

Appendix D: SAMPLES OF LAND USE AGREEMENTS

Appendix D SAMPLES OF LAND USE AGREEMENT FORMS

On the following page is the land use agreement currently being used by West Virginia to obtain permission from property owners to develop trails on their land for the Hatfield-McCoy Trail System. Also included is the proposed land use agreement developed by Kentucky for that same purpose and an easement form currently being used by Pennington Gap in Lee County, Virginia.

EXHIBIT A: West Virginia Land Use Agreement Form

Version Jan. 2005

**License for
Public Recreational Trails**

This license agreement is made this ____ day of _____, 2007, by and between _____, all entities either owning or having an incorporeal interest (such as a lease, sublease, or easement) in the "Land," hereinafter defined and described, (all hereafter jointly or collectively referred to as "Licensor") and the Hatfield-McCoy Regional Recreation Authority, a public corporation (hereinafter "Licensee").

WHEREAS Licensor owns or controls an interest in approximately ____ acres of real property located in the county or counties of _____ in the State of West Virginia, as more particularly delineated on a map attached hereto as Exhibit A; provided, however, Licensor makes no representation or warranty of title to the Land and Licensee takes the licenses granted hereby subject to any and all adverse interests of others (if any) in and to the property described on Exhibits A and B, irrespective of whether such adverse interests (if any) are of record; and;

WHEREAS Licensee Hatfield-McCoy Regional Recreation Authority is a public corporation created by the West Virginia Legislature for the purpose of enabling and facilitating the development and operation of a system of trail-oriented recreation facilities called the Hatfield-McCoy Recreation Area for use by off-highway vehicle enthusiasts, equestrians, mountain bicyclists, and others in southern West Virginia, with significant portions of the recreational trail system being located on private property made available for use through lease, license, easement or other appropriate legal form by a willing landowner, and;

WHEREAS the Licensor is willing to participate in the Hatfield-McCoy Recreation Area by granting the licenses described herein for the use of designated portions of its land for recreational purposes by Licensee and its invitees;

NOW THEREFORE, in consideration of the foregoing recitals, the covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of License to Construct and Maintain Trail System

Licensor hereby grants to Licensee, its employees, agents and contractors, the rights of ingress and egress to the recreational trail corridors described on Exhibit B hereto for the following limited purposes: inspection of the land for the mapping, planning, development, and maintenance of the trail system; designation of existing ways as trails; construction of new trails; closing of existing ways or trails by the installation of signs or barricades; temporarily closing trails to recreational use; moving dirt and rock; making minor changes in gradient features; clearing brush and overhanging limbs; removing scrub

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trees and stumps; removing trash; removing fallen trees or limbs; erecting signs to identify trails and to warn or guide trail users; constructing simple structures, including water fords, bridges, water flow control devices and erosion control devices; providing assistance or guidance to trail users; enforcing regulations adopted by Licensee to regulate recreational use of the trails; monitoring stream quality to check for trail-related erosion; operating construction equipment (bulldozer, tractor, front-end loader, truck, ATV, hand tools, etc.); and other similar activities necessary to plan, construct, reconstruct, improve, maintain, repair, operate, and manage the recreational trail system.

In addition, Licensor hereby grants to Licensee, its employees, agents or contractors the rights of ingress and egress to the property described in Exhibit A hereto (the "Land") for the following limited purposes: inspecting the Land for the mapping and planning of potential new or alternative trail corridors; erecting signs to warn trail users that they are off the trail system and trespassing; providing guidance or assistance to trail users who are off the trail system; enforcing regulations adopted by Licensee to regulate recreational users; removing trash; monitoring stream quality to check for trail-related erosion; operating construction equipment (bulldozer, tractor, front-end loader, truck, ATV, hand tools, etc.) as necessary to install signs, remove trash, or accomplish other activities contemplated by this immediate paragraph; and moving such construction equipment along existing roads or paths in order to directly access the Exhibit B trail corridor location where that equipment will be utilized.

In performing any of the activities authorized hereunder, Licensee will minimize and control the effects of erosion and will consult with Licensor as to the effects of excess spoil.

2. **Grant of License to Use Trail System**

Licensor hereby grants to Licensee and its invitees (which may include members of the general public at the election of the Licensee) the rights of ingress and egress to the recreational trail corridors described on Exhibit B hereto for the sole and limited purpose of recreating on such trails by foot, bicycle, horse or motorized all terrain vehicles; provided however, no motorized vehicle which is licensed or capable of being licensed for use on public roads of West Virginia (except motorcycles and all terrain vehicles) shall be permitted on the Land under the license granted by this paragraph 2.

