

DEED FROM THE NATURE CONSERVANCY TO _____
MILBY ET AL. TRACT (+/- 230 ACRES)
MILBY AND SHAVER TRACT (+/- 124.5 ACRES)

*This document was prepared by:
George W. Barlow, III, Division Attorney (VSB #29008)
The Nature Conservancy
652 Peter Jefferson Place, Suite 190
Charlottesville, Virginia 22911*

Tax Map Parcel: _____

DEED AND CONSERVATION EASEMENT

This DEED AND CONSERVATION EASEMENT is made on this _____ day of _____, 2018, by and between THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, with a local address of 652 Peter Jefferson Place, Suite 190, Charlottesville, Virginia 22911 (“Conservancy”), index as grantor and grantee, and _____, with an address of _____ (“Landowner”), index as grantor and grantee.

W I T N E S S E T H:

Conservancy owns those certain tracts or parcels of land containing in the aggregate three hundred fifty-four (354) acres, more or less, together with the improvements thereon and all rights, privileges, appurtenances, easements and rights of way thereunto belonging or in anywise appertaining, situated in the Stevensville Magisterial District of King and Queen County, Virginia, referred to herein as the “Property” and being more particularly described on Exhibit A, attached hereto and incorporated herein by reference.

The Property is a pristine natural habitat of fish, wildlife, plants and ecological communities. The specific conservation values of the Property are set forth in a Conservation Easement Documentation Report (the “Report”) of even date herewith, prepared by Conservancy and signed and acknowledged by Landowner. Conservancy and Landowner have the common desire and purpose to protect the conservation values of the Property described in the Report and wish to create a conservation easement in favor of the Conservancy (this “Conservation Easement”). The Commonwealth of Virginia has authorized the creation of conservation easements pursuant to the Virginia Conservation Easement Act, Virginia Code § 10.1-1009 *et seq.* (the “Act”), and the Conservancy and Landowner wish to avail themselves of the provisions of the Act. The conservation values of the Property are further described below:

A. Conservancy and Landowner have the common purpose of conserving in perpetuity the Property's conservation values as natural habitat in the public interest.

B. As required under §10.1-1010(E) of the Act, the use of the Property for open space land conforms to the 2006 King and Queen County Comprehensive Plan, as more particularly set forth in this paragraph. The future land use designation for this Property is as Rural Development Area, which determines future land use as forests, agriculture and rural residential subdivisions.

C. Conservancy is a qualified holder under the Act, to-wit: the Conservancy is a national non-profit corporation exempt from taxation under §501(c)(3) of the Internal Revenue Code of 1986, as amended (the "IRC"), organized and existing under the laws of the District of Columbia; Conservancy has had a principal office in Virginia for more than five years; Conservancy is organized and operated primarily for the purposes of protecting natural resources and the natural values of real property, especially the natural habitat of fish, wildlife, and plants. Conservancy has the resources to enforce the restrictions in this Conservation Easement.

D. The conservation values of the Property that this Conservation Easement is intended by the parties to protect include the following:

1. The Nature Conservancy identified the Mattaponi River as a high-priority Aquatic Conservation Area in the Chesapeake Bay Lowlands Ecoregional Plan completed in October, 2001. The Nature Conservancy and its partners in the development of the plan utilized more than 120 sources of environmental data to identify those aquatic and terrestrial conservation sites of excellent condition, sufficient size and viable context.

2. The Nature Conservancy also identified the Dragon Run Forest Conservation Area (which includes portions of the Dragon Run and Mattaponi River watersheds) as a priority forest of high integrity and viability. The Dragon Run Forest Conservation Area contains more than 275,000 acres of forest cover which provides interior nesting, stopover and foraging habitat for neotropical migratory and resident bird populations. The conservation area provides suitable habitat for summer breeding and reproduction. The forests of the conservation area have protected water quality by filtering pollutants and sediment. The high water quality in both the Dragon and Mattaponi aquatic systems is a result of the extensive forests of the conservation area.

3. The Mattaponi River aquatic system is an exemplary tidal freshwater system which supports increasingly healthy anadromous fish populations. While both culturally and historically important, the annual migratory runs of American shad (*Alosa sapidissima*), hickory shad (*Alosa mediocris*), alewife (*Alosa aestivalis*) and blueback herring (*Alosa pseudoharengus*) provide recreational uses and more importantly, nutrients that support the ecosystem of the Mattaponi River.

4. The Mattaponi River (and the Pamunkey River) from West Point north to Route 360 were identified as an Important Bird Area by the Audubon International. The

important bird area designation demonstrates the importance of the forest cover and tidal freshwater system of the Mattaponi River for migratory birds, waterfowl and resident bird species.

5. The Property contains substantially undeveloped land that, by virtue of its size or by virtue of its location adjacent to rivers, streams, or other waterways, serves to protect water quality and/or quantity, hydrological integrity, riparian and/or aquatic habitat.

