

Schedule A-1

25

JAMES RIVER

BLACK STUMP CREEK

BLACK STUMP CREEK

SHEILDS POINT, LLC

DOC #010013707  
 PN #2840100008  
 PN #2840100007  
 PN #2840100006  
 PN #3310100011  
 PN #3310100012

843 AC +/- TOTAL  
 622.9 AC +/- EXCLUDING RESERVED AREA

CL. STREAM PL.

CL. CUT PL.

CL. STREAM PL.

BUSH HOLE ROAD

BUSH HOLE ROAD

| PARCEL NO. | TAX PARCEL ID | OWNER                           | DOC #          | DEED #        | COMMENT   |
|------------|---------------|---------------------------------|----------------|---------------|---|
| 1          |               | RICHARD E. HELLAND, JR.<br>DRIE | DEC. #00000000 | 0870 PG78     | PARCEL IS BOUNDED NORTH AND WEST BY CENTER OF STREAM AND NEAR LOW WATER |
| 2          | 343100007     | GARBARIN HALL FARM              | 0870 PG83      | FOUR POTS     | PROPERTY IS BOUNDED ON THE NORTH BY CENTER OF STREAM                    |
| 3          | 343100004     | JOSEPHINE RUSSO                 | 0812 PG48      | FOUR POTS     | PROPERTY IS BOUNDED ON THE NORTH BY CENTER OF STREAM                    |
| 4          | 354000004     | A.E. ARMSTRONG<br>LAWYER HANSON | DEC. #00000000 | 0870 PG88     | ADJACENT PROPERTY OF SHEILDS POINT, LLC                                 |
| 5          | 354000003     | ROBERT A. &<br>HENRY L. MESSON  | 2002           | DOC #00000000 | WESTERLY LINE ALONG CENTER OF STREAM                                    |
| 6-7        | 378000003     | RICHARDSON<br>MOLONGE, LLP      | DEC. #00000000 |               | WESTERLY LINE ALONG THE CENTER OF CUT AND MARSH                         |

\*THE AREA SHOWN ON THE CURRENT SIX BEING COPIES 25-10 YEAR OLD DEED ESTIMATES AND OLD CARTOGRAPHY TECHNOLOGY. BASED ON CURRENT TECHNOLOGIES SUCH AS SHAPE FILES, FIELD INSTRUMENTS AND COMPUTERIZATION THE AGENT TO MORE ACCURATELY DETERMINE AREAS IS INCLUDING THESE TECHNOLOGIES AND FIELD SURVEYS WERE USED TO MORE ACCURATELY DETERMINE THE ENCLOSED AREA OF THE SHEILDS POINT, LLC PROPERTY. THE PROPERTY IS BOUNDED NEARLY BY WATER, FEATURES AND THE RESULTING ENCLOSED AREA IS MORE ACCURATELY DETERMINED TO BE 843 AC +/-.

COMPOSITE EXHIBIT OF THE  
 PROPERTIES  
 ADJOINING SHEILDS POINT, LLC  
 JAMES CITY COUNTY, VIRGINIA

JULY 20, 2021

EVANS SURVEYING, LLC  
 631 CLAY HERRON DR.  
 SUITE 10200A, SHELBY  
 (757)392-3653


Shield's Point, LLC Property - Exhibit B

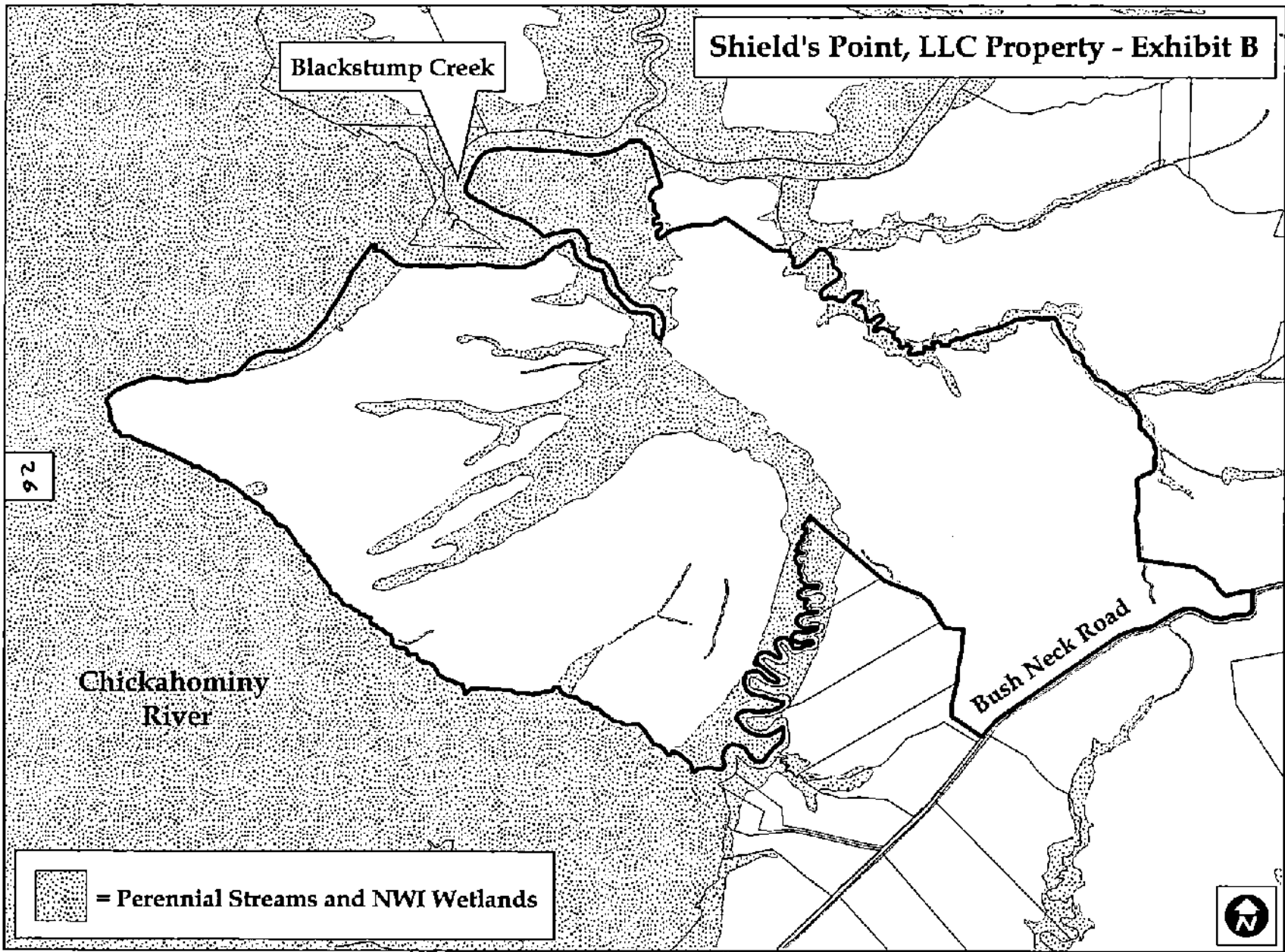
Blackstump Creek

92

Chickahominy  
River

Bush Neck Road

 = Perennial Streams and NWI Wetlands



Prepared by: Mark W. Botkin, Esq., VSB #35780  
BotkinRose PLC  
3190 Peoples Drive  
Harrisonburg, VA 22801

Please Return to: Land Trust of Virginia  
P.O. Box 14  
Middleburg, Virginia 20118

James City County Parcel Identification Numbers:

284-01-000-07  
284-01-000-08  
351-01-000-11  
351-01-000-12

Tax Exempt: § 58.1-811.D VA. CODE

**DEED OF GIFT OF CONSERVATION EASEMENT**

THIS DEED OF GIFT OF CONSERVATION EASEMENT (the "Easement"), made this 14<sup>th</sup> day of October, 2021, by and between **SHIELD'S POINT, LLC**, a Virginia limited liability company (herein the "Grantor"), whose mailing address is P.O. Box 3678, Williamsburg, Virginia 23187, and the **LAND TRUST OF VIRGINIA, INC.**, a Virginia non-stock corporation (herein the "Grantee"), whose mailing address is P. O. Box 14, Middleburg, Virginia 20118. All references to Grantor and Grantee herein shall include their respective successors and assigns.

