

Appendix B

Conservation Easement

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Conservation Easement") is made this 20 day of July, 2006, by GEORGE F. VOGT, JR. and JANICE ELAINE VOGT, individuals having an address at HC 78 Box 103-A, Augusta, WV 26704 ("Grantors"), and the CACAPON AND LOST RIVERS LAND TRUST, INC., a non-profit corporation organized under the laws of the state of West Virginia, having its principal office at RR1, Box 328, High View, WV 26808 and the POTOMAC CONSERVANCY, INC., a non-profit corporation organized under the laws of the State of Maryland, having its principal office at 19 West Cork St., Suite 201, Winchester, VA 22601 (collectively "Grantees").

WITNESSETH

WHEREAS, The State of West Virginia has authorized the creation of conservation easements pursuant to the West Virginia Conservation and Preservation Easements Act, *West Virginia Code* §20-12-1 *et seq.*, and Grantors and Grantees wish to avail themselves of the provisions of that law; and

WHEREAS, the Cacapon and Lost Rivers Land Trust, Inc., and the Potomac Conservancy, Inc. are publicly supported, tax-exempt nonprofit corporations, under Section 501(c) (3) and Section 509 (a) (2) of the Internal Revenue Code of 1986 as amended ("the Code"), qualified under Section 170(h) of the Code to receive qualified conservation contributions, are authorized under West Virginia law to accept and hold conservation easements in the State of West Virginia, and their primary purposes are to promote the preservation, protection, or enhancement of land for conservation purposes in its natural, scenic, agricultural, forested, and/or open space condition; and

WHEREAS, the West Virginia Conservation and Preservation Easements Act of 1995 (*West Virginia Code*, § 20-12-2), specifically recognizes the importance and public benefit of protecting the natural, historic, agricultural, open space and scenic resources of West Virginia and the West Virginia Voluntary Farmland Preservation Act of 2000 (*West Virginia Code* § 8-24-72) provides authorization for the creation of local farmland protection boards to assist in the protection of farm and woodland; and

WHEREAS, Grantors own in fee simple 93.5095 acres, more or less of certain real property ("Property") situate, lying and being in the Sherman District of Hampshire County, West Virginia, which is identified in Hampshire County, West Virginia, Deed Book 394, Page 797 and is more particularly described in Exhibit A, "Legal Description," which is attached hereto and made a part hereof;

WHEREAS, the Hampshire County Comprehensive Plan, adopted on August 20, 2003, (the "Comprehensive Plan") specifies that the goal of the Comprehensive Plan is to "retain the rural character of the county by preserving natural, scenic, and open space resources." The Comprehensive Plan also specifies the following objectives: "[To] protect and retain water resources within the County, to assure the quantity and quality of surface and groundwater for recreational use, wildlife habitats, fire protection, and water supply. Of particular concern will be the South Branch of the Potomac River, North River, Little Cacapon River and Cacapon River, their

PLEASE RETURN TO: POTOMAC CONSERVANCY, 19 W. CORK ST., SUITE 201
WINCHESTER, VA 22601

tributaries, wetlands and floodplains, and the steep slopes draining into the rivers and creeks", and "[To] encourage proper utilization of creek valleys, open areas and steep slopes as open space;" and

WHEREAS, the Property is a significant natural area which qualifies as a "...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder, because the Property contains significant unbroken woodlands and riparian habitat for small mammals and neotropical migratory birds; and

WHEREAS, the permanent protection of the Property will preserve open space and scenic views that provide a significant benefit to the public as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder, because the Property can be seen and viewed by the public from County Route 29, Delray Road; and

WHEREAS, the Property contains significant scenic, historic and natural resources, including those that are particularly important to the protection and maintenance of water quality and wildlife habitat, hereinafter "Conservation Values," described more particularly in Exhibit B, "Summary of Conservation Values" and Exhibit C, "Baseline Documentation," that are worthy of permanent protection including rural, cultural, woodland, and agricultural features; and

WHEREAS, Grantors desire and intend to grant a perpetual Conservation Easement over the Property, thereby restricting and limiting the use of the land, on the terms and conditions and for the purposes hereinafter set forth, and Grantees wish to accept such Conservation Easement; and

WHEREAS, this Conservation Easement is intended to constitute a "Perpetual Conservation Restriction" for purposes of the Code, as amended at Title 26, U.S.C.A., Section 170(h) (1)-(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulations at Title 26 C.F.R. 1.170A-14 et seq, as amended and is intended to be a "Qualified Donation" pursuant to West Virginia Conservation and Preservation Easements Act of 1995 (*West Virginia Code*, § 20-12-2); and

WHEREAS Grantors and Grantees recognize the Conservation Values of the Property in its present state, as an open space and scenic area and a relatively natural habitat for fish, wildlife, or plants, or similar ecosystem with significant conservation and agricultural features summarized in Exhibit B, "Summary of Conservation Values," and described more explicitly in Exhibit C, "Baseline Documentation," and incorporated by reference in Article V. hereto; and

NOW THEREFORE, as an absolute gift for no monetary consideration (\$0.00) but in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, Grantors unconditionally and irrevocably grant and convey unto Grantees, their successors and assigns, forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, with respect to the Property, and Grantees accept the said Conservation Easement.