6. The Property contains wetlands, which are lands with characteristic hydric soils that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

7. The Property contains riparian vegetated buffers along rivers, streams and wetlands of at least one hundred (100) feet in width, in which natural vegetation is maintained and degradation by livestock is prevented.

8. Protection of the Property provides significant public benefit by contributing to protection of the Chesapeake Bay. The Property contains at least 29 acres of wetlands as shown in the National Wetlands Inventory, and approximately 1.24 miles of frontage on multiple tributaries to the Mattaponi River. In the Chesapeake 2000 Agreement, the Governor of the Commonwealth of Virginia and the Administrator of the United States Environmental Protection Agency acknowledged “that future development will be sustainable only if we protect our natural and rural resource land, limit impervious surfaces and concentrate new growth in existing population centers.” A goal of the Chesapeake 2000 Agreement is to “expand the use of voluntary and market-based mechanisms such as easements...to protect and preserve natural resource lands.” The Commonwealth of Virginia established the Virginia Water Quality Improvement Fund in part to meet its commitments under the Chesapeake Bay Agreement. §10.1-2124 of the Code of Virginia (1950), as amended (the “Code”). The Fund provides grants for projects including “the acquisition of conservation easements related to the protection of water quality and stream buffers.” The 2006 Annual Report of the Virginia Land Conservation Foundation, dated May 2007, states that meeting Virginia’s land conservation goals under the Chesapeake 2000 Agreement “requires the conservation of 308,451 acres by 2010 or 77,113 acres per year...Continued preservation activity by Virginia’s land trusts and the local governments through PDR programs also will advance progress toward these targets.” (pp. 16).

Fee Interest and Conservation Easement and Concurrent Conveyance

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid by Landowner to Conservancy, and other good and valuable consideration, the receipt whereof is hereby acknowledged at and before the sealing and delivery of this deed, Conservancy does hereby bargain, sell, grant and convey unto Landowner the Property in fee simple with special warranty of title, subject to easements, restrictions and reservations of

record, including without limitation the hereinafter described Conservation Easement reserved and retained in perpetuity by Conservancy.

FURTHERMORE, for and 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 Conservancy, and simultaneously with the hereinabove-described conveyance of the fee simple interest in the Property, Landowner does hereby give, grant and convey to Conservancy the Conservation Easement in gross over, and the right in perpetuity to restrict the use of, the Property of the nature and character as set forth below.

Conservation Easement

1. **PURPOSES.** The purposes of this Conservation Easement are as follows: to ensure that the Property will be retained forever predominantly in its natural and scenic condition; to protect native plants, animals, or plant communities on the Property; and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property described above, while allowing for traditional uses on the Property that are expressly permitted in this Conservation Easement and defined herein.

Landowner will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the purposes of this Conservation Easement. However, unless otherwise specified below, nothing in this Conservation Easement shall require the Landowner to take any action to restore the condition of the Property after any act of God or other event over which Landowner had no control. Landowner understands that nothing in this Conservation Easement relieves them of any obligation or restriction on the use of the Property imposed by law.

2. **PROPERTY USES.** Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following is a listing of activities and uses which are expressly prohibited or which are expressly allowed. Landowner and Conservancy have determined that the activities and uses allowed herein do not impair the conservation values of the Property. Additional rights of Landowner are set forth in Paragraph 3 below.

2.1 Subdivision.

(a) The Property may be divided, partitioned in kind, subdivided, or conveyed into no more than two (2) parcels (the newly created parcel and the residue of the Property each being a "Parcel"), after which neither Parcel may be further divided, subdivided or partitioned in kind. Upon the sale, transfer or conveyance of a Parcel, the following shall apply: (i) each Parcel may be under separate ownership and operated as an independent unit and shall remain subject to all terms of this Conservation Easement, including the terms of this Paragraph 2.1; and (ii) any division or subdivision must conform to applicable federal, state or local laws or regulations and Landowner shall be solely responsible for securing any required governmental approval, and

Conservancy makes no representation that any division authorized under this Paragraph will be approved by governing authorities

(b) The Landowner shall provide prior written notice to Conservancy of any division of the Property pursuant to this Paragraph 2.1. As provided above, the Property may be granted, sold, transferred, exchanged, devised, gifted, or otherwise conveyed in title as no more than two (2) Parcels. Except for the divisions expressly permitted pursuant to this Paragraph, to protect the conservation purpose of this Conservation Easement, the legal or de facto division, subdivision, or partitioning in kind of the Property is prohibited, which shall include but shall not be limited to the following: any subdivision, platting, testamentary division, long-term leaseholds or use agreements that effectively create a de facto division of the Property, or other process by which the Property is divided in ownership or in which legal or equitable title to different portions of the Property are held by different owners. Landowner may not indirectly divide any of the Property through the allocation of property rights among partners, shareholders, or members of any legal entity, creation of a horizontal property regime, interval or time-share ownership, partitioning among tenants in common, judicial partition, or by any other means. Notwithstanding the fact that, as of the date of this Conservation Easement, the Property might be comprised of separate legal or tax parcels, the terms and conditions of this Conservation Easement and this Paragraph shall apply to the Property as a whole. Except with respect to the two (2) Parcels allowed pursuant to this Paragraph, the Property shall not be granted, sold, transferred, exchanged, devised, gifted, or otherwise conveyed except as a whole, intact, single piece of real estate; it being expressly agreed that neither the Landowner nor the Landowner's personal representative, heirs, successors, or assigns shall sell, transfer, or otherwise convey any portion of the Property, other than the two (2) Parcels, that constitutes less than the entire Property. Ownership of the Property may be held in the form of undivided interests as tenants in common, whether by choice or by operation of any applicable laws, but no owner of an undivided interest in the Property shall have any right to have the Property partitioned in kind, whether pursuant to state law or otherwise.

