation of the Property pursuant to Section 9 or otherwise ("Artifacts") shall remain the personal property of Grantor, unless otherwise provided by law. Prior to Grantor's donation of Artifacts to an organization or institution other than SVBF for curation, Grantor shall provide Grantee with written notice of such donation, which written notice shall include: (a) the name of the organization or institution, (b) the location where the Artifacts will be stored, treated, curated, and preserved, and (c) an affirmation that the Artifacts will be treated consistent with the *Virginia Department of Historic Resources State Collection Management Standards* (as amended or superseded).

**11. TREATMENT OF HUMAN REMAINS:** If human remains are identified during Archaeological Survey and Investigation of the Property pursuant to Section 9 or during any other Ground Disturbing Activity, then Grantor shall immediately cease all activities at the specific location(s) where human remains have been found and notify Grantee. Grantor shall comply with all laws applicable to the discovery of human remains, including without limitation, notifying local law enforcement and obtaining any necessary permits or authorizations for treatment of the human remains. Grantor shall be responsible for all costs and expenses associated with the treatment and removal of the human remains discovered because of Grantor's proposal to engage in Ground Disturbing Activity.

**12. TREATMENT OF ARCHAEOLOGICAL RESOURCES:** Grantor shall take all reasonable precautions to protect archaeological deposits, sites, or features on the Property from looting, vandalism, erosion, mutilation, or destruction from any cause. Relic hunting on the Property is expressly prohibited.

**13. MEASUREMENTS AND DETERMINATION OF PERMEABILITY:**

All measurements of length, width, square footage, height, and quantity set forth in Section II Paragraphs 1 through 7 above may be made only by employees, agents, or other representatives of Grantee in accordance with common and standard methods of

measurement. In addition, determination of whether a particular surface is permeable or impermeable may be made only by employees, agents, or other representatives of Grantee.

### **SECTION III – ENFORCEMENT**

1. **RIGHT OF INSPECTION.** Employees, agents, and other representatives of Grantee may enter the Property from time to time for purposes of (i) inspection (including photographic documentation of the condition of the Property), (ii) flagging or otherwise marking the boundaries of specific areas or zones on the Property that are restricted as to the structures or activities allowed thereon in Section II above, and (iii) enforcement of the terms of this Easement after reasonable notice to Grantor or Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to observe, document, prevent, terminate, or mitigate a potential violation of these restrictions with notice to Grantor or Grantor's representative being given at the earliest practicable time. For the purposes of this section, "reasonable notice" shall mean notice by first-class mail, postage prepaid, dated at least seven (7) days prior to the requested entry onto the Property.
2. **ENFORCEMENT.**
  - (i) Grantee, in accepting this Easement, commits to protecting the Conservation Values and advancing the conservation purposes of this Easement and has the resources necessary to enforce the restrictions set forth herein. Grantee has the right to bring a judicial proceeding to enforce the restrictions, which right specifically includes the right (a) to require restoration of the Property to its condition on the Effective Date or to require restoration of the Property to its condition prior to a violation hereof, provided that such prior condition was in compliance with the provisions of this Easement; (b) to recover any damages arising from non-compliance; (c) to compel Grantor to disgorge to Grantee any proceeds received in activities undertaken in violation of the restrictions set forth in Section II of this Easement; (d) to require Grantor to replant or pay for the replanting of trees on the Property harvested in violation of the restrictions involving timber or trees set forth in Section II of this Easement, (e) to require Grantor to pay the costs of ascertaining the value of the timber

harvested in violation of restrictions involving timber or trees set forth in Section II of this Easement; (f) to pay to Grantee three times the value of the timber on the stump for the value (at the time of harvesting) of such timber harvested in violation of restrictions involving timber or trees set forth in Section II of this Easement, constituting the agreed-upon harm to the Conservation Values protected herein caused by such wrongful harvest; (g) to enjoin non-compliance by temporary or permanent injunction; and (h) to pursue any other appropriate remedy in equity or at law. If the court determines that Grantor failed to comply with this Easement, Grantor must reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs, expert-witness costs, and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay will 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 defense of waiver, estoppel, or laches with respect to any failure to act by Grantee.