The Purpose of this Conservation Easement is to preserve and maintain the natural, scenic, open-space, and wildlife habitat features of the land, to maintain the significant Conservation Values, which are described more particularly in Exhibit B and Exhibit C, including the dominant water resources such as rivers, streams, springs and seeps, rock outcroppings, woodland characteristics of the Property, especially the unbroken forest, which provides habitat for wildlife and helps to maintain and enhance water quality, and finally, to prevent the subdivision, use or development of the Property for any purpose or in any manner that would jeopardize its natural characteristics or the maintenance of the Conservation Values intended to be protected by this Conservation Easement.

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross and as such is inheritable and assignable in accordance with Article VI and runs with the land as an incorporeal interest in the Property, enforceable with respect to the Property by Grantees against Grantors and their personal representatives, heirs, successors and assigns.

ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

A. Subdivision:

Division or subdivision of the Property is prohibited.

B. Improvements:

Grantors shall be restricted from placing or constructing any buildings, structures, or other improvements of any kind (including, without limitation, roads, parking lots, and utility lines and related facilities) except for the following:

- 1) *Permanent Residential Dwellings*: Grantors may construct, replace, expand, place or enhance existing or new structures or improvements including one (1) single family residential dwelling and associated accessory structures which shall be wholly contained within the designated **Building Zone 1**, which does not exceed two (2) acres in size and is more particularly described within Exhibit C, Baseline Documentation. In addition, Grantors may construct, replace, expand, place or enhance new structures associated with one single family residential dwelling and associated structures which shall be wholly contained within **Building Zone 2**. The location of Building Zone 2 may be designated by Grantors provided that: (a) Building Zone 2 shall be no larger than two (2) acres; (b) the structures built within Building Zone 2 shall not harm the Conservation Values of the Property; (c) all associated structures shall be contained within Building Zone 2; (d) Grantors shall submit a request for designation of Building Zone 2 in writing to Grantees that provides the specific requested location; and (e) Grantees must approve of such Building Zone 2, which approval shall not be unreasonably withheld; and
- 2) *Farm Buildings*: To construct, place, replace, expand, move, or enhance structures or improvements related to and customarily used for agricultural purposes and maintaining

agricultural viability, including but not limited to barns, fences, and sheds, except that no single agricultural building or structure larger than 4,000 square feet shall be constructed on the Property without the prior written approval of Grantee, and such approval shall be contingent upon consideration of the impact of the size, height and site of the proposed structure on the Conservation Values of the Property;

- 3) Creation, maintenance, and enhancement of roads for access to permitted structures, including structures located in Building Zone 1 and Building Zone 2 as well as for access for the purposes of agricultural, forestry or other permitted activities; and
- 4) Fences for agricultural or conservation purposes; and
- 5) Maintenance, enhancement and expansion of existing ponds and construction of new ponds as well as construction or maintenance of structures for water-related recreation on the ponds. Structures for water-related recreation may not impair conservation values or be used in a residential manner or as overnight accommodations. Construction and maintenance of ponds shall be in accordance with a plan approved by the Natural Resource Conservation Service (NRCS) or any successor or equivalent agency; and
- 6) Utility lines for the sole purpose of providing service to permitted structures including but not limited to power, communication, and water supply; and
- 7) Placement, construction, enhancement, or improvement of windmills, solar panels, and similar renewable energy structures for the sole purpose of providing service to permitted structures and improvements.

C. Development Rights:

Except for those rights otherwise reserved in this Conservation Easement, Grantors hereby grant to Grantees all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated and extinguished, and may not be used or transferred to any portion of the Property as it is now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

D. Viewshed:

For the purpose of protecting the scenic integrity of the Property, no public or private utility installations, such as cellular telephone towers or exchanges, electric generating plants (other than those contemplated by Article II B. 7), electric power substations, high tension electric power transmission lines, gas generating plants, gas storage tanks, water storage tanks or reservoirs, sewage treatment plants, or microwave relay stations shall be constructed or placed on the Property. The preceding sentence is intended to provide the Grantees an interest in the Property sufficient to prohibit the exercise of eminent domain by public utility companies without prior written notice and approval by the Grantees, but is not intended to prohibit or conflict with easements existing on the Property as of the date this deed of Conservation

Easement is executed. The existing easements are identified more particularly in Exhibit A, "Legal Description."