(c) Landowner and Conservancy acknowledge that cases may arise where it may be necessary to correct technical or typographical errors or mistakes of fact made in the survey or legal description of the Property. In order to rectify such errors or mistakes, and with the prior written consent of Conservancy (which may be withheld in Conservancy's reasonable discretion), Landowner (and where necessary, Conservancy) may enter into minor or *de minimis* lot line or boundary adjustments, or otherwise correct minor title defects.

2.2 Improvements. For purposes of this Conservation Easement, Improvements consist of any building, structure, or man-made addition to the Property, including but not limited to residences, out-buildings, sheds, barns, house and office trailers, tennis and other recreation courts, and swimming pools placed, built, or constructed on the Property after the date of this Conservation Easement. For the purposes of this definition, Improvements do not include roads and trails, structures associated with utilities (poles, wires, etc.), septic tanks or fields, fences, or movable items not affixed to real estate that have a *de minimis* impact on ground area. No Improvements may be constructed, maintained, or permitted on the Property except as provided herein:

(a) Limitation on Improvements. The collective Footprint of all Improvements on the Property shall not exceed ten thousand (10,000) square feet. Footprint means the ground area, as measured in square feet, covered or overhung by an Improvement, including any area covered by an overhanging roof or attached patio, deck, or porch. No more than two (2) single-family dwellings may be constructed on the Property. No Improvement or portion thereof shall have a height greater than fifty (50) feet above ground level adjacent to such Improvement. In the event of division of the Property as provided in Paragraph 2.1, the grantor making the division retains all of the permitted Footprint of Improvements unless such Footprint is allocated differently in the instrument effecting the division. The Footprint limitation may be allocated unevenly among the resulting two (2) Parcels so long as the maximum Footprint for the entire Property is not exceeded. Subsequent to a permitted division, the owner of a Parcel may transfer all or any portions of the allocations attributable to their respective Parcel to the other Parcel by instrument recorded in the Clerk's Office where this Conservation Easement is recorded.

(b) Improvements in Building Envelopes. A Building Envelope is an area not to exceed two (2) acres in size in which Landowner shall have the right to construct Improvements. Building Envelopes are depicted on Exhibit B hereto and may not be relocated without the Conservancy's prior written approval. No portion of a Building Envelope may be located in the Buffer Areas (hereinafter defined). There shall be no more than two (2) Building Envelopes on the Property. The Grantee is permitted to construct and maintain Improvements within the Building Envelopes subject to Paragraph 2.2(a) without the prior consent of the Conservancy. All residences shall be located within Building Envelopes. In the event of division of the Property as provided in Paragraph 2.1, the grantor making the division retains all permitted Building Envelopes unless they are allocated differently in the instrument effecting the division. Subsequent to a permitted division, the owner(s) of a Parcel may transfer unused Building Envelopes (meaning Building Envelopes that contain no Improvements) to the other Parcel by instrument recorded in the Clerk's Office where this Conservation Easement is recorded.

(c) Improvements Outside Building Envelopes. The Landowner may construct and maintain Improvements outside a Building Envelope only with the Conservancy's prior written consent.

(d) Outdoor Lighting. Outdoor lighting is permitted provided it is placed no more than twenty (20) feet high. Lighting must be shielded with full cut-off reflectors and directed towards the ground. Use of mercury vapor lights is prohibited.

(e) Roads, Trails, and Utilities. Subject to Paragraph 2.7(a)(ii), the Landowner may construct roads, associated culverts, and underground and above-ground utility lines necessary to accommodate permitted Improvements on the Property. Roads shall be no more than sixteen (16) feet in width, and an area of no more than thirty (30) feet in width may be cleared of natural vegetation in the construction of roads. Land cleared in the construction of a road (excluding the road itself) shall be re-forested or re-vegetated as soon as possible following

construction. In addition, Landowner shall have the right to construct trails on the Property of reasonable extent to provide non-motorized access to areas of the Property and/or to accommodate recreational activities. Trails shall be no more than four (4) feet in width and shall be either unimproved paths or shall be constructed of permeable materials.

(f) Well and Septic. The Landowner may drill water wells and install septic tanks and septic fields necessary to accommodate permitted Improvements on the Property together with other necessary utilities to serve these structures.