- (ii) Notwithstanding any other provision of this Easement, Grantor will not be responsible or liable for any damage to the Property or change in the condition of the Property (a) caused by fire, flood, storm, Act of God, governmental act, or other cause outside of Grantor's control or (b) resulting from prudent action taken by Grantor to avoid, abate, prevent, or mitigate such damage to or changes in the condition of the Property from such causes.
- (iii) Nothing in this Easement creates any right in the public or any third party to maintain a judicial proceeding against Grantor or Grantee. The conveyance of this Easement to Grantee does not affect the property rights of contiguous landowners or vest in any contiguous or nearby landowner rights in the Property or the administration of this Easement by Grantee.

**3. THE SHENANDOAH COUNTY BOARD OF SUPERVISORS' RIGHT OF ENFORCEMENT.** The Shenandoah County Board of Supervisors is hereby granted a right of enforcement for all those restrictions that the Conservation Easement Authority, as a Grantee, is entitled to enforce in order to protect the public interest and the investment of County resources in this Easement.

#### **SECTION IV – DOCUMENTATION**

Grantor has made available to Grantee, prior to conveyance of this Easement, documentation sufficient to describe the condition and character of the Property, and the Baseline Documentation Report (BDR), describes the condition and character of the Property on the Effective Date. The BDR may be used to determine compliance with and enforcement of the terms of this Easement. However, the parties are not precluded from using other relevant evidence or information to assist in that determination. The parties hereby acknowledge that the BDR contained in the files of Grantee is an accurate representation of the Property and contains a statement signed by Grantor and a representative of Grantee as required by Treasury Regulation Section 1.170A-14(g)(5)(i).

Grantee may compile written reports and photographic documentation of the condition of the Property from time to time as a result of inspection of the Property pursuant to Section III 1. above.

#### **SECTION V – GENERAL PROVISIONS**

1. **DURATION.** This Easement will 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, Grantor and its successors in title to the Property, or any portion thereof or interest therein, and will continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer will survive transfer.
2. **NO PUBLIC ACCESS AND GRANTOR'S RETENTION OF USE.** Although this Easement will benefit the public as described above, nothing herein may be construed to convey to the public a right of access to or use of the Property. Subject to the terms hereof, Grantor retains the exclusive right to such access on and use of the Property.
3. **GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor represents, covenants, and warrants that (i) Grantor has good fee simple title to the Property (including the mineral rights located under the surface of the Property), (ii) Grantor has all right and

authority to give, grant and convey this Easement, (iii) the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record), including, but not limited to, any leases, option contracts, mortgage liens, deed of trust liens, or other liens not subordinated to this Easement, and (iv) no consent of any third party is required for Grantor to enter into this Easement.

4. **ACCEPTANCE.** Grantee accepts this conveyance pursuant to Virginia Code Section 10.1-1801, which acceptance is evidenced by the signature of a Deputy Director or Staff Attorney by authority granted by Grantee's Board of Trustees.
5. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, has been or may be proffered or dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; proffered or dedicated as open space in, or as part of, any real estate development plan; or proffered or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits. No development rights that have been encumbered or extinguished by this Easement may be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement, or otherwise.
6. **CONSTRUCTION.** Pursuant to the public policy of the Commonwealth of Virginia favoring land conservation, any general rule of construction to the contrary notwithstanding (including the common-law rule that covenants restricting the free use of land are disfavored and must be strictly construed), it is the intent of the parties hereto that this Easement and all language contained herein be liberally construed in favor of the grant to effect the purposes of this Easement and the policies and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation that is consistent with the purposes of this Easement (to protect the Conservation Values of the Property and prevent the exercise of reserved rights in a way that would impair such values) and that would render the provision valid will be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses consistent with the purposes of and not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a "qualified conservation contribution"

as that term is defined in IRC Section 170(h)(1) and Treasury Regulation Section 1.170A-14, and the restrictions and other provisions of this Easement will be construed and applied in a manner that will not prevent it from being a qualified conservation contribution.