E. Forestry:

Any timber harvest, forest management, or tree cutting on the Property is prohibited except for removal of trees to prevent blockage of access roads, for personal use, to eliminate safety hazards, and to remove dead or diseased trees, or unless the cutting or removal is conducted in accordance with a Forest Management Plan prepared by a West Virginia licensed professional forester that describes existing timber resources, supplies an inventory of stands to be cut, and shows logging roads and landings. Such Plan shall incorporate the following goals: (1) to support, maintain, and enhance wildlife habitat; (2) to promote the long-term sustainability of contiguous forest; and (3) to maintain and enhance riparian forest in compliance with the existing USDA NRCS Conservation Reserve Enhancement Program (CREP) agreement as documented and contained in Baseline Documentation, Exhibit C attached hereto in order to protect water quality and prevent water pollution. A commercial timber harvest must be conducted in accordance with a Forest Management Plan. Such Plan must be updated not less than every ten (10) years and shall be submitted by Grantors to Grantees for Grantees' review at least 60 days before timber is commercially sold or forest management or harvest begins. Reasonable cutting of trees for firewood for the personal use of Grantors is permitted.

F. Water Resources:

The Property contains perennial streams, springs and river frontage along the North River identified more particularly in Exhibit C. In order to protect the ecological integrity and quality of the Property's water resources, a forested or vegetated Riparian Buffer containing one hundred (100) feet from the average high water mark of the North River and thirty-five (35) feet in each direction from the center of the small, unnamed stream identified in Exhibit C, shall be established in which there shall be no mowing, harvesting of timber, construction or placement of structures or disturbance of vegetation and which shall be planted, preferably with native species, or allowed to regenerate naturally, except for as may be necessary for: (1) stream bank restoration, riparian restoration, or erosion control; (2) cutting and removal of dead, disease infested or invasive species; (3) placement of fencing to exclude cattle or livestock from the stream; (4) water access for agricultural irrigation on the Property; and (5) reasonable access to the remainder of the Property. Manure and compost shall not be stored, and pesticides, herbicides, or fertilizers shall not be used or deposited within the Riparian Buffer without prior written approval of Grantees. The Riparian Buffer shall be protected from degradation by livestock.

Should water bodies protected under this Conservation Easement meander or move, the Riparian Buffer shall move in proportion to the movement of the water body. However, should the Riparian Buffer move into an area that was previously outside of the Riparian Buffer and where structures existed prior to the water body moving, such structures shall not be considered a violation of this provision.

G. Industrial or commercial activities:

Industrial or commercial activities are prohibited on the Property except for:

- 1) Forestry activities in accordance with Article II.E;
- 2) Agricultural activities, including but not limited to, production of vegetables, fruits, trees, livestock, poultry, field crops, hay, pasture, sod, or equestrian uses;
- 3) Activities conducted from a home office or studio within permitted structures which are incidental to home ownership, or those associated with a cottage industry that are conducted within permitted structures; and
- 4) Activities that do not exceed *de minimis* commercial recreational activity as it is described under Section 2031(c)(8)(B) of the Code;
- 5) Rental or leasing of permitted structures.

H. Signs:

Display of billboards, signs or advertisements is prohibited on or over the Property, except (1) to state solely the name and address of the Property and its owners; (2) to advertise on-site agricultural business, such as a farm stand or sale of agricultural or cottage industry products; (3) to advertise the sale or lease of the Property; (4) to advertise the Property's protection under this Conservation Easement and/or its management under a particular forestry or agricultural practice; or (5) to post the Property to control unauthorized entry or use.

I. Dumping of materials:

No waste materials other than two vehicles previously existing on the Property and more particularly described in Baseline Documentation, Exhibit C, may be dumped, placed, or stored on the Property including, but not limited to, trash, garbage, rubbish, dredge spoil, chemicals, pesticides, abandoned vehicles, appliances, or machinery. However, Grantors may place legally permitted pesticides, fertilizers, or herbicides to the extent necessary for agricultural activities or to control any weeds, insects, pests and other species, provided that such uses are consistent with the Purpose of this Conservation Easement as set forth in this deed. All such uses of fertilizers, pesticides, and herbicides shall be consistent with all existing federal, state, and local regulations. Grantors may utilize soil, rock, other earth materials, vegetative matter, sawdust, bark, and compost to the extent reasonably necessary for the purpose of agricultural or horticultural activities, stream bank restoration, wildlife management activities, riparian restoration, or combating erosion or flooding.

J. Excavation and Mining:

Excavation, dredging, mining and removal of loam, gravel, soil, rock, sand, coal, petroleum and other materials are prohibited except for (1) the purpose of combating erosion or flooding; (2) for the construction or maintenance of permitted structures; or (3) for restoration

activities including wildlife habitat enhancement or stream bank restoration. Extraction or removal of minerals by any surface mining method is prohibited, unless the method has limited, localized impact on the Property that is not irretrievably destructive of significant conservation interests, Grantors obtain written permission from Grantees to conduct such extraction or removal, and Grantors undertake to restore the Property as nearly as possible to its condition existing prior to such extraction or removal.