**RECITALS**

**R-1** The Grantor is the owner in fee simple of certain real property, consisting of 827.9 acres, more or less, situated in the Powhatan Magisterial District, James City County, Virginia (the "Property").

**R-2** The Virginia Conservation Easement Act, §§10.1-1009 *et seq.* VA. CODE (the "Virginia Act"), provides for the conveyance of a conservation easement to a charitable corporation declared exempt from taxation pursuant to §501(c)(3) of the Internal Revenue Code (the "Code"), when the primary purposes or powers of such corporation include "(i) retaining or protecting the natural or open-space values of real property; (ii) assuring the availability of real property for agricultural, forestal, recreational or open space use; (iii) protecting natural resources; (iv) maintaining or embracing air or water quality; or (v) preserving the historic architectural or

archaeological aspects of real property.”

**R-3** Section 170(h)(4) of the Code defines a conservation purpose as “(i) the preservation of land areas for outdoor recreation by, or the education of, the general public, (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, (iii) the preservation of open space (including farmland and forest land) where such preservation is (I) for the scenic enjoyment of the general public, or (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or (iv) the preservation of a historically important land area or certified historic structure.

**R-4** The Grantee is a charitable organization exempt from taxation pursuant to § 501 (c)(3) of the Code, and a “qualified organization” and an “eligible donee” under §501 (c)(3) of the Code, and the Treasury Regulations adopted pursuant thereto (the “Treasury Regulations”), and specifically §1.170A-14(c)(1), with purposes including those specified in the Virginia Act; Grantee has maintained a principal office in the Commonwealth of Virginia for at least five years; and Grantee is willing to accept a perpetual open space conservation easement over the Property as set forth herein.

**R-5** This Easement is intended to constitute (i) a Conservation Easement under Chapter 10.1 of the Virginia Act; and (ii) a “qualified conservation contribution” as defined in §170(h)(1) of the Code and as more particularly explained below, and (iii) a qualifying “interest in land” under the Virginia Land Conservation Incentives Act of 1999 (§§58.1-510 *et seq.* VA. CODE.)

**R-6** This Easement is intended to be a grant “exclusively for conservation purposes” under §170(h)(1)(C) of the Code, because it effects “the preservation of open space (including farmland and forest land)” under §170(h)(4)(A)(iii) of the Code; 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-7** The Property consists of approximately 827.9 acres of forested lands and wetlands.

**R-8** The Property is situated 5.4 miles west-northwest of Williamsburg, Virginia in an agricultural and rural area of James City County (the “County”).

**R-9** The Property is designated as agricultural on the land use map of James City County.

**R-10** The Property is located on and has approximately 3,240 linear feet (0.61 miles) of frontage on State Route 633 (Bush Neck Road).

**R-11** The Restrictions contained in Article II of this Easement protect the scenic views and the scenic enjoyment of the public by restricting the number, size, and location of permitted

Buildings and limiting division of the Property and they further public purposes of James City County evidenced in its Comprehensive Plan.

**R-12** The Property is in the watersheds of Blackstump Creek, the Chickahominy River, the James River, and the Chesapeake Bay.

**R-13** The Property is within the Chesapeake Bay watershed and contributes in its undeveloped state to the water quality of the Chesapeake Bay and its watershed and to the goals of the multi-jurisdictional 2014 Chesapeake Bay Watershed Agreement. The riparian buffers required by this Easement help to protect water quality in the Chesapeake Bay Watershed.

**R-14** The Property has approximately 1.94 miles of frontage on the Chickahominy River, which is designated as a perennial stream on the United States Geological Survey 7.5-minute quadrangle map for Norge, Virginia. The Chickahominy River is a State-designated Scenic River.

**R-15** The Property has approximately 2.51 miles of frontage on Blackstump Creek, which is designated as a perennial stream on the United States Geological Survey 7.5-minute quadrangle map for Norge, Virginia.

**R-16** The Property contains approximately 156 acres of wetlands identified by the National Wetlands Inventory of the U.S. Fish and Wildlife Service (“NWI Wetlands”), which are associated with the Chickahominy River, Blackstump Creek, and associated tributaries. These NWI Wetlands are shown on the map titled “Land Use Map” included in Exhibit 3 of the Baseline Documentation Report. The riparian buffers and other provisions of this Easement related to water resource protection help to preserve these water resources and protect water quality.

**R-17** The Property contains approximately 505 acres of County-designated floodplain, which are associated with the Chickahominy River, Blackstump Creek, and associated tributaries.

**R-18** The Chickahominy River, at the location of the Property’s frontage, is known by confirmed observation to contain Atlantic Sturgeon (*Acipenser oxyrinchus*), which is listed as being endangered at the State and Federal levels, and which is designated in the Virginia Wildlife Action Plan as having Tier I status of “Critical Conservation Need”.

**R-19** The Property contains a 731-acre “ecological core” area with Category 5 (“Outstanding”) ecological integrity, designated as such in the 2007 Virginia Natural Landscape Assessment of the Department of Conservation and Recreation’s Virginia Natural Heritage Program.

**R-20** The Property contains approximately 660 acres of areas rated as having “High”, “Very High”, or “Outstanding” potential economic value under the Forest Economics Model of the 2007 Virginia Natural Landscape Assessment of the Department of Conservation and Recreation’s Virginia Natural Heritage Program. The portions of the Property with these ratings



are as follows: “High” potential (Category 3) found on approximately 2.7% of the Property, “Very High” potential (Category 4) found on approximately 10.9% of the Property, and “Outstanding” (Category 5) found on approximately 76.2% of the Property.

**R-21** The Property contains approximately 444 acres of soils defined by the Natural Resources Conservation Service of the United States Department of Agriculture as being either Prime Farmland or Farmland of Statewide Importance.

**R-22** The Property lies directly across the Chickahominy River from 5,217 acres of land known as the “Chickahominy Wildlife Management Area”, which is owned and managed by the Commonwealth of Virginia Department of Wildlife Resources (“DWR”). This management area is the only DWR management area in the coastal plain that consists mainly of woodlands and is managed primarily for upland wildlife rather than wetland species. This type of management, coupled with the area’s location along a major tidal river and creek, gives the Chickahominy Wildlife Management Area a variety of habitat types that is unique to the DWR’s Wildlife Management Area system.

**R-23** The conveyance of a conservation easement on the Property by this Easement is in furtherance of and will serve clearly delineated federal, regional, and state conservation policies, as set forth in:

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.

The Virginia Act (§§10.1-1009 *et seq.*, VA. CODE), which provides for the conveyance of conservation easements in perpetuity to a private charitable organization such as the Land Trust of Virginia, Inc. for the purposes noted above.

The Virginia Outdoors Foundation Act (§§10.1-1800 *et seq.*, VA. CODE), which declares it to be the public policy of the Commonwealth to encourage the preservation of open space land and which establishes an Open Space Land Preservation Trust Fund enabling a foundation and regional advisory boards to provide grants to assist persons conveying conservation easements.

The Virginia Open-space Land Act (§§10.1-1700 *et seq.* VA. CODE), which declares that open space land serves a public purpose by retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

The Virginia Land Conservation Incentives Act of 1999 (§§58.1-510 *et seq.* VA. CODE), which provides an income tax credit for donors of interests in land for conservation

purposes to encourage the preservation and sustainability of Virginia's unique natural resources, wildlife habitats, open spaces, and forested resources.

ConserveVirginia is a model which prioritizes potential conservation areas across the Commonwealth of Virginia that would provide quantifiable benefits to the citizens of Virginia. There are seven categories, which identify aspects of such land that is important for conservation purposes. The model was created through conservation data provided by various state agencies, private organizations, etc. The Property intersects and will protect four identified state priority layers of ConserveVirginia: Agriculture and Forestry, Natural Habitat and Ecosystem Diversity, Floodplains and Flooding Resilience, and Scenic Preservation.

