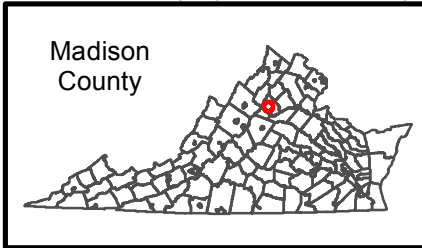


Legend

- Secondary Roads
- New Easement Boundary
- Existing VOF Easements
- Other Conserved Lands



San Miguel East, L.P.
162.7065 acres
Board Meeting Date: 9/24/2015

0 1000 2000 Feet

This map is for general reference and display purposes only.

Datum: North American Datum 1983

Map created 6/17/2015 by Anna Clayton Bullock.
 Source data: Other Conserved Lands - VADCR 2015;
 Topo map-USGS/NGS-VGIN; Roads-VDOT;
 All Else-VOF.

USGS Quadrangle: Madison

Madison Co., VA

Inst. No. 160001430

NOTE TO TITLE EXAMINERS: This open-space easement contains restrictions on permitted uses and activities on the property described below, which run with the land and are applicable to the property in perpetuity.

Prepared by: Alan Dranitzke

Bar No. 43468

PO Box 501

Washington, VA 22747

Return to: ~~Virginia Outdoors Foundation~~
~~1010 Harris Street, Suite 2~~
~~Charlottesville VA 22903~~

TAX MAP NO.: TM 37-30

Exempted from recordation tax
under the Code of Virginia (1950), as amended,
Sections 58.1-811 (A) (3), 58.1-811 (D) and 10.1-1803
and from Circuit Court Clerk's fee under Section 17.1-266

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made this 14th day of October, 2016, between SAN MIGUEL EAST, LLC ("Grantor") and the VIRGINIA OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA ("Grantee") (the designations "Grantor" and "Grantee" refer to Grantor and Grantee and their respective successors and assigns); witnesseth:

RECITALS:

R-1 Grantor is the owner in fee simple of real property situated in Madison County, Virginia, containing in the aggregate 162.7065 acres as further described below (the "Property"), and desires to give, grant, and convey to Grantee a perpetual open-space easement over the Property as herein set forth.

R-2 Grantee is a governmental agency of the Commonwealth of Virginia and a "qualified organization" and "eligible donee" under Section 170(h)(3) of the Internal Revenue Code (references to the Internal Revenue Code in this Easement shall be to the United States Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings issued thereunder, or the corresponding provisions of any subsequent federal tax laws and regulations) (the "IRC") and Treasury Regulation Section 1.170A-14(c)(1) and is willing to accept a perpetual open-space easement over the Property as herein set forth.

RETURN TO:
RAPPAHANNOCK TITLE, LLC
P.O. BOX 501
WASHINGTON, VA 22747

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

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

R-5 Chapter 525 of the Acts of 1966, Chapter 18, Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia, declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Virginia Outdoors Foundation to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space, and recreational lands of the Commonwealth.

R-6 As required under Section 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the County of Madison Comprehensive Plan adopted on February 14, 2012, and the Property is located within an area that is designated as A-1 and C-1 on the county’s future land use map.

R-7 This Easement is intended to constitute (i) a “qualified conservation contribution” as defined in IRC Section 170(h)(1) and as more particularly explained below, and (ii) a qualifying “interest in land” under the Virginia Land Conservation Incentives Act of 1999 (Section 58.1-510 *et seq.* of the Code of Virginia (1950), as amended).

R-8 This Easement is intended to be a grant “exclusively for conservation purposes” under IRC Section 170(h)(1)(C), because it effects “the preservation of open space (including farmland and forest land)” under IRC Section 170(h)(4)(A)(iii); specifically the preservation of open space on the Property is pursuant to clearly delineated state governmental conservation policies and for the scenic enjoyment of the general public and will yield a significant public benefit.

R-9 This open-space easement in gross constitutes a restriction granted in perpetuity on the use that may be made of the Property and is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below:

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

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

b. The Open-Space Land Act cited above;

c. Chapter 18, of Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia cited above;

d. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, Sections 58.1-510 through 58.1-513 of the Code of Virginia cited above, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth's unique natural resources, wildlife habitats, open spaces and forest resources;

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

f. Governor McAuliffe's goal to identify, conserve, and protect at least 1,000 Virginia Treasures by the end of his term. Virginia Treasures include "Virginia's most important ecological, cultural, scenic and recreational assets as well as its special lands." (dcr.virginia.gov/Virginia-treasures); and

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

a. its comprehensive plan adopted on February 14, 2012, to which plan the restrictions set forth in this Easement conform and which contains the following:

Goal: Protect and enhance the forest, open spaces, and working lands that support the County's quality of life and economic basis.

Objective 2: Conserve significant natural resources and working lands through a combination of voluntary economic and regulatory programs.

Major Strategies:

1. The County supports the right of private landowners to donate or sell conservation easements to qualified public or private organizations.
7. Discourage mining or mineral extraction in Agricultural or Conservation Zones.

8. Ensure that new construction adapts to existing topography and setting and that land disturbances are kept to a minimum.
9. Discourage development that may cause environmental damage to sensitive areas.