K. Right of Inspection:

Grantees, their employees and agents and their successors and assigns, have the right to enter the Property at reasonable times, with reasonable notice to Grantors for the purpose of inspecting the Property to determine whether Grantors, their personal representative, heirs, successors or assigns are complying with the terms of this Conservation Easement.

L. Reserved Rights:

Grantors, and their heirs and assigns, shall retain the right of exclusive use, possession, and enjoyment of the Property, subject only to the terms of this Conservation Easement. All rights reserved by Grantors or not prohibited by this Conservation Easement shall be exercised so as to prevent or minimize, to the extent reasonable under the circumstances, damage to water quality, air quality, land/soil stability and productivity, wildlife, scenic, environmental and agricultural values, and the natural topographic and open-space character of the Property. If Grantors have any doubt with respect to whether or not any particular use of the Property is prohibited by the terms of this Conservation Easement, Grantors may submit a written request to Grantees for consideration and approval of such use, and Grantees shall use their best efforts to respond to such written request within sixty (60) days of the date the request was mailed.

ARTICLE III. NO PUBLIC ACCESS

The granting of this Conservation Easement does not convey to the general public the right to enter the Property for any purpose whatsoever.

ARTICLE IV. ENFORCEMENT AND REMEDIES

A. Remedies:

Upon any breach of the terms of this Conservation Easement by any party hereto, an aggrieved party may, by appropriate legal proceedings, exercise any or all of the following remedies:

- 1) Seek and obtain mediation to address grievances; and
- 2) Seek and obtain legal and or equitable relief as may be necessary to enforce the terms of this Conservation Easement; and

- 3) Require that the Property be restored promptly to its condition on the effective date of this Conservation Easement.

The aggrieved party's remedies shall be cumulative and shall be in addition to any other rights and remedies available at law or in equity. If a party is found to have breached any of the terms of this Agreement, the party in violation shall reimburse the other parties for any costs or expenses incurred by them as a result of the violation, including costs of restoration, court costs and reasonable attorneys' fees.

B. Effect of Failure to Enforce:

No failure on the part of any party to enforce any term hereof shall discharge or invalidate such term or any other term hereof or affect the right of said party to enforce the same in the event of a subsequent breach or default.

C. Effect of Multiple Grantees:

If there is more than one Grantee, each Grantee has independent authority to enforce the provisions of this Conservation Easement. In the event that the Grantees do not agree as to whether the Grantors are complying with the Terms, each Grantee may proceed with enforcement actions without the consent of the other Grantee.

D. Defenses:

Grantors hereby waive any defense of laches, estoppel, or prescription.

E. Change to Property Beyond Grantors' Control:

Nothing contained in this Conservation Easement shall be construed to entitle Grantees to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond the Grantors' control, including, without limitation, fire, flood, storm, war, blight, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property, any buildings or other structures now or hereafter located on the Property or resulting from such causes, unless and only to the extent that such damage is greater or of a different nature due to violation by Grantors of the terms of this Conservation Easement and such damage would not have occurred had Grantors not violated the terms of this Conservation Easement.

ARTICLE V. EXHIBITS

- A. Exhibit A: A Legal Description of the Property including legal references to easements existing on the Property is attached hereto and made a part hereof.
- B. Exhibit B: A Summary of Conservation Values is attached hereto and made a part hereof.

C. Exhibit C: Baseline Documentation

A Baseline Report is kept on file at the office of Grantees and is fully incorporated into this Conservation Easement as though attached hereto and made a part thereof, including:

- a. Narrative description of the history of the Property, the natural features, structures, surrounding land use and summary of the Conservation Easement.
- b. Maps of the Property, including USGS map and aerial photo of the Property, that identify existing structures and improvements, natural features, and locations where photographs of the Property were taken.
- c. Photo documentation of existing conditions of the Property.

ARTICLE VI. MISCELLANEOUS

A. Assignment:

Either Grantee may assign, upon prior written notice to Grantors, its rights under this Conservation Easement, but only to an "eligible donee" within the meaning of Treasury Regulations §1.170A-14(c) and only with assurances that the Purpose of this Conservation Easement will be maintained. No assignment may be made by Grantees of their rights under this Conservation Easement unless Grantees, as a condition of such assignment, require the assignee to continue to carry out the Purpose of this Conservation Easement.

B. Sale or Transfer:

- 1) Grantors agree that, in the event of any subsequent sale or transfer of the Property, Grantors shall notify Grantees in writing of the names and addresses of any party to whom the Property is to be granted, conveyed or otherwise transferred at or prior to the time said transfer is consummated. Grantors shall make specific reference to this Conservation Easement in a separate paragraph of any subsequent deed or other legal instrument by which any interest in the Property is granted, conveyed or otherwise transferred. Grantors shall provide a copy of this Conservation Easement to all subsequent owners of the fee simple interest of any part of the Property.
- 2) In the event of any sale of any interest in the Property, three percent (3%) of the greater of either the sales price or the fair market value of such interest sold shall be paid to Grantees to assist in the long term-stewardship and monitoring of this Conservation Easement. At the time of the signing of this Easement, there are two Grantees, the Cacapon and Lost Rivers Land Trust and the Potomac Conservancy, and these two Grantees shall share such transfer fee equally between them.
- 3) The three percent (3%) fee described above shall not be payable in the event of a testamentary transfer or a transfer incident to a divorce or separation leading to a transfer solely between or among Grantors. The executor or personal representative of a Grantor's estate shall notify Grantees of the identity of the new owner of said Grantor's interest in the Property within six months after any testamentary transfer.