3. **General Scope and Limitations on Licenses**

The licenses granted in paragraphs 1 and 2 are nonexclusive, and the Licensor retains full rights to use or alienate the Land, including the trail corridor areas

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and trails, for any purpose whatsoever, but Licensor agrees that it will not license or permit any other corporation, person, group, or entity to use the Land for the same recreational activity or for any inconsistent recreational activity. Whenever Licensor, or any of its employees, agent or contractors, undertakes activities within the trail corridors that necessitate the temporary closing of the trail or any portion thereof, Licensor shall give Licensee notice to permit the Licensee to effectively close the trail in order to protect trail users. Where feasible, such notice shall be given in writing and shall be given not less than 15 days in advance of the activities.

With regard to the exercise of the licenses granted in numbered paragraphs 1 and 2, Licensee is specifically prohibited from undertaking the following activities without the express, written permission of Licensor's authorized agent, which permission may be granted or withheld at Licensor's sole discretion: (i) cutting any tree having a diameter at breast height in excess of ____ inches; (ii) setting any fire for any reason whatsoever; (iii) constructing any trails or ways not existing as of the date hereof; (iv) constructing any dam or changing the location or flow of any river, stream or other watercourse; or (v) (A) using the Land for the generation, use, handling, manufacture, treatment, storage, discharge or disposal of any hazardous or toxic substance or waste, pollutant or contaminant (including without limitation petroleum products and radioactive materials ("Hazardous Substances")); (B) installing any Hazardous Substance storage tank, asbestos-containing materials or polychlorinated biphenal ("PCB") containing equipment on the Land; (C) undertaking, permitting any action or omitting to take any action on or at the Land which could require Licensor to include in the deed to the Land a notice of disposal/release of Hazardous substances on the Land. Licensee represents that it has not, and covenants that its invitees will not, pay any "charge" (as that term is defined in W. Va. Code § 19-25-1 et seq.) to Licensor for the licenses hereby granted.

The licenses hereby granted are specifically made subject to the representations, indemnities, terms and conditions hereinafter set forth.

4. Indemnification and Hold Harmless as to Claims relating to Licensee's Acts or Omissions

Licensee covenants and binds itself to indemnify and save harmless Licensor, its assigns, affiliates, and parent corporations, and its/their respective officers, partners, directors, agents, and employees, and each of them, from any and all damages, liability, and expense resulting from the claims, demands, actions, causes of action of any and all persons, firms, and corporations or governmental bodies for personal injuries, death, damages to property, fines, or penalties caused by or arising out of the acts or omissions of Licensee, its officers, agents, employees, invitees, licensees, or contractors in exercising Licensee's rights hereunder, or in any manner using or enjoying the Land

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under the provisions hereof, and from and against any and all reasonable costs, counsel fees, expenses and liabilities incurred in our about any such claim or action brought thereon.

5. Indemnification and Hold Harmless as to Claims relating to Licensor's Acts or Omissions

Licensee covenants and binds itself to likewise indemnify and same harmless Licensor, its assigns, affiliates, and parent corporations, and its/their respective officers, partners, director, agents, and employees from any and all damages, liability, and expense resulting from the claims, demands, actions, causes of action of any and all persons, firms, and corporations for personal injuries, death, or damages to property caused by or arising out of the acts or omissions of Licensor, its officers, agents, employees, invitees, licensees, or contractors and from and against any and all reasonable costs, counsel fees, expenses, and liabilities incurred in or about any such claim or action brought thereon; Provided, however, that such obligation of indemnification and saving harmless contained in this paragraph 5 shall apply only to claims, demands, actions, or causes of action that arise out of or are directly related to the exercise by Licensee, its officers, agents, employees, invitees, licensees, or contractors of Licensee's rights hereunder or Licensee's employment or use in any manner of the Land under the provisions hereof; Provided further that such obligation of indemnification and saving harmless shall not include acts or omissions committed by the Licensor, its officers, agents, employees, invitees, licensees, or contractors that constitute the deliberate, willful, or malicious infliction of injury to persons or property.

6. Indemnification and Hold Harmless; Legal Action

The parties further agree that if it becomes necessary for the Licensor, its officers, agents, or employees to file an action against Licensee to establish the right to indemnification, then the party prevailing in such litigation shall be reimbursed by the other party for all reasonable attorney fees, expenses, and costs incurred in such litigation.