Goal: Promote and sustain agricultural and forestry as the highest priority industries in the County.

Objective 1: Limit residential development in Agricultural and Conservation Zones.

Major Strategies:

1. Treat residential development as a secondary use in Agriculture and Conservation Zones.

Goal: Conserve and protect the water resources of the County.

Objective 2: Implement plans and practices that improve water quality and reduce non-point source pollution.

Major Strategies:

1. Support utilization of Best Management Practices (BMPs) for all agriculture and forestry production.

Goal: Expand and enhance tourism based recreational opportunities in Madison County.

Objective 1: Ensure protection of the natural, cultural, scenic and historic resources that contribute to the enjoyment of citizens and visitors.

Major Strategies:

1. Develop a comprehensive open space plan to identify, protect and enhance key resources of the County.

Goal: Maintain agriculture and forestry as the primary uses in the County.

Objective 1: Develop a plan for providing land owners options for the voluntary preservation of farm and forest lands.

Major Strategies:

2. The County supports the rights of private landowners to donate or sell conservation easements to qualified public or private organizations.

Goal: Maintain agriculture and forestry as the primary land uses in the County, and preserve agricultural and conservation land use when such use is more sustainable. Provide a hierarchical use structure in these areas that favor farming and forestry to residential developments.

b. Correspondence dated May 9, 2016 from Betty Grayson, Zoning Administrator at Madison County, acknowledging that contribution of this Easement to Grantee and the restrictions set forth herein conform to the land use plan and policies of the county.

R-10 The Property contains open pasture and forested lands extending up onto the slopes and ridgetop of Blakey's Ridge and fronts on and contains tributaries to the Rapidan River, providing habitat and wildlife corridors for many species.

R-11 The Property fronts on the Rapidan River, designated by the Department of Conservation and Recreation as a potential Virginia Scenic River, and lies within the Rapidan River watershed, the Rapidan River being a tributary of the Rappahannock River, the source of the public water supply of downstream communities including the City of Fredericksburg, and a major tributary of the Chesapeake Bay. Protection of said waters by limiting development will help implement the goals of the Chesapeake Bay Preservation Act Sections 10.1-2100 *et seq.* of the Code of Virginia (1950), as amended, and support the land conservation goals of the interstate Chesapeake Bay Program, and the Federal Executive Order 13508 (5/19/09) strategy to permanently protect two million acres in the bay watershed by 2025.

R-12 Further related to benefiting the Chesapeake Bay conservation efforts, an open-space easement on the Property also contributes to the "Goals and Outcomes" of the 2014 Chesapeake Watershed Agreement, for which Governor McAuliffe affirmed the Commonwealth's commitment on June 16, 2014, as a member of the Chesapeake Executive Council, making Virginia a partner in the agreement among six states, the District of Columbia, The Chesapeake Bay Commission, and seven federal agencies. Protecting the Property supports two of the goals outlined in this agreement:

- Land Conservation Goal: By 2025, protect an additional two million acres of lands throughout the watershed . . . and reduce the rate of conversion of agricultural lands, forests, and wetlands as well as the rate of changing landscapes from more natural lands that soak up pollutants to those that are paved-over, hardscaped or otherwise impervious.
- Vital Habitats Goal: Continually improve stream health and function throughout the watershed . . . restore and sustain naturally reproducing brook trout populations in the Chesapeake headwater streams . . . Restore 900 miles per year of riparian forest buffer and conserve existing buffers until at least 70 percent of the riparian areas throughout the watershed are forested.

R-13 The Property was given an exceptionally high watershed integrity value in the 2011 Watershed Integrity Model from the Virginia Commonwealth University Center for

Environmental Studies (VCU-CES), conducted in cooperation with certain state agencies in Virginia. The restrictions set forth herein, helping to preserve the Property in a relatively undeveloped state, allow for retention and expansion of forests and help preserve watershed and water quality integrity.

R-14 The Property is visible from the Shenandoah National Park at a distance of approximately 1 1/2 miles, and the protection of the Property by this Easement will preserve the viewshed enjoyed by the public from that park.

R-15 The Property lies adjacent to and near other protected lands under open-space easements deeded to Grantee and near the Department of Game and Inland Fisheries (DGIF) Rapidan Wildlife Management Area and the Piedmont Virginia Birding and Wildlife Trail managed by DGIF. Protection of the Property by this Easement contributes to the open-space values of such other land under easement and the wildlife management area.

R-16 Approximately 50% of the Property has been identified by the Virginia Department of Forestry as containing forested areas with the highest ranking in forest conservation value, and protection of the Property in perpetuity hereunder helps ensure that the forested areas remain available for wood products, watershed protection, and wildlife habitat.

R-17 This Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in these recitals and in Section I below.

R-18 Grantor and Grantee desire to protect in perpetuity the conservation values of the Property as specified in Section I by restricting the use of the Property as set forth in Section II.

R-19 Grantee has determined that the restrictions set forth in Section II (the Restrictions) will preserve and protect in perpetuity the conservation values of the Property and will limit use of the Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by this Easement.