C. Notices to Grantees and Grantors:

Any notice, demand, request, consent, approval, or communication that either party is required to give to the other shall be in writing and served either personally or sent by registered or certified mail, return receipt requested, addressed to:

Grantors:

George F. and Janice Elaine Vogt, Jr.
HC 78 Box 103-A
Augusta, WV 26704

Grantees:

Cacapon and Lost Rivers Land Trust, Inc.
RR 1 Box 328
High View WV 26808

Potomac Conservancy, Inc.
19 West Cork Street, Suite 201
Winchester, VA 22601

or to such other addresses as Grantors or Grantees may establish in writing regarding notification to each other. Should any Grantor or Grantee change mailing address, such Grantor or Grantee shall provide written notice of change of address to the other Grantors and Grantees within a reasonable time from when the change in address occurs. Mailed notices shall be deemed given ten (10) days after the date deposited in the United States mail.

D. Approval of Grantees:

If the approval of Grantees is required under any provision of this Conservation Easement, such approval shall be requested by Grantors through written notice to Grantees, who shall respond in writing within sixty (60) days. Grantees will take into account the terms and Purpose of this Conservation Easement in determining whether to give such approval, but the decision shall be final and in their sole discretion. In the event that there are multiple Grantees, Grantees will coordinate their review; however, the approval of one Grantee shall in no way be deemed to be the approval of all Grantees, it being the intention of the parties that each Grantee shall have independent authority to disapprove and enforce the terms of this Conservation Easement.

E. Retained Responsibilities of Grantors:

Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors, or liens relating to nonpayment of taxes.

F. Indemnification:

Grantors shall hold harmless, indemnify, and defend Grantees and their members, directors, officers, employees, agents, and contractors, and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: injury 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, except to the extent arising out of the negligence of any of the Indemnified Parties.

G. Property Right Vests in Grantees:

The donation of this Conservation Easement gives rise to a property right, immediately vested in Grantees, with a fair market value equal to the ratio of the value of this Conservation Easement on the effective date of this grant to the value of the protected Property without deduction for the value of this Conservation Easement on the effective date of this grant. The value of the Conservation Easement on the effective date of this grant shall be the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code. For the purposes of this paragraph, the ratio of the value of the Conservation Easement to the value of the Property unencumbered by the Conservation Easement shall remain constant, and the percentage interests of Grantors and Grantees in the fair market value of the Property thereby determinable shall remain constant.

H. CERCLA Liability:

Grantees shall not be considered an owner or owner/operator of the Property for the purposes of liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. Chapter 103) or any similar state law. Grantors warrant that they have 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 promise to indemnify Grantees against, and hold Grantees 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 waste or violation of environmental laws.

I. Condemnation or Extinguishment:

(1) If circumstances arise in the future that render the entire Purpose of this Conservation Easement impossible to accomplish, this Conservation Easement may only be terminated or extinguished, whether with respect to all or part of the Property, by judicial proceedings in a court of competent jurisdiction. In the event of a sale of all or a portion of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and after the satisfaction of prior claims and net of any costs or expenses associated with such sale, Grantors and Grantees shall divide the proceeds from such sale in accordance with their respective percentage interests in the fair market value of the Property, as such percentage interests are determined under Article VI.G.,

adjusted, if necessary, to reflect partial termination or extinguishment of this Conservation Easement. All of Grantees' compensation, if any, shall be shared equally by Grantees and used by Grantees in a manner consistent with Grantees' conservation purposes.

(2) If all or any part of the Property is taken under the power of eminent domain by public, corporate or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantors and Grantees shall join in the appropriate proceedings at the time of such taking to recover the full value of the interests in the Property subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by the parties to this Conservation Easement in connection with such taking shall be paid out of the recovered proceeds. Grantors and Grantees shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of the Article VI. G. (with respect to the allocation of proceeds). The respective rights of Grantors and Grantees set forth in this provision shall be in addition to, and not in limitation of, any rights they may have at common law with respect to a modification or termination of this Conservation Easement by reason of the exercise of powers of eminent domain as aforesaid.

J. Modification or Amendment:

Grantors and Grantees may jointly amend this Conservation Easement provided that no amendment shall be allowed that will affect the qualification of the Conservation Easement or the status of Grantees under §501(c)(3) and §170(h) of the Internal Revenue Code or the Code of West Virginia (or any successor provision then applicable). Any amendment of this Conservation Easement may not conflict with and must be consistent with the Purpose of this Conservation Easement, and shall not affect its perpetual duration. Any such amendment shall not be effective unless and until executed by both parties and recorded in the land records of Hampshire County, West Virginia.