7. **REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement must be referenced by deed book and page number, instrument number, or other appropriate reference in any deed or other instrument conveying any interest in the Property. Failure of Grantor to comply with this requirement will not impair the validity of this Easement or the conveyance or limit this Easement's enforceability in any way.
  
8. **NOTICE TO GRANTEE AND GRANTOR.** For the purpose of giving notices hereunder the current address of Grantee is 600 North Main Street, Woodstock, Virginia 22664, and any notice to Grantor should be given to the recipient at the address at which the real estate tax bill is mailed for the Property or portion thereof that is the subject of the notice and which is currently 326 Bruebeck Lane, Strasburg, Va 22657.
  - (k) **Grantor must notify Grantee in writing at or prior to closing on any *inter vivos* transfer, other than a deed of trust or mortgage, of all or any part of the Property.**
  
  - (v) In addition, Grantor agrees to notify Grantee in writing before exercising any reserved or permitted right that may have an adverse effect on the Conservation Values of the Property as encumbered by this Easement or that, because of unforeseen or changed circumstances, involves activities or structures regarding which this Easement is silent or ambiguous. (The purpose of requiring such notice is to afford Grantee an adequate opportunity to either (a) prohibit or approve and monitor such activities to ensure that they are carried out in a manner not having an adverse impact on the Conservation Values of the Property or (b) to prohibit or permit the construction of such structures, depending upon whether the construction of such structures will have an adverse impact on the Conservation Values of the Property.) Such notice must describe the proposed activity or structure in sufficient detail to allow Grantee to judge the consistency of the proposed activity or construction of the proposed structures with the purposes of this Easement. Grantee may grant its consent if it determines, in its

sole discretion, that the performance of such activities or the construction of such structures does not confer upon Grantor an impermissible private benefit, does not violate any of the terms of this Easement, and does not have an adverse impact on the Conservation Values of the Property. Grantor may not engage in the proposed activities or construction of such structures unless and until Grantor receives Grantee's approval in writing.

- (vi) Failure of Grantor to comply with these requirements will not impair the validity of this Easement or limit its enforceability in any way.

9. **TAX MATTERS.** The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in Treasury Regulation Section 1.170A-13(c)(5), and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from conveyance of this Easement, that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable.
10. **GOODS AND SERVICES.** By its execution hereof, Grantee acknowledges and confirms receipt of this Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of this Easement.
11. **NO MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement will not merge into the fee interest, but will survive the deed and continue to encumber the Property.
12. **ASSIGNMENT BY GRANTEE.** Assignment of this Easement is permitted by Virginia Code Section 10.1-1801, but Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (i) all restrictions set forth in this Easement are to be continued in perpetuity, (ii) the transferee then qualifies as an eligible donee as defined in IRC Section 170(h)(3) and the applicable Treasury Regulations, and (iii) the transferee is a public body as defined in Section 10.1-1700 of the Open-Space Land Act.
13. **CONVERSION OR DIVERSION.** Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted

from its open-space use except in compliance with the provisions of Section 10.1-1704 of the Open-Space Land Act, which does not permit loss of open space.

**14. EXTINGUISHMENT.**

- (I) Grantor and Grantee agree that if a subsequent unexpected change in the conditions surrounding the Property that is the subject of the donation of this perpetual conservation easement renders impossible or impractical the continued use of the Property or a portion thereof for conservation purposes, the conservation purpose may nonetheless be treated as protected in perpetuity if (1) the easement is extinguished by a judicial proceeding and (2) all of Grantee's portion of the proceeds (as determined below) from a subsequent sale or exchange of the Property or portion thereof are used by Grantee in a manner consistent with the conservation purposes of the original contribution.
- (II) Grantor and Grantee agree that the donation of this perpetual conservation 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 easement, at the time of the gift, bears to the fair market value of the Property as a whole at that time. The proportionate value of Grantee's property rights remains constant such that if a subsequent sale, exchange, or involuntary conversion of the Property occurs, Grantee is entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation easement.