(g) Utilities Serving Others; Landing Strips. Unless such utilities are placed on or over the Property under eminent domain proceedings or the threat thereof, Landowner may not consent to the construction or placement of utilities on the Property that serve entities and/or users located off the Property (a communications tower for example) without the Conservancy's prior written consent. Such consent shall only be granted if their construction or placement would not deleteriously impact the conservation values of the Property or would produce a smaller impact than if those utilities were located on an adjoining or nearby property. There shall be no constructing or placing of any airplane landing strip on the Property.

2.3 Existing Improvements and Constructed Features. Landowner shall have the right to maintain, remodel, and repair Improvements and constructed features (such as roads, trails, utilities and wells) on the Property existing as of the date of this Conservation Easement (as described and detailed in the Baseline Report), and in the event of their destruction, to reconstruct any such existing Improvement or constructed feature with another of similar size, function, capacity, location and material.

2.4 Agricultural Use. Except as provided in Paragraphs 2.5 and 2.6, there shall be no agricultural use of the property.

2.5 Grazing. Landowner shall not graze or pasture domestic animals on the Property for commercial purposes. This restriction shall not prevent the grazing or pasturing of animals used for Landowner's or Landowner's guests' recreation, or used in connection with activities allowed on the Property, provided that such animals are excluded from the Buffer Areas pursuant to Paragraph 2.7(a)(iv). No more than ten (10) Animal Units shall be permitted on the Property for these purposes. For purposes of this Conservation Easement: (a) an Animal Unit ("AU") equals 1,000 pounds of animal body weight, and (b) the following Animal Units shall apply to grazing animals: adult horses: 1.5 AU; colts (< 2 years): 0.5 AU. No other species are permitted without the Conservancy's prior written approval. In the event of division of the Property as provided in Paragraph 2.1, the grantor making the division retains the right to pasture all recreational animals permitted under this Paragraph unless such rights are allocated differently in the instrument effecting the division. Subsequent to a permitted division, the owners of the two (2) Parcels may reallocate such rights by instrument recorded in the Clerk's Office where this Conservation Easement is recorded.

2.6 Timber Harvest.

(a) Firewood. Landowner shall have the right to harvest timber from the Property in order to provide firewood for residences allowed on the Property.

(b) Commercial Timber Management. Landowner shall have the right to harvest timber from the Property for commercial purposes pursuant to a forest management plan, to be updated at least every ten (10) years, that is prepared by a professional forester and approved in writing by Conservancy and that is designed to protect soil stability, water quality and other conservation values of the Property, including without limitation, scenic, riparian and wildlife habitat values. The plan may allow for prescribed burning and monoculture cultivation. Landowner shall not cultivate any tree species not native to Virginia, or engage in monoculture using any species other than loblolly pine, without the Conservancy's prior written approval. Landowner shall provide advance notice of any timber sale planned for the Property. The Conservancy reserves the right to waive, in writing, the required forest management plan or portions thereof if Conservancy determines that the proposed forest management activity does not warrant development of a complete plan.

(c) Harvest Plan. A harvest plan must be submitted to Conservancy for its written approval at least thirty (30) days prior to any harvest of timber. No commercial silvicultural activity may occur until the forest management plan and a more specific harvest plan have been approved by Conservancy. Conservancy reserves the right to waive, in writing, the required harvest plan if it determines that the proposed harvest of timber is *de minimis* in nature. All forest management and harvesting activities on the Property must meet or exceed currently accepted silvicultural best management practices, as set forth in "Virginia's Forestry Best Management Practices for Water Quality (Virginia Department of Forestry, 2002)" and its successors ("Forestry BMPs"). The harvest plan shall include:

- (i) A statement signed by the forester preparing the harvest plan acknowledging that management activities follow the terms of this Conservation Easement and the forest management plan and will be supervised by the forester;
- (ii) Description of access to proposed timber sale area and any constraints to that access;
- (iii) Descriptive map(s) of all management areas, including logging deck(s), skid trails, roads, streams, Buffer Areas, stream crossings, and areas of special concern;
- (iv) Timber inventory in targeted management areas with volume, stocking, and species data, and projected yields, which may be estimated or omitted with Conservancy's prior approval in cases where it is not deemed necessary (such as pre-commercial thinning);
- v) Clear marking of Buffer Areas on the ground. The number of stream crossings should be minimized and carefully selected to minimize disturbance to the streams or drainage channels and surrounding soils and vegetation;

(vi) An inventory for the presence of rare, threatened or endangered species and other unique natural, geological or historic resources in targeted management areas which may require special treatment;

(vii) Prescribed activities and precautions including protection methods for any unique natural, geological, or historical areas and erosion and sedimentation control actions for water quality protection and a smoke management plan if fire is to be prescribed;

(viii) Aesthetic and recreational considerations including impacts on views from public roads. Aesthetic impacts should be minimized to the greatest extent possible by use of un-harvested buffers and careful selection of harvest areas, harvest techniques, and by avoiding the use of clear-cutting unless absolutely necessary and approved by Conservancy as part of the harvest plan; and

(ix) Plan for post-cutting treatments, including the re-vegetation of skid rows and logging decks with non-invasive seed mixes.