R-20 Grantee, by acceptance of this Easement, designates the Property as property to be retained and used in perpetuity for the preservation and provision of open-space land pursuant to the Open-Space Land Act.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein and made a part hereof, and in consideration of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant and convey to Grantee for the public purposes set forth in Section I below an open-space easement in gross (this "Easement") over, and the right in perpetuity to restrict the use of, the Property, which is described below and consists of 162.7065 acres located in Madison County, Virginia, near Graves Mill, fronting on State Route 676, to-wit:

ALL THAT CERTAIN tract or parcel of land, together with buildings thereon and appurtenances therewith connected, lying and being situate in Rapidan Magisterial District, Madison County, Virginia, containing 162.7065 acres, more or less, as shown on a plat of

survey by Aaron Mountain Surveys, Robert L. Boykin, Jr., L.S., entitled "Plat Showing Boundary Survey on the Land of San Miguel East, L.P." dated December 17, 2009, and recorded March 30, 2016 with Instrument No. 16-344 at Plat Book 39 Page 018 among the Land Records in the Clerk's Office of the Circuit Court for Madison County, Virginia.

AND BEING the same property conveyed to San Miguel East, LLC, a Virginia limited liability company, by Deed from San Miguel East, L.P., a Virginia limited partnership, dated March 17, 2016 and recorded March 30, 2016 as Instrument No. 16-344 among the aforesaid land records.

The Property is shown as Tax Map No. 37-30 among the land records of the County of Madison, Virginia. **Even if the Property may have been acquired previously as separate parcels, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.**

SECTION I - PURPOSES

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

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

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

SECTION II – RESTRICTIONS

Restrictions are hereby imposed on the use of the Property pursuant to the public policies set forth above. The acts that Grantor covenants to do and not to do upon the Property, and the restrictions that Grantee is hereby entitled to enforce, are and shall be as follows:

1. DIVISION.

(i) Separate conveyance of a portion of the Property or division of the Property is prohibited. For purposes of this Easement, division of the Property includes, but is

7 of 22

not limited to, creating a subdivision plat, judicial partitioning of the Property, testamentary partitioning of the Property, or pledging for debt of a portion of the Property.

(ii) The acquisition of a *de minimis* portion of the Property adjacent to State Route 676 for minor road improvements shall not be considered a division of the Property, and neither the acquisition of such a *de minimis* portion of the Property nor the use of the portion of the Property so acquired shall be prohibited by this Easement, provided that Grantee approves such conveyance or taking, which approval shall be contingent upon the project including all reasonable actions, such as landscaping or topographic improvements, to minimize the project's impact on the Property and prevent harm to its conservation values. Grantor reserves its separate right to approve such acquisition. Use of the Property for such a project is limited to minor improvements to Route 676 in its present alignment, including, but not limited to, maintenance, correction, repair, or upgrading of the existing public road. Such improvements could include, but are not limited to, the addition or renovation of ditches, box culverts, drainage swales, side slopes, curbing, re-grading, or enhancements, such as pull-offs, bike lanes, and restoration projects. For the purpose of this paragraph, "minor road improvements" does not include the addition of new travel lanes, except bike lanes. Any portion of the Property acquired from Grantor pursuant to this paragraph shall remain subject to the terms and restrictions of this Easement.

2. BUILDINGS, STRUCTURES, ROADS, AND UTILITIES.

(i) No buildings, structures, roads or utilities, other than the following, are permitted on the Property. Such buildings and structures are subject to subparagraph 2. (iv) **Siting of buildings and structures** below:

(a) **Dwellings and non-residential outbuildings and structures.** Two (2) dwelling units, such as detached or attached dwellings, barn or garage apartments, or cabins, each of which may be used by one or more persons or families.

(1) The two dwelling units shall not exceed an aggregate of 6,500 square feet of above-ground enclosed living area.

(2) Non-residential outbuildings and structures commonly and appropriately incidental to such dwellings sized appropriately to serve as amenities to residential use are permitted.

(3) Such dwellings shall not individually exceed 4,500 square feet of above-ground enclosed living area without Grantee's prior review and written approval, which approval shall take into consideration the impact of the size, height and siting of the proposed dwellings on the scenic and other conservation values of the Property.

(4) Grantor shall give Grantee 30 days' written notice before beginning construction or enlargement of a dwelling on the Property; and

(b) **Farm buildings or structures.** Farm buildings or structures, except that a farm building or farm structure exceeding 4,500 square feet in ground area may not be

constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed building or structure on the conservation values of the Property. For purposes of this paragraph (b), a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in Section II Paragraph 3(i) (a) below; and

(c) **Buildings for the processing and sale of farm or forest products or certain animal-related uses.** Buildings for the processing and sale of farm or forest products produced or partially produced on the Property not exceeding 4,500 square feet of enclosed area in the aggregate and not individually exceeding 2,500 square feet of enclosed area. For purposes of this paragraph (c), a building for the processing and sale of farm or forest products shall mean a building originally constructed and used for the activities specified in Section II Paragraph 3(i)(b) below. In addition, subject to the written approval of Grantee, kennels, wildlife rehabilitation centers, veterinary clinics and buildings used for similar enterprises (with the square footage limitations set forth above) may be constructed; approval shall be contingent upon Grantee's determination that the construction of such buildings is consistent with the conservation purposes of this Easement and protective of the conservation values identified herein and that the buildings are located at sites on the Property not adversely impacting such conservation values; and

(d) **Roads.**

(1) Private roads to serve permitted buildings or structures; and roads with permeable surfaces for permitted uses and activities, such as farming or forestry.