- 15. AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's Conservation Values or add acreage to the restricted property by an amended deed of easement, provided that no amendment may (i) affect this Easement's perpetual duration or remove this Easement from any portion of the Property, (ii) conflict with or be contrary to or inconsistent with the conservation purposes of this Easement, (iii) reduce the protection of the Conservation Values, (iv) affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land", (v) affect the status of Grantee as a "qualified organization" or "eligible donee", or (vi) create an impermissible private benefit or private inurement in violation of federal tax law. No amendment will be effective unless documented in a notarized document executed by Grantee and Grantor and recorded in the

Clerk's Office of the Circuit Court of Shenandoah County,  
Virginia.

16. **REVIEW FEES.** Grantee reserves the right to charge Grantor, and Grantor agrees to pay to Grantee, a fee to reimburse Grantee for its actual and reasonable expenses (including those of its staff) incurred for Grantee to review and approve any right that is reserved by Grantor in this Easement, and which is required by this Easement to be reviewed and approved by Grantee before being exercised, in accordance with the policies of the Grantee at the time the review is made. Grantee also reserves the right to recover its costs incurred in responding to requests initiated by Grantor involving matters such as boundary line adjustments, easement amendments, project reviews for ecosystem services, preparation of reports to facilitate sales, and access or utility easements over the Property.
17. **JOINT OWNERSHIP.** If Grantor at any time owns the Property or any portion of or interest therein in joint tenancy, tenancy by the entirety, or tenancy in common, all such tenants will be jointly and severally liable for all obligations of Grantor set forth herein.
18. **SEVERABILITY.** It is the express intent of the parties hereto that all provisions of this Easement be considered and construed as part of the whole and that no provision will be applied in isolation without consideration of the overall purposes of this Easement. Nevertheless, 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 will not be affected thereby. The invalidity or unenforceability of any provision of this Deed of Easement shall not affect the validity or enforceability of any other provision of this Deed of Easement.
19. **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 this Easement.
20. **CONTROLLING LAW.** The interpretation and performance of this Easement will be governed by the laws of the Commonwealth of Virginia and the United States, resolving any ambiguities or questions of the validity of specific provisions in a manner consistent with the provisions of Section V, Paragraph 6 above in order to give maximum effect to its conservation purposes.

- 21. RECODIFICATION AND AMENDMENT OF STATUTES AND REGULATIONS**  
This Easement cites various federal and state statutes and regulations applicable to open-space easements. In the event that such statutes or regulations are re-codified or amended, this Easement will be interpreted and enforced according to the re-codified or amended statutes and regulations most closely corresponding to those cited herein and carrying out the purposes recited herein.
- 22. RECORDING.** This Easement will be recorded in the land records in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, and Grantee may take any steps necessary in said clerk's office to preserve its rights under this Easement in the future.
- 23. COUNTERPARTS.** This Easement may be executed in one or more counterpart copies, each of which, when executed and delivered, will be an original, but all of which will constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto will not affect the validity of this Easement.
- 24. HAZARDOUS SUBSTANCES: WARRANTY AND INDEMNITY.** Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or management control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) or any corresponding Commonwealth of Virginia statute or regulation or Shenandoah County ordinance. Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, without regard to its merit, liability, or expense, including reasonable attorneys' fees, arising from or with respect to any release of hazardous substance or waste or violation of environmental laws.
- 25. INDEMNIFICATION.** Grantor hereby agrees to indemnify and hold harmless Grantee and its directors, officers, agents, volunteers, and employees (collectively, Grantee's Indemnified Parties) from and against any and all liabilities, penalties, causes of action, claims, demands, orders, judgments, or administrative actions against

Grantee's Indemnified Parties, including, without limitation, reasonable attorney's fees arising from Grantee's interest in the Property as Grantee under this Easement and in connection with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of Grantee's Indemnified Parties or arising out of Grantee's Indemnified Parties' physical presence on the Property; or (ii) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, ordinance or requirement, by any person other than any of the Grantee's Indemnified Parties, in any way affecting, involving, or relating to the Property which directly lead to a loss suffered by Grantee's Indemnified Parties.

- 26. DEFINITIONS.** For purposes of this Easement, the phrase "Effective Date" means the date upon which this Easement was first put to record in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia. The words "currently" or "existing" mean currently or existing on the Effective Date. Time will be calculated in calendar days, not business days.