(d) Timber Management Roads and Trails. Landowner shall have the right to maintain, repair, and replace existing forest management roads and associated bridges and culverts on the Property. Landowner shall also have the right to construct new forest management roads, permanent and temporary bridges, and associated Improvements, provided that such new construction is limited to roads that are necessary to harvest timber on the Property, and further provided that the approximate location of any new road shall have been provided for in the forest management plan, or otherwise approved in writing by Conservancy. These provisions shall not apply to the establishment and use of temporary skid trails, which shall be permitted without Conservancy's prior approval. The siting, construction, and maintenance of new and existing roads, associated Improvements, and skid trails must meet or exceed Forestry BMPs.

2.7 Buffer Areas to Protect Aquatic Habitats and Water Quality. Buffer Areas ("Buffer Areas") are those areas of the Property located within one hundred (100) feet of all permanent and intermittent streams, wetlands, mudflats, and water bodies on or adjacent to the Property, including manmade ditches and ponds, as measured from the edge of the stream or feature under normal conditions (mean high water in tidal environments) and including the stream, wetland, mudflat or water body itself. Additionally, the Buffer Areas include portions of the Property greater than 100 feet from the edge of streams, wetlands, mudflats and water bodies in those areas depicted in Exhibit B. The Buffer Areas include those portions of the Property lying between a stream, wetland, mudflat or other water body and the boundary of the Property even if such distance is less than 100 feet. The extent and location of Buffer Areas are shown on Exhibit B and are described and depicted graphically in the Baseline Report.

(a) In order to protect aquatic habitats and water quality, within the Buffer Areas, there shall be:

- (i) No constructing or placing of any Improvements. Existing Improvements and constructed features, if any, which exist within the Buffer Areas as of the date of execution of this Conservation Easement may be maintained, repaired and replaced, but not enlarged.
- (ii) No constructing or placing of any new roads or utilities without Conservancy's prior written consent. Roads and utilities existing in the Buffer Areas as of the date of this Conservation Easement may be maintained or repaired, but not enlarged.
- (iii) No septic tanks or septic fields are permitted within the Buffer Areas.
- (iv) No livestock. If livestock are kept or maintained on the Property, they shall be excluded from the Buffer Areas by fencing to be installed and maintained by the Landowner.
- (v) No removal, destruction, or cutting of native vegetation.
- (vi) No use of fertilizers or biocides.
- (vii) No dumping of organic or inorganic materials.
- (viii) No disturbance of soils.
- (ix) No use of motorized vehicles unless on roads existing as of the date of this Conservation Easement or expressly permitted herein.

(b) Notwithstanding the foregoing, the following activities are permitted within the Buffer Areas:

- (i) Landowner shall have the right to remove, and consent to the removal of, invasive species (including without limitation those plants included on the most current list of Virginia Department of Conservation and Recreation's "Invasive Alien Plant Species of Virginia" or, if such list ceases to be published, a similar list promulgated by the Commonwealth of Virginia or the federal government, which Conservancy shall notify the Landowner is the list that shall be binding on the Landowner for purposes of this Conservation Easement). Landowner shall have the right to use biocides in these efforts.
- (ii) Landowner shall have the right to conduct stream or riparian restoration activities. Restoration activities can involve soil disturbance, provided such activities are deemed necessary in restoration plan approved in writing by Conservancy. In addition, fertilizers can be selectively applied to add in the establishment of native vegetation planted as part of restoration efforts.

(iii) Recreational activities, provided they do not cause substantial damage to or removal of the trees or other vegetation in the Buffer Areas or otherwise harm riparian and aquatic habitats associated with the Buffer Areas.

(c) Conservancy's Consent. Prior to engaging in activities permitted under Paragraphs 2.7(b)(i)-(ii), Landowner shall submit written description of proposed activity, with accompanying maps or sketches as appropriate, to the Conservancy for its review. The description shall be sufficiently detailed to allow the Conservancy to evaluate the proposed activity's conformance to the Conservation Easement, specifically that the proposed activity will be conducted such that it does not pose a long-term threat to the ecological integrity of the Buffer Area. Landowner shall not commence proposed activities until the Conservancy reviews and approves the proposed action.

2.8 Home Businesses. Any business that is conducted by, and in the home of, a person residing on the Property, is allowed provided that the traffic generated by the home business does not adversely impact the purposes of this Conservation Easement.

2.9 Recreational Uses. Landowner shall have the right to engage in and permit others to engage in recreational uses of the Property, including, without limitation, hunting, fishing, hiking, trapping and horseback riding, that require no surface alteration or other development of the land. Subject to applicable laws, Landowner shall have the right to lease the Property for hunting or to charge a fee for individuals to hunt on the Property. Pursuit of wildlife by any form of motorized transportation is not allowed.