K. Effect of Laws Imposing Affirmative Obligations on Grantors:

If any applicable state or federal law imposes affirmative obligations on owners of land which, if complied with by Grantors, would be a violation of a term of this Conservation Easement, Grantors shall: (i) if said law requires a specific act without any discretion on the part of Grantors, comply with said law and give Grantees written notice of Grantors' compliance as soon as reasonably possible, but in no event more than thirty (30) days from the time Grantors begin to comply; or (ii) if said law leaves to Grantors' discretion how to comply with said law, use the method most protective of the Purpose of this Conservation Easement set forth in the recitals hereinabove.

L. Effect of Laws and Other Restrictions on the Property:

The terms of this Conservation Easement shall be in addition to any local, state or federal laws imposing restrictions to the Property and any real estate interests imposing restrictions to the Property.

M. Mortgages, Deeds of Trust or Bankruptcy:

Grantors certify that a copy of this Conservation Easement has been provided to all mortgagees, and trustees and beneficiaries of deeds of trust affecting the Property, if any, as of the date of this Conservation Easement, and each such mortgagee, trustee and beneficiary has subordinated the mortgage or deed of trust to this Conservation Easement, by signing a subordination agreement which shall be recorded in the land records at the time of recording of this Conservation Easement. This Conservation Easement shall survive any bankruptcy proceeding of a party with interest.

N. Easements Held Exclusively for Conservation Purposes:

Grantees agree to hold this Conservation Easement exclusively for conservation purposes as defined in Section 170(h)(4)(A) of the Internal Revenue Code.

O. Merger:

Grantors and Grantees agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Property.

P. Effect of Multiple Grantees:

This Conservation Easement assumes that there are two Grantors and two Grantees. If in the future this assumption no longer holds true, then, as appropriate, any term assuming multiple Grantors or Grantees shall be interpreted to mean the same as if such parties are singular or plural.

Q. Construction:

This Conservation Easement shall be construed pursuant to the Purpose of this Conservation Easement and the laws of the State of West Virginia.

R. Entire Agreement and Severability:

This instrument sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to this Conservation Easement. If any term hereof is found to be invalid, the remainder of the terms of this Conservation Easement, and the application of such term to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

S. Successors:

The Terms "Grantors" and "Grantees" wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantors and their personal

representatives, heirs, successors, and assigns and the above-named Grantees and their successors and assigns.

T. Real Property Taxes:

Except to the extent provided for by State or local law, nothing herein contained shall relieve Grantors of the obligation to pay taxes in connection with the ownership or transfer of the Property.

U. Recordation:

Grantees shall record this instrument in a timely fashion in the official records of Hampshire County, West Virginia and may re-record it at any time as may be required to preserve their rights under this Conservation Easement.

V. Servitude Running in Perpetuity:

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

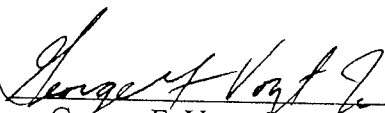
W. Captions:

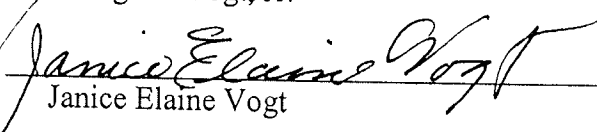
The captions in this Conservation Easement have been inserted solely for convenience of reference and are not a part of this instrument. Accordingly, the captions shall have no effect upon the construction or interpretation of the terms of this Conservation Easement.

TO HAVE AND TO HOLD unto Grantees, their successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantors and Grantees, their respective survivors, agents, personal representatives, heirs, assigns and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the Property.

AND said Grantors have hereunto set their hands and seals the day and year above written.

GRANTORS

By: 
George F. Vogt, Jr.

By: 
Janice Elaine Vogt

GRANTEE

CACAPON AND LOST RIVERS LAND TRUST, INC.
A West Virginia non-profit corporation

By: Nancy B. Ailes
Nancy Ailes, Executive Director

POTOMAC CONSERVANCY, INC.,
A Maryland non-profit corporation

By: Matthew Logan
Matthew Logan, President

This document was prepared and/or reviewed by a licensed West Virginia attorney:

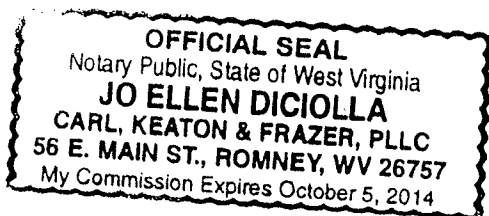
Will Keaton
Will Keaton
Carl, Keaton and Frazier
Romney, WV 26757

STATE OF WEST VIRGINIA

COUNTY OF HAMPSHIRE

I HEREBY CERTIFY that on this 2nd day of August, 2006, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared GEORGE F. VOGT, JR. known to me or satisfactorily proven to be one of the grantors of the foregoing Deed of Conservation Easement and acknowledged that he executed the same for the purposes therein contained and in my presence signed and sealed the same.