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

[Counterpart signature page 1 of 4 of deed of conservation easement]

\_\_\_\_\_  
Grantor

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

The foregoing instrument was acknowledged before me

this \_\_\_\_ day of \_\_\_\_\_, 2023, by

\_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Registration No. \_\_\_\_\_

[Counterpart signature page 2 of 4 of deed of conservation  
easement]

Accepted:  
SHENANDOAH VALLEY BATTLEFIELD FOUNDATION,

By: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me

this \_\_\_ day of \_\_\_\_\_, 2023, by

\_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Registration No. \_\_\_\_\_

[Counterpart signature page 3 of 4 of deed of conservation easement]

Accepted:  
SHENANDOAH COUNTY  
CONSERVATION EASEMENT AUTHORITY,

By: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me

this \_\_\_ day of \_\_\_\_\_, 2023, by Delila Hockman, Chair of  
the Shenandoah County Conservation Easement Authority.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Registration No. \_\_\_\_\_

[Counterpart signature page 4 of 4 of deed of conservation easement]

Accepted:  
SHENANDOAH COUNTY  
BOARD OF SUPERVISORS

By: \_\_\_\_\_, by \_\_\_\_\_  
Chair Of The Shenandoah County Board Of Supervisors

COMMONWEALTH OF VIRGINIA,

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

The foregoing instrument was acknowledged before me

this \_\_\_ day of \_\_\_\_\_, 2023,

by \_\_\_\_\_, Chair of the Shenandoah  
County Board of Supervisors.

(SEAL)

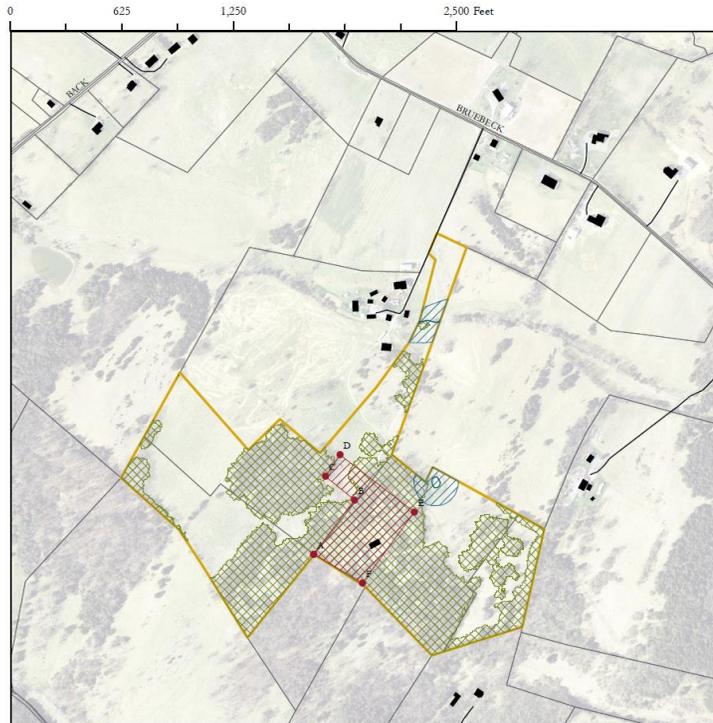
\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

Registration No. \_\_\_\_\_

EXHIBIT A



Prepared By  
Shenandoah County  
Office Of Community  
Development

**Legend**

- |                  |                           |
|------------------|---------------------------|
| <b>Roads</b>     | Waterbodies               |
| <b>Road Type</b> | RPZ                       |
| Interstate       | Building Envelope Points  |
| Primary          | Building Envelope         |
| Private          | Forested Area             |
| School Access    | Baker Easement 1 Boundary |
| Secondary        | Parcels                   |
| State Maintained | County Boundary           |
| US Route         | Town Boundary             |
| Driveway         |                           |
| Buildings        |                           |

Label	X Coordinates	Y Coordinates
A	11506000	7047360
B	11506230	7047661
C	11506070	7047793
D	11506150	7047914
E	11506570	7047595
F	11506280	7047200