2.10 Excavation. Except as necessary to accommodate the activities expressly permitted under this Conservation Easement, there shall be no ditching, draining, diking, filling, excavating, dredging, removal of topsoil, sand, gravel, rock, minerals or other materials, mining, drilling or removal of minerals, nor any building of roads or change in the topography of the Property or disturbance in the soil in any manner. Mining and hydrocarbon extraction are prohibited on the Property.

2.11 Destruction of Plants, Disturbance of Natural Habitat. Subject to the prior approval of Conservancy, Landowner shall have the right to cut and remove diseased or exotic trees, shrubs, or plants, and to cut firebreaks, except that such approval shall not be required in case of emergency firebreaks. Landowner shall also have the right to cut and remove trees, shrubs or plants to accommodate the activities expressly permitted under this Conservation Easement. There shall be no additional removal, harvesting, destruction or cutting of native trees, shrubs or plants. Except for use around Improvements or in gardens there shall be no planting of non-native trees, shrubs or plants on the Property. Furthermore, except to accommodate the activities expressly permitted under this easement, there shall be no use of fertilizers, plowing, introduction of non-native animals, or disturbance or change in the natural habitat in any manner.

2.12 Hydrology. Except as necessary to accommodate the activities expressly permitted under this Conservation Easement, there shall be no alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies on the Property.

2.13 No Biocides. There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, except: (a) as approved by Conservancy to control invasive species detrimental to the conservation values of the Property, (b) as approved by Conservancy as part of a forest management plan, or (c) as needed around or within Improvements on the Property.

2.14 No Pollution. There shall be no pollution, of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall activities be conducted on the Property that would be detrimental to water purity or that could alter the natural water level or flow in or over the Property.

2.15 Predator Control. Landowner shall have the right to control, destroy, or trap predatory and problem animals which pose a material threat to livestock and/or humans by means and methods approved by Conservancy. The method employed shall be selective and specific to individuals, rather than broadcast, nonselective techniques.

2.16 Archeological Investigation. Landowner may conduct archeological research on the Property provided that: (1) Landowner has obtained Conservancy's prior written approval; (2) Landowner gives prior notice and obtains necessary approval from the appropriate state or federal agency; and (3) any such disturbance and investigation is performed in such a manner as to minimize any adverse impact on the conservation values of the Property.

2.17 Density. Neither the Property nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density.

3. ADDITIONAL RIGHTS OF LANDOWNER. Landowner shall have the following additional rights:

3.1 Existing Uses. The right to undertake or continue any activity or use of the Property not prohibited by this Conservation Easement. Prior to making any change in use of the Property, Landowner shall notify Conservancy in writing to allow Conservancy a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement.

3.2 Transfer. The right to sell, give, mortgage, lease, or otherwise convey the Property subject to the terms of this Conservation Easement.

4. **CONSERVANCY'S RIGHTS.** To accomplish the purpose of this Conservation Easement, the following additional rights are reserved by Conservancy:

4.1 Right to Enforce. The right to preserve and protect the conservation values of the Property and enforce the terms of this Conservation Easement, including the right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use pursuant to Section 7 herein.

4.2 Right of Entry. The right of Conservancy's staff, contractors and associated natural resource management professionals to enter the Property after prior written notice to Landowner, for the purposes of: (a) inspecting the Property to determine if Landowner is complying with the covenants and purposes of this Conservation Easement; (b) enforcing the terms of this Easement; (c) taking any and all actions with respect to the Property as may be necessary or appropriate, with or without an order of court, to remedy or abate violations hereof; (d) monitoring and research as described below; and (e) management of exotic and invasive species as described below. Prior written notice is not required if Conservancy is entering upon the Property because of an ongoing or imminent violation that could, in the sole discretion of Conservancy, substantially diminish or impair the conservation values of the Property, as described in Section 7 herein.

4.3 Monitoring and Research. The right, but not the obligation, to monitor the plant and wildlife populations, plant communities and natural habitats on the Property and to actively protect and manage them, if necessary, to ensure their continued presence and viability on the Property. Landowner shall cooperate with Conservancy in establishing, at no expense to Landowner, a written Monitoring and Research Plan to direct the monitoring of and research on plant and wildlife populations, plant communities and natural habitats on the Property. Landowner agrees that all monitoring activity, natural resource inventory and assessment work or other natural resource research, conducted by Landowner or others, shall be reported to Conservancy.

4.4 Management of Exotics and Invasive Species. The right, but not the obligation, to control, manage or destroy exotic non-native species or invasive species of plants and animals that threaten the conservation values of the Property. Conservancy will consult with Landowner prior to implementing management activities.

5. **RESPONSIBILITIES OF CONSERVANCY AND LANDOWNER NOT AFFECTED.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Landowner, or in any way to affect any obligation of the Landowner as owner of the Property. Landowner shall have all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Among other things, this shall apply to:

Taxes - The Landowner shall be solely responsible for payment of all taxes and assessments levied against the Property.

Upkeep and Maintenance - The Landowner shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Conservancy shall have no obligation for the upkeep or maintenance of the Property.

6. **ACCESS.** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement.