7. Inspection of the Land

Licensee acknowledges Licensor's disclosure that mining, timber cutting or other commercial or industrial operations may have heretofore been, and are being and may in the future be prosecuted in, on, and under portions of the Land, and that Licensor makes no warranty or representation, either implied or expressed, concerning the suitability of the Land for recreational purposes or the presence or absence of hazardous conditions, known or unknown. Licensee states that it has inspected the trail corridors delineated in Exhibit B and the immediately adjoining areas to the extent Licensee deems necessary and Licensee accepts the Land covered by the license in its existing condition.

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8. Insurance

Without limiting or affecting the foregoing provisions of paragraphs numbered 4 and 5, Licensee shall, at its sole expense, procure and maintain in full force and effect commercial general public liability insurance against any and all such claims, demands, actions, or causes of action described in paragraphs numbered 4 and 5, including coverage in the following categories as these terms are generally understood in the insurance business: (A) premises and operations liability; (B) contractual liability; (C) products and completed operations liability; and (D) auto liability including hired and non-owned. The specified insurance shall provide coverage in an amount not less than ten million dollars (\$10,000,000). All insurance required under this paragraph shall (1) name Licensor as an additional insured party; (2) be primary (any insurance maintained by Licensor shall be considered in excess and non-contributory); (3) specifically provide that Licensor may be a permissible claimant for any damage done to its/their properties; (4) contain a provision causing the insurer(s) to waive its/their rights of subrogation against indemnified parties; and (5) contain a provision for notice to Licensor of any overdue or unpaid premium and not less than thirty (30) days' advance notice to Licensor of any proposed cancellation or change in coverage. Each policy of insurance shall be written as an "occurrence" contract. Certificates of insurance consistent with the requirements of this paragraph 8 shall be supplied to Licensor before the Licensee enters upon the Land to exercise the Licenses granted herein and from time to time thereafter as requested by Licensor. If at any time any of this insurance coverage shall cease to be in force and effect, Licensee shall immediately notify Licensor and shall immediately suspend all activities described in numbered paragraphs 1 and 2 on the Land until such insurance coverage has been reinstated.

9. Workers' Compensation

Licensee further covenants and agrees that all employees of Licensee and/or any and all other persons performing work on the Land pursuant to the rights granted in this license will be fully covered by Workers' Compensation as may be required under the West Virginia Workers' Compensation Act, including employer's excess liability stop gap coverage, and to that end Licensee shall comply with all applicable workers' compensation laws, rules, and regulations and shall make all necessary contributions, provisions for becoming self-insured, and/or other payments. Before entering upon the Land to exercise this Agreement, and from time to time thereafter as requested by Licensor, Licensee shall furnish unto Licensor satisfactory proof of its compliance with the provisions of this paragraph 9. If at any time any of the workers' compensation coverage required by this paragraph 9 shall cease to be in full force and effect, Licensee shall immediately notify Licensor and shall immediately suspend all activities described in numbered paragraphs 1

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and 2 on the Land until such workers' compensation coverage has been reinstated.

10. Compliance with Law

(A) Licensee shall at all times (i) comply with all applicable federal, state and local laws, rules and regulations relating to performance of its activities on the Land, including without limitation, all permits issued pursuant thereto; (ii) make available to Licensor copies of all permits, licenses and governmental approvals applicable to Licensee's operations on the Land; (iii) post all required surety bonds and furnish evidence thereof to Licensor; and (iv) indemnify and save harmless Licensor from any liability, claims or demands arising out of and attributable to Licensee's failure to observe any applicable laws, rules or regulations. In addition, Licensee shall comply with any and all covenants, conditions, orders, licenses, permits, approvals and restrictions affecting the Land to which Licensor has given Licensee written notice.

(B) Licensee agrees to promptly report to appropriate persons any forest fire when sighted by Licensee, its employees, agents or contractors whether said fire be on the Land or adjacent lands owned by others. Licensee agrees (and shall require its employees, agents and contractors working in the field to agree) to use commercially reasonable efforts to prevent forest fires upon the Licensor's property.

11. Term of Agreement

This Agreement shall become effective _____ and shall remain effective for a period of one year, unless it is earlier revoked. This agreement shall renew itself from year to year unless and until either party exercises its right of 30 day revocation as described in paragraph 12. Licensee shall have the right and obligation, after either (A) the final termination in whole of this Agreement for any reason or (B) the abandonment and/or relocation of portions of established trail corridors within the still existing license, to enter the Land for the purpose of reclaiming areas disturbed by the trails and/or of removing any structures constructed, but only if Licensor notifies Licensee in writing that Licensor desires for Licensee to conduct such reclamation removal. The provisions of paragraphs 4 through 6 and 8 through 10 both inclusive shall survive the termination hereof, irrespective of the reason for such termination, with respect to any activity or occurrence taking place during the term hereof.