The Special Assessment for Land Preservation Act (§§58.1-3229 *et seq.* VA. CODE), which provides for and promotes special use-value tax assessments for real estate devoted to agricultural, forestal, horticultural and open space use, said Property having been approved for use value assessment, and, as such, identified as having important agricultural, forestal, horticultural, or open-space values.

The Virginia Agricultural and Forestal Districts Act (§§15.2-4300 *et seq.* VA. CODE), which encourages the conservation, protection, development and improvement of agricultural and forestal lands for the production of food and other agricultural and forestal products and as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes and as an economic and environmental resource of major importance, said Property being within the Yarmouth Island Agricultural and Forestal District, and, as such, identified by James City County as worthy of protection for conservation purposes.

Legislation that designates the Chickahominy River, a public water supply, as a scenic river under the Scenic Rivers Act (§§10.1-400 *et seq.* VA. CODE), which provides for the administration of the scenic river “to preserve and protect its nature, beauty ... and to encourage the continuance of existing agricultural, horticultural, forestry and open space land and water uses.”

**R-24** Preservation of the Property promotes the public policies of James City County, as delineated in its Comprehensive Plan, *Toward 2035: Leading the Way*, adopted June 23, 2015 (herein the “**Comprehensive Plan**”), by protecting open-space, scenic views, water resources, and forested land, and by implementing the County’s goals, strategies and actions, including, but not limited to, “Environment” strategy 1.5.10 to “[p]romote the preservation of open space in areas adjacent to marsh lands...” (pg. 84) and “Land Use” strategy 6.1.2(a), to “encourage dedication of conservation easements...” (pg. 172).

**R-25** Pursuant to the requirement of §10.1-1010(E) of the Virginia Act, this Easement, and the limitations and obligations created by this Easement, conform in all respects to the

Comprehensive Plan, as confirmed by opinion letter from Tammy Rosario, AICP, James City County Assistant Director of Community Development, dated July 28, 2021, a copy of which is in the Grantee's permanent files.

**R-26** The Property possesses significant conservation values, the preservation of which will benefit the citizens of the Commonwealth and the public. The conservation values of the Property (the "Conservation Values"), are its forestal, scenic and natural values, and its value as open-space land preserved for open-space and rural uses, as referenced in §170(h)(4)(A)(iii) of the Code and Treasury Regulation §1.170A-14(d)(4), §10.1-1009 and §58.1-512 VA. CODE, as the same are more particularly described in these Recitals, and as further documented in the Grantee's Baseline Documentation Report dated August 27, 2021 (herein the "Baseline Documentation Report"), which is further described in Article IV below. This Baseline Documentation Report, which is incorporated by reference herein, was signed by the Grantor and the Grantee, and is to be maintained on file in the offices of the Grantee. This Report is intended to serve as an accurate and objective, though nonexclusive, information baseline for monitoring compliance with the "Restrictions" (hereinafter defined) and the "Terms and Conditions" (hereinafter defined) of this Easement.

**R-27** The retention, preservation and protection of the Conservation Values will be a significant and substantial benefit to the citizens of the Commonwealth, James City County and the public.

**R-28** The Grantor and Grantee intend that the Conservation Values of the Property be retained, preserved and protected in perpetuity by restricting the activities on, uses or development of the Property as set forth in Article II, herein, by permitting only those uses on or development of the Property that will not adversely affect, are not inconsistent with, and do not conflict with, diminish, impair or interfere with the perpetual protection of the Conservation Values.

**R-29** The Grantor further intends, as to all or any portion of or interest in the Property, as owner of the Property, to grant and convey in perpetuity to the Grantee, the right in perpetuity (1) to retain, preserve and protect in perpetuity the Conservation Values of the Property by granting this Easement to the Grantee that will restrict use of the Property by the Grantor because of the imposition of the restrictions set forth in Article II ("Restrictions"), and other duties, covenants, terms and conditions ("Terms and Conditions") hereinafter expressed; and (2) to enforce such Restrictions as well as the Terms and Conditions.

**R-30** The Grantee intends and has hereby agreed to accept such conveyance and to protect in perpetuity the Conservation Values on the Property.

**R-31** The Grantor and Grantee hereby agree that the Restrictions as well as the Terms and Conditions will retain, preserve and protect in perpetuity the Conservation Values of the Property by limiting use of the Property to those uses that do not adversely affect, are not inconsistent with, do not conflict with, diminish, impair, or interfere with the Conservation Values.



**R-32** Grantee's Board of Directors adopted a resolution at its meeting on July 21, 2021, accepting this Easement.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants set forth herein and the acceptance of this conveyance by the Grantee, and for no monetary consideration from Grantee to Grantor, the Grantor does hereby give, grant and convey to the Grantee a conservation easement in gross over, and the right in perpetuity to restrict the use or development of, the Property, which consists of 827.9 acres, more or less, situated in James City County, Virginia, 5.4 miles west-northwest of Williamsburg, Virginia, and which is more particularly described in Schedule "A" attached hereto and made a part hereof (the "Property"). The Property tract is identified as Parcel Identification Numbers 284-01-000-07, 284-01-000-08, 351-01-000-11, and 351-01-000-12 among the tax records of James City County. Even though the Property consists of more than one parcel for real estate tax or for any other legal purpose, it shall be considered to be one parcel for the purpose of this Easement, and the Restrictions, and the Terms and Conditions of this Easement shall apply to the Property as a whole.

## **ARTICLE I** **PURPOSE AND DEFINITIONS**

**1.1 PURPOSE.** The purpose of this Easement is to retain, preserve, and protect the Conservation Values of the Property in the public interest, in perpetuity, by imposing the Restrictions on the activities on, and uses and development of the Property set forth in Article II, and by providing for their enforcement in Article III, while allowing the Property to be used by the owner to the extent that such uses do not conflict with, interfere with or significantly impair the Conservation Values of the Property (herein the "Conservation Purpose"). By doing so, the Grantor and Grantee have the common purpose of preventing, through the enforcement powers granted to the Grantee, any activities on, uses or development of the Property that will adversely affect, be inconsistent with, conflict with, diminish, impair, or interfere with the Conservation Values of the Property.

### **1.2 DEFINITIONS.**

**1.2.1 Alternative Energy Structures:** Utility structures, including any associated equipment, used to harness natural renewable energy sources such as sunlight, wind, water, or biomass, including, but not limited to, wind turbine structures, solar panels and micro-hydro installations.

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

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

**1.2.2.2 Accessory Building:** A Building commonly and appropriately incidental to a Dwelling, sized appropriately to serve as an amenity to such a Dwelling, including but not limited to a garage and storage shed.

**1.2.3 Building Envelopes:** The areas shown on the attached exhibit (“Exhibit C”) in which new Buildings permitted by this Easement must be constructed, unless otherwise provided for in this Easement.

**1.2.4 Commercial:** Any use or activity undertaken for profit.

**1.2.5 Effective Date:** The effective date of the gift is when the fully executed Easement is recorded in the Clerk’s Office of the Circuit Court of James City County.

**1.2.6 Grantee:** Land Trust of Virginia, Inc. and any and all successor holders of this Easement.

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

**1.2.8 Ground Area:** The square footage of a Building, inclusive of all roofed decks, porches, stoops, and other attached roofed Structures, as measured at the exterior of the foundation (perimeter load-bearing) walls and/or piers, but excluding fencing, mailboxes, gate posts, permitted signs, and non-roofed decks, patios, terraces, walkways and swimming pools.

**1.2.9 Home Occupation Use:** A business, professional, occupational or trade use conducted for gain or support within Dwellings or Accessory Buildings which use is incidental and secondary to the primary uses of such Buildings as described in the Definitions for each (see Section 1.2.4 herein).

**1.2.10 Mitigation Bank Activities:** Activities involving monetary compensation or remuneration 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, biodiversity mitigation, and implementation of a nutrient reduction implementation plan approved by the Virginia Department of Environmental Quality, or a similar governmental agency.

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

**1.2.12 Structure:** An assembly of materials forming a construction for use (other than Buildings, Roads and Utilities), including, but not limited to, platforms, observation towers, pipelines and energy generators, but excluding fencing, mailboxes, gate posts, permitted signs, and uncovered decks, terraces, and patios.