7. **ENFORCEMENT.** The Conservancy shall have the right to prevent and correct violations of the terms of this Conservation Easement; to request corrective action sufficient to abate any violations; and to restore the Property to its previous condition at the time of this reservation. Landowner agrees that the Report shall be deemed to provide objective information concerning the Property's condition at the time of this reservation. Failure by the Landowner to abate the violation and take such other corrective action as may be requested by the Conservancy within thirty (30) days after receipt of such notice (the "cure period") shall entitle the Conservancy to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement; to require the restoration of the Property to its previous condition; to enjoin the non-compliance by *ex parte* temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from the noncompliance. Such damages, when recovered, may be applied by the Conservancy, in its sole discretion, to corrective action on the Property. If the court determines that the Landowner has failed to comply with this Conservation Easement, the Landowner shall reimburse the Conservancy for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court.

7.1 Emergency Enforcement. If the Conservancy, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the Conservancy may pursue its remedies under this paragraph without prior notice to the Landowner or without waiting for the cure period to expire.

7.2 Failure to Act or Delay. The Conservancy does not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Easement by any prior failure to act and the Landowner hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act or delay by the Conservancy, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Conservation Easement.

7.3 Violations Due to Causes Beyond Landowner's Control. Nothing herein shall be construed to entitle the Conservancy to institute any enforcement proceedings against the Landowner for any changes to the Property due to causes beyond the Landowner's control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Easement caused by the unauthorized wrongful acts of third persons, the Landowner agrees, upon request by the Conservancy, to assign its right of action to the Conservancy, to join in any suit, or to appoint the Conservancy its attorney-in-fact for the purposes of pursuing enforcement action, all at the election of the Conservancy.

7.4 Standing. By virtue of Conservancy's reservation of rights under this Conservation Easement, it shall be entitled, at its option, to standing before appropriate courts of law to pursue remedies or other matters which are necessary or incidental to the protection of the Property.

8. **TRANSFER OF EASEMENT.** The parties recognize and agree that the benefits of this easement are in gross and assignable. The Conservancy shall have the right to transfer or assign this Conservation Easement to any private nonprofit organization that at the time of transfer, is a "qualified organization" under IRC Section 170(h), and the organization expressly agrees to assume the responsibility imposed on the Conservancy by this Conservation Easement. If the Conservancy ever ceases to exist or no longer qualifies under IRC Section 170(h) or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility.

9. **TRANSFER OF PROPERTY.** Any time the Property, or any interest therein, is transferred by the Landowner to any third party, the Landowner shall notify the Conservancy in writing at least thirty (30) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Conservation Easement. The failure of the Landowner to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or of the transfer or limit their enforceability in any way.

10. **AMENDMENT OF EASEMENT.** This Conservation Easement may be amended only with the written consent of Landowner and Conservancy. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with IRC Section 170(h), or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with the Act, or any regulations promulgated pursuant to that law. The Conservancy and Landowner have no right or power to agree to any amendment that would affect the enforceability of this Conservation Easement.

11. **TERMINATION OF EASEMENT.** If it is determined that conditions on or surrounding the Property have changed so much that it is impossible to fulfill the conservation purposes set forth above, a court with jurisdiction may, at the joint request of both the Landowner and Conservancy, terminate this Conservation Easement.

At the time of the reservation of this Conservation Easement by the Conservancy, this Conservation Easement gives rise to a real property right, immediately vested in the Conservancy. If the easement is terminated and the Property is sold or taken for public use, then, as required by Sec. 1.170A-14(g)(6) of the IRS regulations, the Conservancy shall be entitled to a percentage of the gross sale proceeds or condemnation award (minus any amount attributable to new improvements made after the date of this conveyance, which amount shall be reserved to Landowner) equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of reservation of this Conservation Easement. The Conservancy shall use the proceeds consistently with the conservation purposes of this Conservation Easement.

12. **EMINENT DOMAIN.** Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Conservancy and the Landowner shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Conservancy's and Landowner's interests as determined above and Conservancy's proceeds shall be used as specified above. All expenses incurred by the Conservancy and the Landowner in such action shall be paid out of the recovered proceeds.

13. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of the Commonwealth of Virginia, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

14. **NOTICES.** Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, or by recognized national overnight courier, to Landowner and Conservancy, respectively, at the following addresses, unless a party has been notified by the other of a change of address in such manner.

To Landowner:

with copy to:

To the Conservancy:

Virginia Chapter
The Nature Conservancy
654 Peter Jefferson Place, Suite 190
Charlottesville, Virginia 22911

with copy to:

Legal Department
Charlottesville Legal Office
The Nature Conservancy
654 Peter Jefferson Place, Suite 190
Charlottesville, Virginia 22911

15. **ENVIRONMENTAL CONDITION.** If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment, caused by or through the neglect of Landowner, Landowner agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Conservancy, in which case Conservancy shall be responsible therefor. Landowner releases and shall indemnify, defend and hold Conservancy and its directors, officers and employees, harmless from any and all liability, litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, related to Landowner's obligations pursuant to this Paragraph and/or

related to Landowner's use, deposit or release of any hazardous, toxic, polluting or otherwise contaminating substances regulated by any federal or state environmental laws or regulations. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability to Conservancy to exercise physical or managerial control over the day-to-day operations of the Property, or any of Landowner's activities on 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"), and any corresponding state statute.