12. Revocation of Agreement

This Agreement may be terminated at the will and discretion of either party with 30 days written notice to the other party.

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13. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

14. Assignment Prohibited

Neither this Agreement nor any rights granted hereunder shall be assigned by Licensee without first obtaining the written consent of the Licensor, which consent may, in the sole discretion of the Licensor, be unreasonably withheld.

15. Recordation Prohibited

This Agreement shall not be recorded.

16. Notices

All notices, reports, consents, and other required written communications between the parties shall be made to the parties at their respective addresses as set out in Exhibit C.

17. Exhibits and Revisions of Exhibits

Exhibits A, B, and C are hereby made a part of this Agreement. Exhibits A, B, and C may be revised in writing at any time upon the mutual agreement of the parties, without additional consideration being required or expressed. Any such written modifications of Exhibits A, B, and C, when executed by all of the parties, shall become and constitute a part of this Agreement with the same force and effect as the original Exhibits that they replace.

18. Counterparts and Facsimiles

Any number of counterparts of this Agreement may be signed and delivered, and each shall be considered an original, and together they shall constitute one agreement. Any party to this Agreement may join in this Agreement by delivering, by facsimile transmission, a counterpart of this license agreement, properly executed by such party, and such party shall be bound thereby.

19. Miscellaneous

(A) No failure or delay on the part of either Licensor or Licensee in exercising any of their respective rights hereunder upon any failure by the other party to perform or observe any condition, covenant or provision herein contained shall operate as a waiver thereof, nor shall any single or partial exercise of any of such rights preclude any other or further exercise thereof or the exercise of any other right hereunder. Neither the licenses granted hereby nor any

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EXHIBIT A: West Virginia Land Use Agreement Form - page 8.

provision hereof may be supplemented, changed, waived, discharged or terminated orally, or by any course of dealing or trade usage, but only by an instrument in writing signed by the party against whom the enforcement of the supplement, change, waiver, discharge or termination is sought.

(B) The terms, conditions and covenants contained herein shall extend to, be binding upon, and inure to the benefit of, the successors, legal representatives and assigns of the parties hereto.

(C) This document, together with the Exhibits attached hereto, is the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior representations, negotiations, writings, memoranda and agreements with respect to the subject matter hereof. Any prior agreements, promises, negotiations or representations not expressly set forth herein are of no force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

LICENSOR

By: _____

Its: _____

LICENSEE
HATFIELD-MCCOY REGIONAL
RECREATION AUTHORITY

By: _____

Its: _____

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EXHIBIT B: Kentucky Land Use Agreement Form.

RECREATIONAL LAND USE LICENSE AGREEMENT

This **RECREATIONAL LAND USE LICENSE AGREEMENT** is made and entered into this day of _____, 2009 by and between _____ a married/single individual (hereinafter referred to as "Grantor") whose address is _____ and the **COMMONWEALTH OF KENTUCKY** , by and through the **FINANCE AND ADMINISTRATION CABINET** for the use and benefit of the **KENTUCKY RECREATIONAL TRAILS AUTHORITY , TOURISM, ARTS AND HERITAGE CABINET**, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601 (hereinafter referred to as "Grantee")

WITNESSTH:

WHEREAS, the Grantor is the owner of certain real property (hereinafter "the Property") located in Knott County , Kentucky and more particularly described in the deed attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the purpose of this Recreational Land Use License Agreement is to authorize the public to utilize the existing trails on that portion of the Property described herein for the recreational purpose(s) as defined below; and

WHEREAS, the parties enter into this agreement under the statutory provisions of KRS 148.795;

NOW THEREFORE, in consideration of the mutual covenants contained herein, Grantor does hereby grant unto Grantee, a license to use the existing trails located on the property identified in Exhibit "A". Said license shall extend twelve (12) feet on either side of the centerline of the existing trails on the property and shall be referred to herein as the "Recreational Area." Grantor gives Grantee the right to enter into an agreement with other state or local entities to manage, maintain , operate, improve , renovate, finance or otherwise provide for additional recreational facilities within the Recreational Area, to include trails, signage, stairways, steps, bridges, surfacing material, benches, trash receptacles and trail terminus parking for the following recreational activities: hiking, bicycling horseback riding, and all terrain vehicle riding. Any construction within the Recreational Area must be pre-approved by Grantor. No four wheel drive vehicles shall be permitted or used within the Recreational Area. Any trails or other recreational facilities shall be constructed and maintained in conformance with generally accepted design standards, and may include paved and unpaved trail surfaces, at-grade shoulders, vegetative buffers, benches and such improvements.