**1.2.13 Utility:** A facility for the provision of infrastructure services including wells, water storage tanks; septic systems; electricity and telephone transmission lines; antennas for the transmission and reception of electro-magnetic energy; and Alternative Energy Structures.

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

## **ARTICLE II** **RESTRICTIONS**

The following Restrictions are hereby imposed on uses of the Property pursuant to the public policies described in the Recitals to protect the Conservation Values of the Property. Any

use of the Property inconsistent with the Conservation Purposes, is prohibited. Any use permitted by the following provisions shall be undertaken only in a manner that is consistent with the Conservation Purposes. Without limiting the generality of the foregoing, the acts which Grantor covenants to do and not to do upon the Property, and the Restrictions that Grantee is hereby entitled to enforce (herein “the Restrictions”) are and shall be as follows:

**2.1 DIVISION.** Notwithstanding that the Property is composed of four (4) separate tax parcels, the Property shall not be divided or subdivided into or conveyed separately as more than two (2) total parcels. The term “the Property” as used herein shall also apply to any subdivided parcel created from the Property as permitted hereunder, so that the terms and conditions of this Easement applicable to the Property shall be applicable to each divided parcel when created.

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

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

**2.2.2 Amendment of Easement:** This Easement shall be amended to subject any newly acquired land by boundary adjustment, not already subject to a recorded conservation or open space easement held by a qualified holder under either the Virginia Conservation Easement Act or the Virginia Open-space Land Act, to the terms and conditions of this Easement at transfer. Any land transfer by Grantor by boundary adjustment shall, at transfer, remain subject to this Easement.

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

**2.2.4 Protection of Conservation Values:** As an amendment of this Easement, the boundary line adjustment shall comply with all the requirements of Section 5.15.

**2.3 BUILDINGS AND STRUCTURES.**

**2.3.1 Buildings:** No Buildings, whether permanent or temporary, shall be built or maintained on the Property other than:

**2.3.1.1 Existing Buildings:** The two (2) Buildings on the Property that exist on the Effective date, known as the “Beach Shelter” and “Shed”, which are shown in Appendix G of the Baseline Documentation Report. The Beach Shelter shall not be expanded beyond five hundred (500) square feet of Ground Area unless Prior Written Approval shall have been obtained from Grantee, and the Shed shall not be expanded beyond two thousand five hundred (2,500) square feet of Ground Area unless Prior Written Approval shall have been obtained from Grantee.



**2.3.1.2 Dwellings:** Two (2) Dwellings are permitted on the Property. No Dwelling exists on the Effective Date. A Dwelling shall not exceed two thousand five hundred (2,500) square feet of Ground Area.

**2.3.1.3 Accessory Buildings:** Accessory Buildings are permitted, but the aggregate Ground Area of all Accessory Buildings on the Property shall not exceed four thousand (4,000) square feet.

**2.3.2 Structures:** Existing Structures are permitted. One (1) dock may be constructed on Blackstump Creek, provided such dock is constructed in compliance with requirements of any applicable government agencies. Other Structures may be built only when Prior Written Approval shall have been given by the Grantee.

**2.3.3 Prior Notice:** Grantor must give Grantee written notice pursuant to Section 5.6 before beginning construction, replacement, relocation, or enlargement of any Building, Structure, Road or Utility on the Property.

**2.3.4 Exemptions:** The Restrictions of this Section 2.3 shall not apply to fencing, stone walls, permitted signs, mailboxes, feeding and watering troughs, temporary tents or other temporary shelter for Grantor's personal non-Commercial use.

**2.3.5 Building Height:** The height of any Building or Structure shall not be more than twenty-five (25) feet, as measured from final grade to ridge of roof, unless Prior Written Approval shall have been obtained from Grantee.

**2.3.6 Downlighting:** Use of exterior lighting in all areas shall be limited to fully horizontally shielded lighting fixtures. The light element (lamp or globe) of a fixture shall not extend below the cut off shield.

**2.3.7 Building Envelopes:** All new Buildings must be located within areas marked on the attached Exhibit C as the "Building Envelopes". Prior to construction of any new Buildings, Grantor shall survey the area to ensure said Building is located within a Building Envelope. A copy of each survey shall be provided to Grantee prior to construction.

**2.4 AGGREGATE GROUND AREA.** The Aggregate Ground Area of all Buildings on the Property shall not exceed twelve thousand (12,000) square feet without Prior Written Approval of the Grantee. For purposes of calculating Aggregate Ground Area, all Buildings, including those existing on the Effective Date and those added after the Effective Date, shall be included.

**2.5 CONSISTENCY WITH CONSERVATION VALUES.** New, replaced, relocated, repaired, renovated, or enlarged Buildings or Structures must not adversely affect, be inconsistent or conflict with, diminish, impair nor interfere with the Conservation Values of the Property.

**2.6 RIGHT TO CONSTRUCT, REPAIR, MAINTAIN, RENOVATE, AND REPLACE.** The Restrictions above shall not preclude the repair or replacement of any Buildings, Structures, fencing, mailboxes, gate posts, and permitted signs existing on the Effective Date.

**2.7 ROADS AND UTILITIES.**

**2.7.1 Roads:** No new Roads may be constructed on the Property without Prior Written Approval except Roads to serve permitted Buildings or Structures and Roads with permeable



surfaces for permitted uses, including Agriculture and forestry.

**2.7.2 Utilities:** No Utilities are permitted on the Property other than Public or private Utilities to serve permitted Buildings, Structures or activities on the Property and public or private Utilities to serve parcels created by permitted divisions on the Property, or Public or private Utilities to be constructed in whole or in part to serve other properties, which shall not be constructed on, under or over the Property unless Grantee gives Prior Written Approval for the construction, which approval shall take into consideration the factors set forth in Section 5.7.1 and the visibility of such Utilities, and prior to granting its Prior Written Approval, Grantee shall determine that the construction and maintenance of such utilities will not impair the Conservation Values.

**2.8 PROHIBITED ACTIVITIES.** Commercial activities are prohibited, inclusive of, as it relates to § 2031(c)(8)(B) of the Code, any “de minimis commercial recreation activity”; provided, however, Mitigation Bank Activities on the Property are permitted. All uses not expressly permitted herein, that are inconsistent with the Conservation Values and Conservation Purposes of this Easement are prohibited.

## **2.9 WATER RESOURCES.**

**2.9.1 Wetlands and Perennial Streams:** “Wetlands” on the Property are defined as the areas shown as wetlands on Exhibit B, and described in Recital 16, most of which are associated with the perennial streams on the Property. The perennial streams on the Property are described in Recitals 14 and 15, and are also shown on the attached Exhibit B. Said wetlands and perennial streams protected hereby are inclusive of one hundred (100) foot wide vegetated buffer areas (“Buffers”) around the edge of the wetlands and on both sides of each perennial stream (to the extent that such Buffers are located on the Property), with Buffer width being measured from the edge of the wetland and the top of the relevant streambank.

**2.9.2 Required Vegetation:** The Buffers and non-ponded Wetlands shall be composed of vegetative cover that includes, but is not limited to, forest, shrubs, or warm-season grasses. Lawns or grazed pastures shall not constitute vegetative cover for the purposes of satisfying this requirement, and the Buffers and Wetlands shall not be mowed.

**2.9.3 Livestock Prohibited:** Livestock are prohibited from grazing in, and shall be fenced out of, the perennial streams, the Buffers and the Wetlands. Any such required fencing shall be erected within two years from the Effective Date and shall thereafter be maintained; provided, however, such fencing shall be required only if livestock are placed on and maintained on the Property. The prohibitions in this Section 2.9 shall not preclude the repair of any Building or Structures existing as of the Effective Date or the construction or maintenance of reasonably sized fencing, mailboxes, gate posts, or permitted signs, provided said activities do not adversely affect, are not inconsistent with, and do not conflict with, diminish, impair, or interfere with the Conservation Purpose or Conservation Values.