16. **SEVERABILITY.** If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.

17. **PARTIES.** Every provision of this Conservation Easement that applies to the Landowner or Conservancy shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear.

18. **RE-RECORDING.** In order to ensure the perpetual enforceability of the Conservation Easement, the Conservancy is authorized to re-record this instrument or any other appropriate notice or instrument.

19. **MERGER.** The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

20. **SUBSEQUENT LIENS ON PROPERTY.** No provisions of this Conservation Easement should be construed as impairing the ability of Landowner to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinate to this Conservation Easement.

21. **ACCEPTANCE BY CONSERVANCY & EFFECTIVE DATE.** As attested by the signature of its authorized representative affixed hereto, the Conservancy hereby retains and accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Clerk's Office of the Circuit Court of King and Queen County, Virginia.

RESERVED this Conservation Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto, either in law or in equity, either in possession or expectancy, for the proper use and benefit of The Nature Conservancy, its successors, and assigns forever.

TO HAVE AND TO HOLD the said Conservation Easement unto The Nature Conservancy forever.

IN WITNESS WHEREOF, The Nature Conservancy has executed and sealed this document on the _____ day of _____, 20__.

THE NATURE CONSERVANCY,
a District of Columbia non-profit corporation

By: _____

Its: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, who is _____ of The Nature Conservancy, a District of Columbia non-profit corporation, on behalf of the corporation.

My commission expires: _____.

Notary Public
Notary Registration No. _____

ACCEPTANCE BY LANDOWNER

_____, Landowner, hereby executes and seals this document to indicate acceptance of the terms contained herein on this _____ day of _____, 20__.

Landowner:

_____ [SEAL]

STATE OF _____

CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____.

My commission expires: _____.

Notary Public

Notary Registration No. _____

Exhibit List:

Exhibit A – Property Descriptions (“Mitchell Hill” and “Byrd”)

Exhibit B – Easement Terms Map

EXHIBIT A
Property Description

Milby-Shaver Tract:

All that certain tract or parcel of land, containing One Hundred Twenty-Four and one-half (124 ½) acres, more or less, situated in Stevensville Magisterial District, King and Queen County, Virginia, near Carlton's Store and bounded as follows: on the East by land now or formerly of R. D. Allen; on the West by land now or formerly of Sarah White; on the North by land now or formerly of George Cauthorne; and, on the South by land now or formerly of W. G. Bean, and being a portion of the land of which Spottswood Bird died seized and possessed.

This is the same real property conveyed to The Nature Conservancy, a District of Columbia non-profit corporation, by deed dated June 17, 2011 from William E. Milby, Trustee, et al., of record in the Clerk's Office of the Circuit Court of King and Queen County, Virginia as Instrument No. 110000493.

Milby Tract:

Parcel 1: All that certain tract or parcel of land known as "Mitchell Hill", in Stevensville Magisterial District, King and Queen County, Virginia, containing 230.48 acres, but be the same however much more or less, and is sold in gross and not by the acre, situated partially on State Route 14 and bounded by the lands now or formerly of The Chesapeake Corporation of Virginia, William H. Milby and C. H. Oliver and also bounded by old Route 14 and present Route 14, and also bounded by lands now or formerly of Robert L. Norman.

LESS AND EXCEPT 1.02 acres, more or less, conveyed to the Commonwealth of Virginia by Deed from William S. Beane, et al., dated March 1, 1956 and recorded in the Clerk's Office of the Circuit Court of King and Queen County, Virginia in Deed Book 46 at Page 489, and as more particularly shown and described on that certain plat recorded in State Highway Plat Book 1 at Page 143 in the aforesaid Clerk's Office, to which reference is made for a more accurate and definite description of the property conveyed.

Parcel 2: All that certain tract or parcel of land, in Stevensville Magisterial District, King and Queen County, Virginia, as more particularly shown and described on Sheet 4 of the plans for Route 14, State Highway Project 3749-06, lying northeast of and adjacent to the northeast proposed right of way line of Route 14, from a point approximately 40 feet opposite approximate Station 32+30 (survey centerline) to a point approximately 45 feet opposite approximate Station 42+20 (survey centerline), containing 1.09 acre, more or less, and as more particularly shown and described on that certain plat recorded in State Highway Book 4 at Page 273 in the Clerk's Office of the Circuit Court of King and Queen County, Virginia, to which reference is made for a more accurate and definite description of the property conveyed.

This is the same real property conveyed to The Nature Conservancy, a District of Columbia non-profit corporation, by deed dated June 17, 2011 from William E. Milby, Successor Trustee, et al., of record in the Clerk's Office of the Circuit Court of King and Queen County, Virginia as Instrument No. 110000494.

EXHIBIT B

Map depicting various spatial concepts of Conservation Easement