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

(e) **Utilities.** Public or private utilities to serve permitted buildings, structures, or activities on the Property. Public or private utilities to be constructed in whole or in part to serve other properties shall not be constructed on, under, or over the Property unless Grantee determines that the construction and maintenance of such utilities will cause no more than minimal impairment of the conservation values of the Property and gives its prior written approval for such construction and maintenance. Approval or disapproval of such construction and maintenance shall take into consideration the visibility and any other adverse impact of such utilities on the conservation values of the Property. Grantor reserves its separate right to approve such public or private utilities; and

(f) **Alternative energy structures.** Alternative energy structures used to harness natural renewable energy sources, such as sunlight, wind, water, or biomass, and scaled to provide electrical energy or pump water for permitted dwellings, other buildings, structures, and activities on the Property, which limitation shall not be deemed to prohibit the sale of excess power generated incidentally in the operation of such structures and associated equipment, including, but not limited to, solar panels, wind turbines, and micro-hydro installations; and

(g) **Small-scale miscellaneous buildings or structures.** Small-scale miscellaneous buildings and structures, the existence of which is consistent with the conservation purposes of this Easement and which will not impair the conservation values protected herein, such as hunting stands, wildlife observation structures, fences, boardwalks, structures for crossing streams or wetlands (all subject to the limitations set forth in Section II, Paragraph 5(ii) below); and

(h) **Signs.** Signs (but not billboards or other signs larger than 32 square feet in area).

(ii) Grantor shall have the right to construct any dwellings, other buildings, structures, roads, and utilities permitted in Section II Paragraph 2(i) above and to repair, maintain, renovate, expand, and replace any permitted dwellings, other buildings, structures, roads, and utilities on the Property, within the limitations set forth in this Easement.

(iii) All or a portion of the allowable square footage for dwellings set forth in Section II Paragraph 2(i)(a) above may be allocated to any number of buildings to be used for natural resource-based educational, scientific, or recreational purposes, provided that Grantee determines that the conversion of dwellings or the construction of new buildings for such purposes is consistent with the conservation purposes of this Easement, will not impair the conservation values protected herein, and gives prior written approval of such conversion or construction.

(iv) **Siting of buildings and structures.** To protect the scenic values of the Property, no buildings or structures larger than 400 square feet in ground area shall be constructed above the 1,100-foot contour elevation as shown on the sketch attached hereto as Exhibit A. (See Section II Paragraph 5 (i) for further restrictions on improvements in the riparian protection zones.)

(v) The collective footprint of all buildings and structures on the Property, excluding linear surfaces, such as roads, driveways, walls, fences, and boardwalks, shall not exceed **0.75%** of the total area of the Property, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values of the Property, Grantee may approve such increase. For the purpose of this paragraph the collective footprint is the ground area measured in square feet of the buildings and structures set forth in Section II Paragraph 2(i)(a) through (c), (f), and (g) and Section II Paragraph 2(iii) above and all other impervious surfaces, excluding linear surfaces, such as roads, driveways, walls, fences, and boardwalks.

3. INDUSTRIAL AND COMMERCIAL ACTIVITIES ON THE PROPERTY.

(i) Industrial or commercial activities on the Property are limited to the following:

(a) agriculture (including livestock production), equine activities, or forestry;

(b) processing or sale of farm or forest products produced or partially produced on the Property and approved animal-related uses in buildings permitted in Section II Paragraph 2(i)(c) above;

(c) small-scale incidental commercial or industrial operations compatible with activities set forth in (a) above that Grantee approves in writing as being consistent with the conservation purpose of this Easement;

(d) activities, other than those already permitted in (a) above, that can be, and in fact are, conducted within permitted buildings without material alteration to their external appearance, provided that such activities to be conducted in buildings exceeding 10,000 square feet in ground area are subject to the written approval of Grantee, which approval shall take into consideration the impact of such activities and any proposed associated infrastructure improvements on the conservation values of the Property;

(e) the sale of excess power generated incidentally in the operation of approved alternative energy structures and associated equipment as provided in Section II Paragraph 2 (i)(f) above;

(f) activities to restore or enhance wetlands or streams or restore, enhance, or develop other ecosystem functions on the Property including, but not limited to, stream bank restoration, wetland and stream mitigation, biological carbon sequestration and biodiversity mitigation, provided that such activities are not in conflict or inconsistent with the conservation purpose of or the restrictions set forth in this Easement and that prior written approval for same shall have been obtained from Grantee. Grantee is not responsible for monitoring any such activities and has no obligation to enforce the provisions of any permit(s), restriction(s), or easement(s) therefor. Subject to Grantee's approval, Grantor is free to participate in same in Grantor's discretion and to retain any remuneration derived therefrom;

(g) outdoor activities that do not permanently alter the physical appearance of the Property and that do not impair the conservation values of the Property herein protected; and

(h) natural resource-based educational, scientific, or recreational activities, provided that they are consistent with the conservation purposes of this Easement and do not impair the conservation values protected herein.