**2.9.4 Other Restrictions:** Within the Buffers and Wetlands there shall be no construction of Buildings, Structures, Roads, or other impervious surfaces, no storage of compost, manure, fertilizers, chemicals, machinery or equipment, and no cultivation, dumping, filling or damaging of Wetlands, plowing, or other earth disturbing activity conducted, except as may be

reasonably necessary for (a) wetland or stream bank restoration and erosion control pursuant to a government permit, (b) fencing along or within the Buffers or Wetlands, (c) removal of individual trees presenting a danger to persons or property, (d) removal of diseased, dead, non-native trees, shrubs or plants, or invasive trees, shrubs or plants (as defined in the Virginia Department of Conservation and Recreation's publication: "Invasive Alien Plant Species of Virginia" or other, independent authoritative source), (e) creation and maintenance of foot or horse trails with unimproved surfaces, (f) maintenance and/ or construction of stream, Buffer or Wetland crossings for vehicles, forestry machinery, pedestrians or livestock (including horses), which crossings shall not obstruct water flow and shall conform to the standards for such crossings as developed by the Natural Resources Conservation Service and shall not individually exceed fifteen (15) feet in width, (g) mowing and/ or bushhogging of those areas identified in the Baseline Documentation Report for recreational purposes no more than three times in one calendar year, and (h) maintenance of existing Roads as identified in the Baseline Documentation Report. The total number of such crossings on the Property shall not exceed eight (8) without the Prior Written Approval of the Grantee. There are four (4) such crossings existing on the Effective Date, which are shown in the Baseline Documentation Report.

Nothing contained herein shall prohibit or prevent the Grantor from undertaking efforts to restore or create additional wetlands upon the Property, provided that any such activities are pursuant to and in conformity with applicable state or federal laws and regulations and all necessary state and federal permits are obtained. In addition, Grantor reserves the right to construct, maintain, repair, restore, and operate one or more wetland, stream, and/ or nutrient mitigation banks on the Property ("Mitigation Banks"). Such Mitigation Banks would be designed to restore, preserve, and enhance wetland and stream functions on the Property, or to develop nutrient credits, consistent with United States Army Corps of Engineers and/ or DEQ requirements under Section 404 of the Clean Water Act, and/ or the State Water Control Law, and/ or the Chesapeake Bay Watershed Nutrient Credit Exchange Program, as applicable, and any other related federal and/ or state laws regarding nutrient or mitigation bank activities.

**2.10 MANAGEMENT OF FOREST.** No timbering shall be permitted on the Property except as provided below, and Grantor intends that the woodlands existing on the Property on the Effective Date be maintained substantially in their natural state, unless otherwise expressly provided for herein. The forest understory, which habitat is essential to migratory and other bird species, shall not be removed except as necessary for uses permitted in this Section 2.10, and in Section 2.9 herein.

**2.10.1 Permitted Activities.** The following forestry activities shall be permitted on the Property:

- a) Limited timbering for Grantor's domestic consumption, including, without limitation, the cutting of firewood for Grantor's personal use.
- b) The cutting of trees in connection with the maintenance of Roads, trails and fences and as reasonably necessary in connection with the construction or maintenance of permitted Buildings or other Structures on the Property.
- c) The removal of exotic, invasive species.
- d) The cutting of trees that are diseased or have died naturally or which, were they

not removed, would present an imminent hazard to human health or safety, including salvage timbering necessitated by natural disaster, insect infestation, or disease.

e) The cutting of trees to create forest openings for the purpose of wildlife habitat improvement, provided that no such opening shall be larger than five (5) acres, and no more than twenty (20) acres of such openings in the aggregate may be created on the Property every ten (10) years.

f) The cutting of trees to create forest openings associated with construction of the Dwellings permitted in Section 2.3.1.2 above and for the construction and maintenance of Roads for access for such permitted Dwellings. The opening for each Dwelling shall not exceed five (5) acres without Prior Written Approval of Grantee.

**2.10.2 Forest Stewardship Plan; Intensive Activities.** Before commencing timber harvesting or forestry activities permitted above on a scale requiring the use of heavy logging equipment such as skidders and logging trucks and construction or reconstruction of logging roads and skid paths (“Intensive Activities”), Grantor shall have obtained Grantee’s Prior Written Approval of a forest stewardship plan (the “Stewardship Plan”) to include that all forest management and harvesting activities be developed by or in consultation with the Virginia Department of Forestry, or be consistent with Virginia’s Forestry Best Management Practices for Water Quality Guide, the primary objectives of which shall be to improve wildlife habitat and maintain the health of the forest. The Stewardship Plan may be amended from time to time by written agreement between Grantor and Grantee, provided that its primary objectives shall not be changed. Intensive Activities shall not be permitted on the Property unless all of the following requirements are met:

a) Any Intensive Activities shall be conducted in accordance with the Stewardship Plan.

b) The siting, construction, and maintenance of new and existing roads, associated improvements, and skid trails must meet or exceed 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. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality during such activity.

c) A pre-activity plan consistent with the Stewardship Plan shall be submitted to Grantee at least 30 days prior to commencing any such Intensive Activity (such pre-activity plan shall describe the proposed Intensive Activities in sufficient detail to allow Grantee to judge the consistency of such Intensive Activities with the Stewardship Plan and the purpose of this easement).

**2.10.2A AGRICULTURE CONSERVATION PLAN.** If the Property contains five (5) acres or more of land in agricultural use, then a written conservation plan shall be developed that stipulates the use of best management practices for water quality protection, such as proper nutrient management, utilization of cover crops, and stabilization of highly erodible lands. The plan shall be developed in consultation with the local Soil and Water Conservation District or the Natural Resources Conservation Service and shall be implemented and



periodically updated by the Grantor as long as at least five acres of the Property remains in agricultural production.

**2.11 TRASH.** Accumulation or dumping of trash, refuse, junk, or toxic materials is not permitted on the Property. This Restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts incidental to operation of the farm on the Property or use of other such practices that do not adversely affect, are not inconsistent with, and do not conflict with, diminish, impair or interfere with the Conservation Values.

**2.12 SIGNS.** No billboards, signs, or other advertisements that are visible from outside the Property are permitted on or over the Property except to: (i) state the name and/or address of the owners, including property name, (ii) advertise the sale or lease of the Property, (iii) advertise the sale of goods or services produced incidentally to a permitted use of the Property, (iv) advertise the conduct of permitted activities, (v) provide notice necessary for the protection of the Property, (vi) give directions to visitors, (vii) recognize historic status or participation in a conservation program, or (viii) advertise political candidates or parties. No such sign shall exceed nine square feet in size or the applicable restriction under the County's zoning ordinance, whichever is less.

**2.13 CHANGES IN TOPOGRAPHY; MINING, GRADING, BLASTING, FILLING, EARTH REMOVAL.** Mining by surface mining or any other method, dredging on or from the Property, or drilling for oil and gas on or under the Property is prohibited. Grading, blasting, filling or earth moving or removal shall not alter the topography of the Property except for wetlands or stream bank restoration, both of which require Prior Written Approval from Grantee, and all requisite government permits and approvals, or for erosion and sediment control pursuant to a government-required erosion and sediment control plan, or as required in the construction of permitted Buildings, Structures, Roads, and Utilities or for farm ponds. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in such construction. Generally accepted forestal or agricultural activities shall not constitute any such activities. Notwithstanding the foregoing, no grading, blasting, filling or earth moving or removal is permitted on the Property if it will adversely affect, be inconsistent with, conflict with, diminish, impair or interfere with the Conservation Values protected by this Easement.

### **ARTICLE III** **ENFORCEMENT**

**3.1 ENTRY/RIGHT OF INSPECTION.** Representatives of the Grantee may enter the Property at reasonable times for purposes of inspection, including the taking of photographs, and enforcement of the Restrictions, and the Terms and Conditions of this Easement after reasonable notice to the Grantor or the Grantor's representative, provided however, that in the event of an emergency, as defined solely by the Grantee, Grantor consents to allow entrance onto the Property



to inspect, evaluate, prevent, terminate or mitigate a potential violation of these Restrictions or the Terms and Conditions with notice to the Grantor or Grantor's representative being given at the earliest practicable time. Reasonable notice for non-emergencies shall be considered as not exceeding fifteen (15) days.