WITNESS my hand and Notarial Seal.



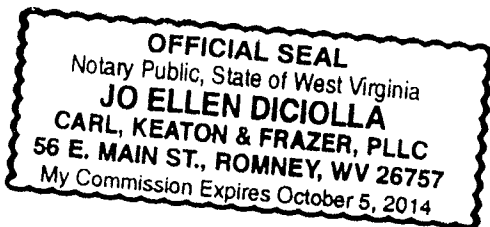
Jo Ellen Diciolla
Notary Public
My commission expires on 10/05/2014

STATE OF WEST VIRGINIA

COUNTY OF HAMPSHIRE

I HEREBY CERTIFY that on this 2nd day of August, 2006, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared JANICE ELIANE VOGT known to me or satisfactorily proven to be one of the grantors of the foregoing Deed of Conservation Easement and acknowledged that she executed the same for the purposes therein contained and in my presence signed and sealed the same.

WITNESS my hand and Notarial Seal.



Jo Ellen Diciolla
Notary Public

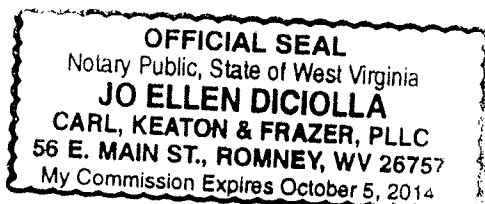
My commission expires on 10/05/2014

STATE OF WEST VIRGINIA

COUNTY OF HAMPSHIRE

I HEREBY CERTIFY that on this 2nd day of August, 2006, a Notary Public in and for the jurisdiction aforesaid, personally appeared NANCY AILES, EXECUTIVE DIRECTOR OF THE CACAPON AND LOST RIVERS LAND TRUST., a West Virginia non-profit corporation, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that she executed the same in the capacity therein stated and for the purposes therein contained and acknowledges this instrument as Executive Director of the Cacapon and Lost Rivers Land Trust, a West Virginia non-profit corporation, on behalf of said corporation.

WITNESS my hand and Notarial Seal.



Jo Ellen Diciolla
Notary Public

My commission expires on 10/05/2014

STATE OF Maryland

COUNTY OF Montgomery

I HEREBY CERTIFY that on this 20 day of July, 2006, a Notary Public in and for the jurisdiction aforesaid, personally appeared MATTHEW LOGAN, PRESIDENT of the POTOMAC CONSERVANCY, INC., a Maryland non-profit corporation, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained and acknowledges this instrument as President of the Potomac Conservancy, a Maryland non-profit corporation, on behalf of said corporation.

WITNESS my hand and Notarial Seal.

Nirka M. Feliz

Notary Public



My commission expires on NIRKA M. FELIZ
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires February 3, 2010

Exhibit A
Legal Description
Vogt Easement
p.1 of 1

All those three certain tracts or parcels of real estate containing 93.51 acres, situate in Sherman District of Hampshire County, West Virginia and located along the east side of the North River near the village of Delray, West Virginia being more particularly described by metes and bounds descriptions incorporated in the hereinafter referenced Deeds to George F. Vogt, Jr. and Janice Elaine Vogt, to which reference is now made for any and all pertinent purposes.

Being the 5 acres more or less of real estate conveyed unto George F. Vogt, Jr. and Janice Elaine Vogt, husband and wife, from Dorsey B. Whitacre and Virginia F. Whitacre by Deed dated January 7, 1987 and of record in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Deed Book No. 290, at Page 339.

Being the 20.51 acres, more or less, of real estate conveyed unto George F. Vogt, Jr. and Janice Elaine Vogt, husband and wife, from Dorsey B. Whitacre and Virginia Whitacre by Deed dated October 26, 1971 and of record in the Office of the Clerk of the County Commission of Hampshire County, West Virginia in Deed Book No. 193 at Page 532.

Being the 68 acres, more or less, of real estate conveyed unto George F. Vogt, Jr. and Janice Elaine Vogt, husband and wife, from Marvin W. Strother and Ruth E. Strother by Deed dated October 3, 1964 and of record in the Office of the Clerk of the County Commission of Hampshire County, West Virginia in Deed Book No. 163, at Page 123.

Reference is hereby made to the aforesaid deeds and other documents therein referred to and same are incorporated herein, by reference, for all proper and pertinent reasons.

The real estate is identified for tax assessment purposes as one undivided parcel in the Hampshire County Assessor's Office as Parcel ID# 09-005-006.