(ii) Notwithstanding any other provision of this Easement, no commercial recreational use (except for *de minimis* commercial recreational uses) shall be allowed on the Property.

4. **MANAGEMENT OF FOREST.** Best Management Practices (BMPs), as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material timber harvest or land-clearing activity is undertaken. A pre-harvest plan shall be submitted to Grantee for approval no later than 14 days before the proposed date of a material timber harvest, which approval shall take into consideration whether or not the pre-harvest plan is consistent with the terms of this Easement. The pre-harvest plan shall describe the BMPs to be used in sufficient detail to ensure that water quality will be protected.

The following activities do not constitute material timber harvesting or land clearing and do not require the use of BMPs or a pre-harvest plan: the cutting, clearing, or removal of trees on less than 10 acres of the Property at any one time (i) for the construction or maintenance of permitted roads, trails, utilities, buildings, structures, or ponds, (ii) for firewood for Grantor's domestic use, (iii) which are invasive species, (iv) which pose a threat to the health or safety of persons, property, or livestock, (v) which are dead, diseased, or dying, or (vi) for other permitted activities on the Property, except timber harvesting or land clearing.

5. **RIPARIAN PROTECTION ZONES.**

To protect water quality and natural habitat, riparian protection zones (RPZs) shall be maintained on the Property as shown on Exhibit A, attached hereto and made a part hereof, and as shown in the Baseline Documentation Report.

Such zones are made up of a 100-foot riparian buffer along the edge of the Rapidan River and the edges of the tributary on the Property, as measured from the tops of the banks of the watercourses.

(i) Within the RPZs there shall be:

- (a) no buildings or other substantial structures constructed;
- (b) no new paved roads or paving of existing roads without Grantee's approval;
- (c) no storage of manure, fertilizers, chemicals, machinery or equipment;
- (d) no removal of trees, except
 - (1) removal of invasive species,
 - (2) removal of dead or diseased trees,
 - (3) removal of trees posing a threat to human or livestock health or safety,
 - (4) minimal removal of trees for the purpose of maintaining existing roads,
 - (5) minimal removal of trees for creation of small wildlife plots, and
 - (6) minimal removal of trees for construction and maintenance of new permitted roads, stream crossings, dams, and any other structures permitted in subparagraph (ii) below; and

- (e) no plowing, cultivation, filling, dumping, or other earth-disturbing activity, except as may be reasonably necessary for the activities set forth in subparagraph (ii) below.

In addition, livestock shall be excluded from the RPZ along the Rapidan River and livestock shall be excluded from the RPZ along the tributary and from the tributary itself.

(ii) Permitted within the RPZs are:

- (a) erosion control or restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3 (i)(f) above;
- (b) fencing along or within the RPZs;
- (c) construction and maintenance of stream crossings (including improvements over the RPZs to access crossings) for pedestrians, livestock and vehicles, which crossings minimize obstruction of water flow;
- (d) creation and maintenance of trails and roads without hard surfaces, and maintenance of existing and new permitted trails and roads;
- (e) creation and maintenance of natural habitat and small wildlife plots;
- (f) planting of trees, shrubs, grasses, or other vegetation; and
- (g) clearing, grading and dam construction to create ponds (but not storm water retention or detention ponds to serve other properties),

(iii) Subsequent to the recordation of this Easement the Rapidan River or the tributary may meander or change course naturally, or as a result of the restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3 (i)(f) above. In such event, the RPZs shall remain the same width, but move relative to the movement of the Rapidan River or the tributary. In such event, any buildings or structures that were outside of the original RPZs and are determined to be within the new RPZs shall not be considered in violation of these restrictions and may be maintained and replaced at such locations, but not enlarged.

6. GRADING, BLASTING, FILLING AND MINING.

(i) Grading, blasting, filling, or earth removal shall not materially alter the topography of the Property except (a) for clearing, grading, and dam construction to create and maintain ponds (but not storm water retention or detention ponds to serve other properties), (b) for restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3 (i)(f) above, (c) for erosion and sediment control pursuant to an erosion and sediment control plan, or (d) as required in the construction of permitted buildings, structures, roads, and utilities. Grantee may require appropriate sediment and erosion control practices to be undertaken for buildings, structures, roads, or utilities that require Grantee's approval in Section II Paragraph 2 (i) above, as a condition of such approval.

(ii) Grading, blasting, filling, or earth removal in excess of one acre for the purposes set forth in subparagraphs (a) through (d) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities, including the conversion of forest land into farmland, shall not constitute a material alteration of the topography. Surface mining on the Property and subsurface mining from the surface of the Property are prohibited. Dredging on or from the Property is prohibited, except for maintenance of any ponds on the Property.