**3.2 ACTION TO ENFORCE.** Grantee has the right to bring an action at law or in equity to prevent or stop any violation of the Restrictions, and the Terms and Conditions of this Easement or any use that adversely affects, is inconsistent with, conflicts with, diminishes, impairs, or interferes with the Conservation Purpose or Conservation Values. This right specifically includes: (i) the right of entry onto the Property for the purposes of evaluating the extent and nature of any potential violation; (ii) the right to require restoration of the Property to its condition on the Effective Date (except for any change in such condition that is consistent with the provisions of this Easement), including the removal of any prohibited Buildings or Structures; (iii) the right to require restoration of the Property to a condition of compliance with the Restrictions and the Terms and Conditions of this Easement; (iv) the right to recover any damages, including monetary damages, arising from non-compliance, the loss of Conservation Values, or the inability to return the Property to its condition on the Effective Date; and (v) the right to enjoin non-compliance by *ex parte* temporary or permanent injunction. These remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. If the court determines that the Grantor failed to comply with this Easement, the Grantor shall pay to the Grantee for any costs of enforcement, including costs of investigating, preventing, stopping and correcting the non-compliance, restoration costs, court costs and attorney's fees, in addition to any other payments ordered by such court. The Grantee shall not, by any failure to discover non-compliance or any delay to act, or by any prior forbearance to exercise rights under this Easement, waive any Restrictions or Terms and Conditions or forfeit the right to take action as may be necessary to ensure compliance with this Easement and the Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure or forbearance by the Grantee.

#### **ARTICLE IV** **DOCUMENTATION**

The Conservation Values of the Property and its condition, use, character and state of improvement are described in a Baseline Documentation Report, incorporated herein by reference. The Baseline Documentation Report was signed by the Grantor, and made available to and signed by the Grantee, prior to the execution of this Easement, and will be maintained on file in the offices of the Grantee. Grantor and Grantee have copies of the Baseline Documentation Report and acknowledge that the Baseline Documentation Report is an accurate representation of the condition of the Property on the Effective Date. The Baseline Documentation Report may be used by Grantee to determine compliance with and enforcement of the Restrictions, and the Terms and Conditions of this Easement, including specifically to establish that a change in the condition, use, character or state of improvement of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition, use, character or state of improvement of the Property on the Effective Date.

**ARTICLE V**  
**GENERAL PROVISIONS**

**5.1 DURATION.** This Easement shall be perpetual. It is an easement in gross which runs with the land as an incorporeal interest in the Property. The Restrictions and the Terms and Conditions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors in interest, 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.

**5.2. NO PUBLIC ACCESS.** 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. Grantor retains the exclusive right to such access and use, subject to the terms hereof.

**5.3 TITLE WARRANTY.** Grantor covenants and warrants that Grantor has good and marketable title to the Property, free and clear of all encumbrances (except utility and access easements of record), including, but not limited to, any mortgages, judgments or other liens not subordinated to this Easement, and hereby covenants to defend same and hold Grantee harmless against any and all claims that may be made against it. The holders of all liens or other encumbrances arising from borrowing have subordinated their interests in the Property to the operation and effect of this Easement, by their execution hereof.

**5.4 INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property which is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage or open-space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. Specifically, neither the Property, nor any portion thereof, has been or shall be dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; dedicated as open space in, or as part of, any real estate development plan; 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 or counted towards development of any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.

**5.5 CONSTRUCTION.** Notwithstanding any general rule of construction to the contrary, this Easement shall be liberally construed in favor of the Grantee to effect the purpose of this Easement— to retain, preserve and protect in the public interest in perpetuity the Conservation Values of the Property— by restricting the use of the Property as set forth, herein, and by permitting only those activities on, uses or development of the Property that will not adversely affect, are not inconsistent with, and do not conflict with, diminish, impair or interfere with the

## Conservation Values.

If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement and in favor of the Restrictions and the Terms and Conditions protecting its Conservation Values shall be favored over the free use of the Property. Grantor intends that the grant of this Easement qualify as a “qualified conservation contribution” as that term is defined in §170(h)(1) of the Code, and the Restrictions and other provisions of this Easement shall be, where possible, construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.

### **5.6 NOTICES TO GRANTEE.**

**5.6.1. Division and/or Transfer.** The Grantor shall notify the Grantee in writing prior to dividing or subdividing the Property and shall notify the Grantee in writing prior to closing on any *inter vivos* transfer or sale of the Property or any part thereof, other than a deed of trust or mortgage on all or any part of the Property.

**5.6.2 Exercise of Retained Rights.** The Grantor shall notify the Grantee in writing prior to exercising any reserved right or undertaking any activity that may have an adverse impact on the Conservation Values protected by this Easement or that may adversely affect, be inconsistent with, conflict with, diminish, impair or interfere with the Conservation Purpose or Conservation Values.

**5.6.3 Time Frame of Notice.** In any case where the terms of this Easement require notice to the Grantee, Grantor shall provide written notice to the Grantee at least 60 days prior to commencing the activity or exercising the right requiring the notice.

**5.6.4 Content of Notice.** Notices and requests for Grantee’s approval must describe the situation or activity in question in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Conservation Values, Conservation Purpose, and this Easement. Any notices or requests for approval required by this Easement shall be in writing and shall be personally delivered or sent by certified mail, to Grantor or Grantee respectively, to the Grantor at the address of the Property and to the Grantee at the address of its principal office as registered with the Commonwealth of Virginia, or to such addresses as the parties may designate by written notice.

**5.6.5 Validity.** The failure of the Grantor or Grantee to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

### **5.7 PRIOR WRITTEN APPROVAL.**

**5.7.1 Prior Written Approval.** In any case where the terms of this Easement require approval of the Grantee, such approval from Grantee must be in writing (herein “Prior Written Approval”). Grantor shall make a written request for such approval to the Grantee, and the Grantee shall have sixty (60) days from the receipt of a request for Prior Written Approval, or such longer period as the parties may agree in writing, within which to review such request and consider whether to grant or deny approval. Failure by Grantee to respond within sixty (60) days shall constitute denial. In considering whether or not to grant any Prior Written Approval to the Grantor,



the Grantee shall determine in each instance whether the proposed activity on, use or development of the Property (including the size, setting or height of the proposed Building or Structure) will not adversely affect, is not inconsistent with, and does not conflict with, diminish, impair or interfere with the Conservation Values. Should the Grantee determine that the granting of Prior Written Approval would authorize an activity, use or development that would adversely affect, be inconsistent with, conflict with, diminish, impair or interfere with the Conservation Values, the Grantee may, in its discretion, refuse to grant such approval.

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

## **5.8 PROPERTY RIGHT OF GRANTEE; EXTINGUISHMENT.**

**5.8.1 Property Right.** The Grantor agrees that the donation of this Easement gives rise to a property right, immediately vested in the Grantee, with fair market value that is at least equal to the proportionate value that the Easement on the Effective Date bears to the value of the Property as a whole at that time, and that proportionate value of the Grantee's property rights shall remain constant.

**5.8.2 Extinguishment.** If, notwithstanding subparagraph 5.1, an attempt is made to terminate or extinguish this Easement, it can be terminated or extinguished only through a judicial proceeding, and only if in compliance with § 170(h) of the Code and applicable Treasury Regulations. In such case, on a subsequent sale, exchange, or involuntary conversion of the Property, Grantee shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Easement as determined in Section 5.8.1. The Grantee must use any such proceeds in a manner consistent with the Conservation Purposes of this Easement donation.

**5.9 HAZARDOUS SUBSTANCES OR WASTES - NO CONTROL; WARRANTY; INDEMNITY.** Nothing in this Easement shall be construed as giving rise to any right or ability in the Grantee to exercise physical or management control over the day-to-day operations of the Property, or any of the Grantor'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) or any corresponding Commonwealth of Virginia statute or regulation or James City County ordinance. Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, without regard to its merit, liability or expense, including reasonable attorneys' fees, arising from or with respect to any release of hazardous substance or waste or violation of environmental laws.