Vogt Easement

Exhibit B
Summary of Conservation Values
 p. 1 of 2

Description of Property and Natural Features

The Property contains 93.51 acres in Hampshire County, West Virginia and lies in the Shermand District of Hampshire County. The Property is bounded on the northwest by the North River. The structures contained by the Property include one residential dwelling, a garage, a barn, a pole shed and a machine shed. The Property also contains a low water bridge and swinging bridge across the North River, fencing for livestock, and a network of roads to provide access to the farm and wooded portions of the Property. The significant natural features of the Property include significant frontage along the North River, a floodplain wetland, a small mountain tributary of the North River, significant limestone rock outcroppings, and mature mixed hardwood and softwood forest.

Woodlands and Farmland:

This Property contains significant upland forest which includes several species of oak (*Quercus spp.*) and hickories as well as some pine species. The forest contains some minimal access roads. The forested land also contains some large limestone outcroppings and cliffs, many of which reach heights of forty (40) feet. The lower portion of the property adjacent to the North River is currently used as pasture for cattle. Cattle have largely been fenced out of the North River and the small tributary stream on the property. A mature riparian forest buffer is located along the North River which contains sycamores (*Platanus occidentalis*) and tulip poplar (*Liriodendron tulipifera*).

Water Resources:

The Property contains just over ½ mile of frontage on the North River, a tributary of the Cacapon River which flows into the Potomac River. The Property also contains approximately three-tenths of a mile of a small tributary of the North River. A large pond is located on the property near the North River. The northern pasture of the Property contains a small floodplain wetland.

Conservation Purposes Test**Relatively Natural Habitat for Fish and Wildlife**

This Property qualifies as a "relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder. The Property provides a relatively natural habitat for wildlife including white-tailed deer, skunk, groundhog, black bear, coyote, chipmunk, fox, rabbit, fox squirrel, and raccoon. Bird species which are known to use the Property include great crested flycatchers, Baltimore orioles, a variety of woodpeckers, chipping sparrows, hummingbirds, red wing blackbirds, and a variety of raptor species including bald eagles. The rock outcroppings are believed to be potential habitat for wood rats, a state species of concern.

Scenic Enjoyment and Public Benefit

Preservation of this Property satisfies the "conservation purposes" as defined in Treasury Regulation Section 1.170A-14(d) because it preserves open space and scenic areas that provide a significant public benefit, and it protects a relatively natural habitat for fish, wildlife and plants.

Exhibit B

- 1) The Property can be viewed from County Route 29, Delray Road (also known as North River Road).
- 2) Protection of this Property is consistent with the Hampshire County Comprehensive Plan (adopted August 20, 2003) which specifies that the goal of the Plan is to "retain the rural character of the County by preserving natural, scenic, and open space resources," and identifies the following objectives: "[to] protect and retain water resources within the County to assure the quantity and quality of surface and groundwater for recreational use, wildlife habitats, fire protection and water supply. Of particular concern will be the...Cacapon River, [its] tributaries, wetlands, floodplains, and the steep slopes draining into the rivers and creeks," and "[to] encourage proper utilization of creek valleys, open areas and steep slopes as open space."
- 3) The property contains significant woodlands which are home to a wide variety of plant and animal species. The property provides habitat for white-tailed deer, red-tailed hawks, fox, coyote, skunk, raccoon, and a variety of avian species including great-crested flycatcher, baltimore orioles, and hummingbirds.
- 4) Protection of this Property significantly contributes to the preservation of the rural and wooded character of the region. The Property is within three miles of the Short Mountain Wildlife Management Area and within 10 miles of the George Washington National Forest. The Cacapon and Lost Rivers Land Trust and Potomac Conservancy hold easements on over 6,000 acres of land in the Cacapon and Lost Rivers watershed. The nearest of these easements is less than one mile away, with more than 5,000 acres of land protected by conservation easements within two miles of the Property.

Exhibit C

Summary of Baseline Documentation

p.1 of 1

A Baseline Report is kept on file at the office of the Grantees and is fully incorporated into this Conservation Easement as though attached hereto and made a part thereof, including: Property summary, easement summary, description of scenic and natural features, description of existing structures, description of the surrounding community, USGS map, copy of Conservation Easement, Aerial photograph of property, Hampshire County Soils Map, Title Certificate, map of Building Zones, map of streams subject to Riparian Buffer restrictions, map of surrounding protected land, map showing location of where photos were taken, photo documentation showing the condition of the Property at the time the easement is donated, and the resolutions by the Boards of Potomac Conservancy and Cacapon and Lost Rivers Land Trust providing authority to accept this Conservation Easement.

SHARON A. LUK
HAMPSHIRE COUNTY CLERK
Instrument No 97001
Recorded Date 08/02/2006
Document Type LE
Book Page 457-654
Rec/Adm Fee 21.00 3.00

STATE OF WEST VIRGINIA, Hampshire County Commission Clerk's Office

The foregoing Instrument, together with the certificate of its acknowledgment, was this day presented in said office and admitted to record.

8/2/06 1:13pm

[Signature] 21