SECTION III – ENFORCEMENT

1. **RIGHT OF INSPECTION.** Representatives of Grantee may enter the Property from time to time for purposes of inspection (including photographic documentation of the condition of the Property) and enforcement of the terms of this Easement after permission from or reasonable notice to Grantor or Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with notice to Grantor or Grantor's representative being given at the earliest practicable time.
2. **ENFORCEMENT.** Grantee, in accepting this Easement, commits to protecting the conservation purposes of the Easement and has the resources necessary to enforce the restrictions set forth herein. Grantee has the right to bring a judicial proceeding to enforce the restrictions, which right specifically includes the right (i) to require restoration of the Property to its condition at the time of the conveyance or to require restoration of the Property to its condition prior to a violation hereof, provided that such prior condition was in compliance with the restrictions of and consistent with the purpose of this Easement; (ii) to recover any damages arising from non-compliance; (iii) to compel Grantor to disgorge to Grantee any proceeds received in activities undertaken in violation of the restrictions set forth herein; (iv) to require Grantor to replant or pay for the replanting of trees on the Property in the event that Grantor harvests timber in violation of any restrictions set forth in Section II above; (v) to enjoin non-compliance by temporary or permanent injunction; and (vi) to pursue any other appropriate remedy in equity or law. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs, expert-witness costs, and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay shall not waive or forfeit its right to take such action as may be necessary to ensure compliance with this Easement, and Grantor hereby waives any defense of waiver, estoppel or laches with respect to any failure to act by Grantee. Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage to the Property or change in the condition of the Property (i) caused by fire, flood, storm, Act of God, governmental act, or other cause outside of Grantor's control or (ii) resulting from prudent action taken by Grantor to avoid, abate, prevent, or mitigate such damage to or changes in the condition of the Property from such causes. Nothing in this Easement shall create any right in the public or any third party to maintain any judicial proceeding against Grantor or Grantee.

SECTION IV – DOCUMENTATION

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

SECTION V – GENERAL PROVISIONS

1. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions, and restrictions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
2. **NO PUBLIC ACCESS AND GRANTOR'S RETENTION OF USE.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Subject to the terms hereof, Grantor retains the exclusive right to such access and use including, but not limited to, the right to hunt or fish on the Property.
3. **GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor represents, covenants, and warrants that (a) Grantor has good fee simple title to the Property (including the mineral rights located under the surface of the Property), (b) Grantor has all right and authority to give, grant and convey this Easement, (c) the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record), including, but not limited to, any leases, option contracts, mortgage liens, deeds of trust liens, or other liens not subordinated to this Easement, (d) no consent of any third party is required for Grantor to enter into this Easement, (e) each person and/or entity signing on behalf of Grantor is authorized to do so, and (f) Grantor is and shall be duly organized and legally existing under the laws of the Commonwealth of Virginia.

4. **ACCEPTANCE.** Grantee accepts this conveyance pursuant to Virginia Code Section 10.1-1801, which acceptance is evidenced by the signature of a Deputy Director or Staff Attorney by authority granted by Grantee's Board of Trustees.
5. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, has been or shall be proffered or dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; proffered or dedicated as open space in, or as part of, any real estate development plan; or proffered or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement, or otherwise.
6. **CONSTRUCTION.** Pursuant to the public policy of the Commonwealth of Virginia favoring land conservation, any general rule of construction to the contrary notwithstanding (including the common law rule that covenants restricting the free use of land are disfavored and must be strictly construed), this Easement shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses consistent with the purpose of and not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a "qualified conservation contribution" as that term is defined in IRC Section 170(h)(1) and Treasury Regulation Section 1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.
7. **REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property. Failure of Grantor to comply with this requirement shall not impair the validity of the Easement or limit its enforceability in any way.
8. **NOTICE TO GRANTEE AND GRANTOR.** For the purpose of giving notices hereunder the current address of Grantee is Main Street Centre, 600 East Main Street, Suite 402, Richmond, Virginia 23219, and any notice to Grantor shall be given to the recipient at the address at which the real estate tax bill is mailed for the Property or portion thereof that is the subject of the notice and which is currently 1350 Connecticut Avenue, N.W., Suite 800, Washington, D.C. 20036-1733.

Grantor shall notify Grantee in writing at or prior to closing on any *inter vivos* transfer, other than a deed of trust or mortgage, of all or any part of the Property.

In addition, Grantor agrees to notify Grantee in writing before exercising any reserved right that Grantor believes may have an adverse effect on the conservation or open-space values or interests associated with the Property. (The purpose of requiring such notice is to afford Grantee an adequate opportunity to monitor such activities to ensure that they are carried out in a manner consistent with the purpose of this Easement; such notice shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement.)

Failure of Grantor to comply with these requirements shall not impair the validity of the Easement or limit its enforceability in any way.

9. **TAX MATTERS.** The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in Treasury Regulation Section 1.170A-13(c)(5), and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from conveyance of this Easement, that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.
10. **NO MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.
11. **ASSIGNMENT BY GRANTEE.** Assignment of this Easement is permitted by Virginia Code Section 10.1-1801, but Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (i) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity, (ii) the transferee then qualifies as an eligible donee as defined in IRC Section 170(h)(3) and the applicable Treasury Regulations, and (iii) the transferee is a public body as defined in Section 10.1-1700 of the Open-Space Land Act
12. **GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the conveyance of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the perpetual conservation restriction at the time of the conveyance bears to the value of the Property as a whole at that time.
13. **CONVERSION OR DIVERSION.** Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Section 10.1-1704 of the Open-Space Land Act, which does not permit loss of open space.