**5.10 TAXATION.** 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 Regulations (see §1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Land Trust of Virginia, Inc. makes no express or implied warranties regarding availability of



tax benefits to the Grantor from donation of this Easement, nor whether any such tax benefits might be transferable, nor whether there will be any market for any tax benefits which might be transferable. 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.

**5.11 SUCCESSORS IN INTEREST.** This Easement, its grant, and its Restrictions and its Terms and Conditions, shall be binding upon, and inure to the benefit of, the Grantee and its successors and assigns in interest to this Easement, and the Grantor and its successors and assigns in interest to the Property and any portion thereof or interest therein (including leasehold interests), and shall continue as a servitude running in perpetuity with the Property.

**5.12 INCLUSION OF TERMS IN SUBSEQUENT DEEDS.** The Grantor agrees that this Easement will be referenced by deed book and page number, or instrument number, in any subsequent deed or other legal instrument by which the Grantor conveys any interest in the Property.

**5.13 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.

**5.14 ASSIGNMENT BY GRANTEE.** Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (1) the Conservation Values are to be protected, and all Restrictions and Terms and Conditions set forth in this Easement are to be continued, in perpetuity; and (2) the transferee then qualifies as an eligible donee as defined in § 170(h)(3) of the Code and the applicable Treasury Regulations, or any successor provisions to either then applicable.

**5.15 AMENDMENT.** Grantee and Grantor may amend this Easement to enhance or increase protection of the Property's Conservation Values, or add additional land to the Property by an amended deed of easement, provided that no amendment shall: (i) affect this Easement's perpetual duration or remove from the Easement any land made subject to this Easement on the Effective Date; (ii) adversely affect, be inconsistent with, or conflict, diminish, impair or interfere with the Conservation Values; (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 the County where the Property is located. Grantee reserves the sole and absolute discretion to approve or deny requests for amendments.

**5.16 VESTING OF CONSERVATION EASEMENT.** Should the Grantee cease to exist, or not qualify as a "qualified organization" under § 170(h) of the Code, or any successor provision then applicable, or otherwise cease to be eligible to hold this Easement directly under the laws of

the Commonwealth of Virginia, this Easement and all rights of enforcement shall vest in the Virginia Outdoors Foundation, unless the Easement has been assigned prior to cessation to another holder qualified according to the provisions of the laws of the Commonwealth of Virginia. If the qualifying holding entity or the Virginia Outdoors Foundation, or the successors or assigns thereof, should cease to exist, or should not qualify as a “qualified organization” under § 170(h) of the Code or any successor provision then applicable, or should otherwise cease to be eligible to receive this Easement directly under the laws of the Commonwealth of Virginia, a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed upon the Grantee by this Easement.

**5.17 LIMITATION ON EFFECT OF INVALIDITY OR UNENFORCEABILITY.** The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any other provision of this Easement, or of any ancillary or supplementary agreement relating to this Easement.

**5.18 APPLICABLE LAW.** This Easement shall be interpreted under the laws of the Commonwealth of Virginia and the United States, except as limited or changed by Subsection 5.5 and the Restrictions, and the Terms and Conditions of this Easement.

**5.19 ENTIRE AGREEMENT.** This Easement sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement.

**5.20 ACCEPTANCE.** Acceptance by the Grantee of this conveyance is authorized by § 10.1-1010 VA. CODE and is evidenced by the signature of its authorized representative below.

**5.21 COST RECOVERY.** Grantee reserves the right to recover its costs incurred in responding to requests initiated by Grantor involving matters such as consideration of the granting of Prior Written Approval, interpretation of the Restrictions, or the Terms and Conditions of this Easement, boundary line adjustments, easement amendments, project reviews for ecosystem services, preparation of reports to facilitate sales, and access or utility easements over the Property. In the event that the Grantee is joined in litigation as a proper party, the Grantee may employ an attorney to protect its interests, and a reasonable fee to such attorney and any costs and expenses of such litigation shall be paid by the Grantor, if the then owner of the Property, and if not, the then successor in title.

WITNESS the following signatures and seals.

[Counterpart signature pages follow]

[Counterpart signature page 1 of 2 of deed of conservation easement]

SHIELD'S POINT, LLC,  
a Virginia limited liability company

By *Hunter S. Vermillion* (SEAL)  
HUNTER S. VERMILLION (Printed Name)  
Its: MANAGER (Title)

*State of New Mexico*

~~COMMONWEALTH OF VIRGINIA~~, at large,  
CITY/COUNTY OF *Cuba, Sandoval county*, TO WIT:

The foregoing instrument was acknowledged before me this *18<sup>th</sup>* day of *October*, 2021,  
by *Hunter S. Vermillion*, \_\_\_\_\_ of Shield's  
Point, LLC, a Virginia limited liability company, on behalf of said company, pursuant to due  
company authority.

*Mary Vigil*  
Notary Public



OFFICIAL SEAL  
Mary Vigil  
NOTARY PUBLIC - STATE OF NEW MEXICO

My Commission Expires: *September 04, 2022*

My commission expires: *September 04, 2022*

(SEAL)

Registration No. *Commission No: 1123160*

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

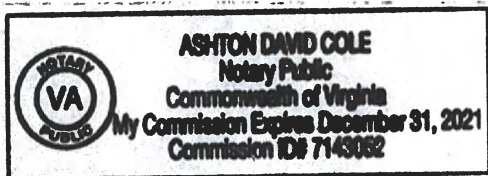
Accepted:  
LAND TRUST OF VIRGINIA, INC.,  
a Virginia corporation

By: [Signature] (SEAL)

Title: [Signature]

COMMONWEALTH OF VIRGINIA, at large,  
CITY/COUNTY OF Loudoun, TO WIT:

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of October, 2021, by Childs F. Burden, Chairman of Land Trust of Virginia, Inc., on behalf of said corporation, pursuant to due corporate authority.



[Signature]  
Notary Public

My commission expires: 12/31/21

(SEAL)

Registration No. 714 3052



Schedule A  
Property/Legal Description

All those four (4) tracts or parcels of land containing in the aggregate approximately 827.9 acres, located in Powhatan District, James City County, Virginia, and further shown on that composite plat entitled “COMPOSITE EXHIBIT OF THE PROPERTIES ADJOINING SHIELDS POINT, LLC, JAMES CITY COUNTY, VIRGINIA”, dated July 20, 2021, a copy of which is attached hereto as Schedule A-1.

The following description of the tracts or parcels comprising the Property is principally based on descriptions in previous deeds in the chain of title, except for Parcel Four, which is shown and described on a plat referenced in the description of Parcel Four.

Parcel One: GPIN No. 2840100008:

All that certain tract or parcel of land containing 625.2 acres, more or less, in gross and not by the acre, situate in Powhatan District, James City County, Virginia, known as “Shield’s Point”, originally containing 715 acres, more or less, and bounded and described as follows: On the north by Spring Bay, Black Stump Creek and the land of J. C. Warburton; on the west by the Chickahominy River; on the south by Ashby’s Bay, the lands of W. F. and W. E. Bozarth and Checkerhouse Creek; and on the east by the land of Martha Harris and the land of W. F. and W. E. Bozarth.

Less and except therefrom, a tract or parcel of land containing approximately 12.3 acres, conveyed by Virginia Trust Company and Estelle Crawford Watts, Executors and Trustees of the R. B. Watts Estate to T. R. Vermillion by deed dated August 18, 1960 of record in the Clerk’s Office of the Circuit Court of James City County, Virginia, in Deed Book 76, page 172.

Further less and except therefrom, a tract or parcel of land containing approximately 77.5 acres, conveyed by Virginia Trust Company and Estelle Crawford Watts, Executors and Trustees of the R. B. Watts Estate to T. R. Vermillion by deed dated May 14, 1962, of record in the aforesaid Clerk’s Office in Deed Book 85, page 386.

Parcel Two: GPIN No. 3510100011:

All that certain tract or parcel of land containing 27.34 acres, more or less, being the northern portion of the Wallace Tract, lying north of the Bush Neck Road, situate in Powhatan District, James City County, Virginia, and shown on a plat entitled “Plat of a Part of Rye Patch and Wallace Tracts”, made by A. B. Edmonds, dated February 3-6, 1900, of record in the aforesaid Clerk’s Office in Plat Book 3, page 6; Bush Neck Road having been surveyed and platted on the original plat June, 1939, by V. D. McManus, which plat, with additional lines shown thereon, was recorded contemporaneously with the deed from Richmond Realty Appraisal Corporation to R. B. Watts, dated July 10, 1939, of record in the aforesaid Clerk’s Office in Deed Book 31, page 217.

Parcel Three: GPIN No. 3510100012:

All that certain tract or parcel of land containing 7.35 acres, more or less, adjoining the above mentioned tract on the easterly side thereof and shown on the above mentioned plat, and being situate in the fork or corner of Bush Neck Road and the road leading into Shield's Point, and reputed to have been formerly a portion of the "Locust Hill Tract".

Parcel Four: GPIN No. 2840100007:

All that certain tract or parcel of land containing 74.7 acres, more or less, situate in Powhatan District, James City County, Virginia, and being a portion of "Shield's Point", and being the residue of that tract or parcel of land that originally contained 77.5 acres, more or less, as described in an instrument of record in the aforesaid Clerk's Office in Deed Book 85, page 386. By boundary adjustment, 2.8 acres, more or less, was subtracted from this Parcel Four and added to that tract or parcel of land (the "Excluded Tract") known as James City County GPIN No. 2840100006, resulting in the Excluded Tract being increased from 12.3 acres, more or less, to 15.1 acres, more or less. The Excluded Tract is excluded and excepted from the Property and this Easement, as shown on that plat entitled "BOUNDARY LINE ADJUSTMENT PROPERTY OF SHIELDS POINT, LLC JAMES CITY COUNTY, VIRGINIA" dated June 18, 2021, revised July 22, 2021, of record in the aforesaid Clerk's Office as Instrument Number 210018104. On the aforementioned plat, the Excluded Tract is shown as PARCEL A, and this Parcel Four as PARCEL B. The Property and this Easement shall be subject to that easement of right-of-way thirty (30) feet in width, over and across Parcel Four, to provide ingress to and egress from the Excluded Tract as shown on the aforementioned Plat.

The Property was acquired by Shield's Point, L.L.C., a Virginia limited liability company, from T. R. Vermillion (aka T. Robert Vermillion, Thomas R. Vermillion, and Thomas Robert Vermillion), by deed dated July 18, 2001, of record in the aforesaid Clerk's Office as Instrument Number 010013767.

**PLAT ATTACHED**





**Shield's Point, LLC Property - Exhibit B**

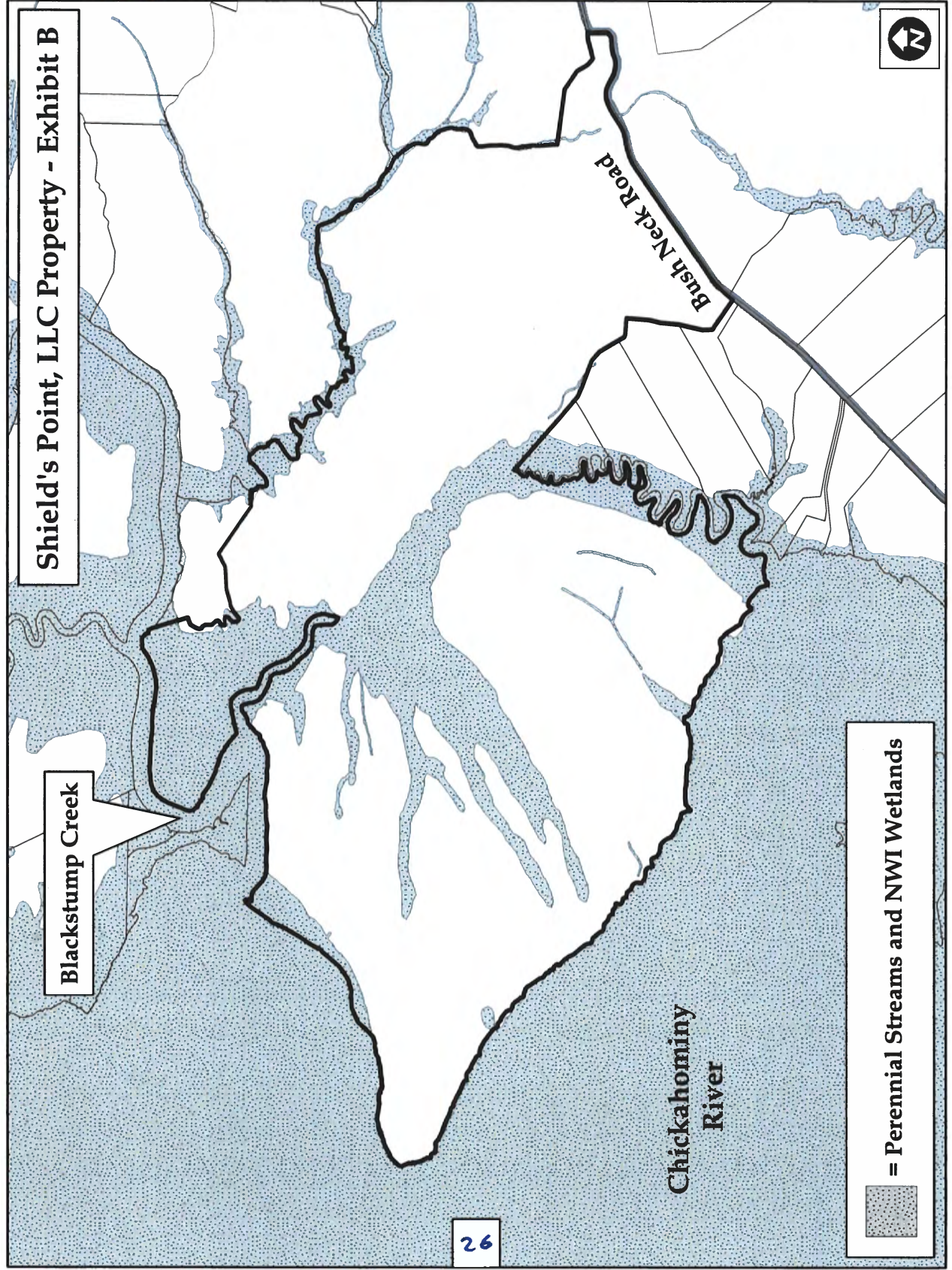
**Blackstump Creek**

**Bush Neck Road**

**Chickahominy River**



**= Perennial Streams and NWI Wetlands**

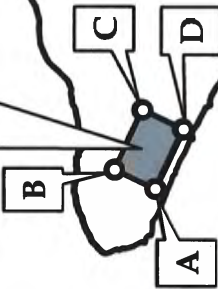


# Shield's Point, LLC Property - Exhibit C

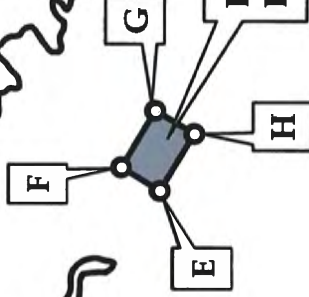
## GPS Points

- A: 37°18'15.5"N 76°52'19.2"W
- B: 37°18'18.7"N 76°52'17.4"W
- C: 37°18'16.6"N 76°52'12.4"W
- D: 37°18'13.0"N 76°52'14.2"W
- E: 37°18'22.7"N 76°51'16.6"W
- F: 37°18'26.3"N 76°51'14.8"W
- G: 37°18'23.4"N 76°51'10.1"W
- H: 37°18'19.8"N 76°51'11.9"W

Building Envelope #1



Building Envelope #2



Note: Building Envelope #1 is a four-sided polygon defined by GPS Points A to D.  
Building Envelope #2 is a four-sided polygon defined by GPS Points E to H.

INSTRUMENT 210020902  
RECORDED IN THE CLERK'S OFFICE OF  
WMSBG/JAMES CITY CIRCUIT ON  
OCTOBER 21, 2021 AT 03:26 PM  
MONA A. FOLEY, CLERK  
RECORDED BY: VYS