14. **EXTINGUISHMENT.** Should an attempt be made to extinguish this Easement in whole or in part, such extinguishment shall be carried out by judicial proceedings in compliance with IRC Section 170 (h) and applicable Treasury Regulations. In a sale or exchange of the Property subsequent to and resulting from such an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Section V Paragraph 12 above, but not to be less than the proportion that the value of this Easement at the time of extinguishment bears to the then value of the Property as a whole, excluding from such calculation, however, any increase in the value of the Property attributable to improvements constructed on the Property subsequent to the recordation of this Easement. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this Easement and the Open-Space Land Act.
15. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property by an amended deed of easement, provided that no amendment shall (i) affect this Easement's perpetual duration, (ii) conflict with or be contrary to or inconsistent with the conservation purpose of this Easement, (iii) reduce the protection of the conservation values, (iv) affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land", (v) affect the status of Grantee as a "qualified organization" or "eligible donee", or (vi) create an impermissible private benefit or private inurement in violation of federal tax law. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded in the Clerk's Office of the Circuit Court of Madison County, Virginia.
16. **COST RECOVERY CHARGES.** Grantee reserves the right to recover its costs incurred in responding to requests initiated by Grantor involving matters such as boundary line adjustments, easement amendments, project reviews for ecosystem services, preparation of reports to facilitate sales, and access or utility easements over the Property. Such cost recovery charges shall be determined and periodically adjusted by its Board of Trustees, as set forth in a published fee schedule.
17. **JOINT OWNERSHIP.** If Grantor at any time owns the Property or any portion of or interest therein in joint tenancy, tenancy by the entirety, or tenancy in common, all such tenants shall be jointly and severally liable for all obligations of Grantor set forth herein.
18. **SEVERABILITY.** If any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.
19. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement.
20. **CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia, resolving any ambiguities or

questions of the validity of specific provisions in order to give maximum effect to its conservation purpose.

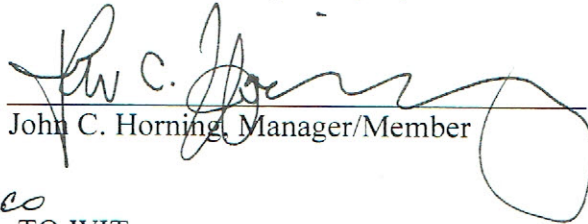
21. **RECODIFICATION AND AMENDMENT OF STATUTES AND REGULATIONS**
This Easement cites various federal and state statutes and regulations applicable to open-space easements. In the event that such statutes or regulations are re-codified or amended, this Easement will be interpreted and enforced according to the re-codified or amended statutes and regulations most closely corresponding to those cited herein and carrying out the purposes recited herein.
22. **RECORDING.** This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of Madison, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.
23. **COUNTERPARTS.** This Easement may be executed in one or more counterpart copies, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto shall not affect the validity of the Easement.

WITNESS the following signatures and seals:

[Counterpart signature pages follow.]

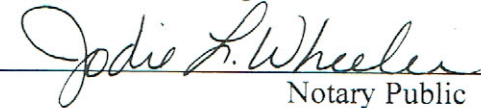
[Counterpart signature page 1 of 2 of deed of open-space easement]

GRANTOR: SAN MIGUEL EAST, LLC
a Virginia limited liability company

By: 
John C. Horning, Manager/Member

STATE/Commonwealth of New Mexico
CITY/COUNTY OF Santa Fe, TO WIT:

The foregoing instrument was acknowledged before me this 14 day of October, 2016
2016 by John C. Horning, as the authorized Manager of San Miguel East, LLC.


Notary Public

My commission expires: 08-28-2018
Registration No. 1096405

(SEAL)

[Counterpart signature page 2 of 2 of deed of open-space easement]

Accepted:

VIRGINIA OUTDOORS FOUNDATION,

By: Leshell H. Grayson

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

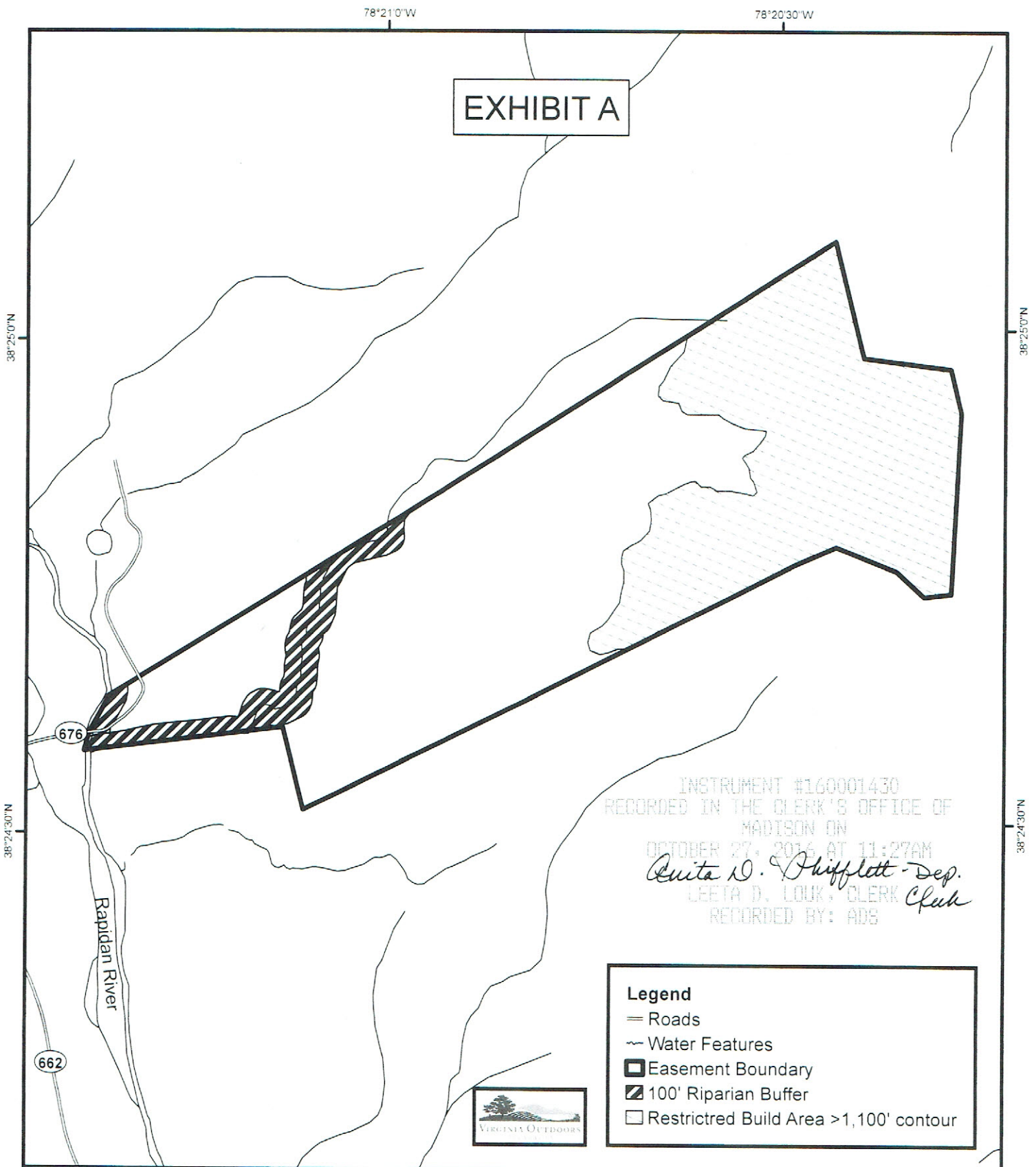
The foregoing instrument was acknowledged before me this 23rd day of October, 2016 by Leshell Grayson, a Deputy Director/~~Staff Attorney~~ of the Virginia Outdoors Foundation.



Crystal Marlene Mayo
Notary Public

(SEAL)

My commission expires: 1-31-2018
Registration No. 7592087



<p>Projection: Lambert Conformal Conic GCS North America 1983 Datum: D North America 1983</p> <p>Map created 7/7/2016 by Anna Clayton Bullock Source data: Roads-VDOT, Water-VGIN 2012</p> <p>This map is for general reference and display purposes only</p>	<p>EXHIBIT A</p> <p>Special Conditions Map</p> <p>San Miguel East, LLC</p> <p>162.7065 acres</p> <p>Madison County</p>	<p>0 400 800</p> <p>Feet</p> <p>1:9,600</p> <p>N</p>
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22 8 22



OFFICIAL RECEIPT
MADISON COUNTY CIRCUIT COURT
1 MAIN STREET, PO BOX 220
MADISON, VA 22727
540 948-6888

DEED RECEIPT

DATE: 10/27/16 TIME: 11:27:25 ACCOUNT: 113CLR160001430 RECEIPT: 16000003892
CASHIER: ADS REG: MZ07 TYPE: DG PAYMENT: FULL PAYMENT
INSTRUMENT : 160001430 BOOK: PAGE: RECORDED: 10/27/16 AT 11:27
GRANTOR: SAN MIGUEL EAST LLC EX: N LOC: CO
GRANTEE: VIRGINIA OUTDOORS FOUNDATION EX: N PCT: 100%
AND ADDRESS : 1010 HARRIS STREET STE 2 CHARLOTTESVILLE, VA. 22903
RECEIVED OF : NO MONIES DATE OF DEED: 10/14/16
: \$.00
DESCRIPTION 1: NO CONSIDERATION TAX EXEMPT PAGES: 22 OP: 0
2: 162.7065 AC RAPIDAN DISTRICT NAMES: 0
CONSIDERATION: .00 A/VAL: .00 MAP: 37-30
PIN:
000 ** ZERO PAYMENT ** .00

TENDERED : .00
AMOUNT PAID: .00
CHANGE AMT : .00

CLERK OF COURT: LEETA D. LOUK

PAYOR'S COPY
RECEIPT COPY 1 OF 3