Except as expressly limited by this Agreement, Grantor may exercise and enjoy all rights as owner of the Property, including the right to use the Property for any purpose not inconsistent with this Agreement. Grantor may maintain, replace, and repair the existing fences, roads, corrals, barns, sheds, and other improvements within the Recreational Area as may be necessary for uses permitted by this Agreement.

Grantor shall have the right to post appropriate signs or boundary markers within the Recreational Area and to regulate public access to and activities within the Recreational Area and shall further have the right to keep the Recreational Area free from obstructions including but not limited to structures and fences, which prevent reasonable public access to and along the Recreational Area.

Grantee may, at its discretion, charge for a general use permit to access the Recreational Area.

This Agreement shall be for a term of twenty (20) years from the date hereof unless termination is mutually agreed in writing by the Grantee and Grantor.

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The parties agree that the provision of KRS 411.190 shall apply to the public's use of the Recreational Area for the recreational purposes authorized under this agreement.

The parties further agree that the rights granted under this agreement shall not create in the public or any user under this agreement any interest in the Property or the Recreational Area, nor shall that use ripen into adverse possession. Grantee shall not transfer or assign this Recreational Land Use License Agreement without Grantor's permission.

The parties further agree that the uses authorized herein shall not alter the land or the status of the land to make it unsuitable for mining pursuant to KRS 350.610 or be the basis for a denial of a mining permit pursuant to KRS 350.085 or other statutes or regulations of the Commonwealth of Kentucky. In the event Grantor chooses to permit mining within the Recreational Area, Grantor retains the right to re-locate the existing trail onto another portion of his or her property.

IN WITNESS WHEREOF, the parties have executed this Recreational Land Use Agreement on the day and date set out above.

GRANTOR:

Spouse (if applicable)

COMMONWEALTH OF KENTUCKY

COUNTY OF _____

I, the undersigned, a notary public duly authorized in the county and commonwealth aforesaid, do hereby certify that the foregoing Recreational Land Use Agreement was subscribed, sworn to, and acknowledged before me by _____, to be his free act and deed on this _____ day of _____, 2009.

Notary Public

My Commission Expires: _____

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EXHIBIT B: Kentucky Land Use Agreement Form - page 3.

COMMONWEALTH OF KENTUCKY
COUNTY OF _____

I, the undersigned, a notary public duly authorized in the county and commonwealth aforesaid, do hereby certify that the foregoing Recreational Land Use Agreement was subscribed, sworn to, and acknowledged before me by _____, to be his/her free act and deed on this _____ day of _____, 2009.

Notary Public

My Commission Expires: _____

GRANTEE:
Commonwealth of Kentucky,
by and through the Finance and Administration Cabinet
for the use and benefit of the Kentucky Recreational Trail Authority
Commerce Cabinet,

BY: _____

COMMONWEALTH OF KENTUCKY
COUNTY OF FRANKLIN

I, the undersigned, a notary public duly authorized in the county and commonwealth aforesaid, do hereby certify that the foregoing Recreational Land Use Agreement was subscribed, sworn to, and acknowledged before me by _____, Finance and Administration Cabinet, to be his free act and deed on this _____ day of _____, 2008.

Notary Public

My Commission Expires: _____

THIS INSTRUMENT WAS PREPARED BY:

Signature: _____
Attorney Name: _____
Address: _____

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EXHIBIT "A"
(Grantor's Deed)

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Exhibit "B"

The Recreational Area

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EXHIBIT C: Virginia Easement Form.

COUNTY OF LEE, VIRGINIA & TOWN OF PENNINGTON GAP, VIRGINIA
PENNINGTON GAP – STONE MOUNTAIN TRAIL SYSTEM
PUBLIC RECREATIONAL TRAIL USAGE EASEMENT
Tax Parcel No.: _____

This Agreement is made on this _____ day of _____, 2008, between _____, hereinafter called the "Grantor" and County of Lee, Virginia or the Town of Pennington Gap, Virginia, as applicable, hereinafter called the "Grantees." The term Grantor in all cases shall mean the owner(s) of the property herein described, whether singular or plural and shall be gender neutral.

For and in consideration of the mutual advantages to be gained from a public multi-use recreation trail system and like agreements of other property owners, the Grantor does hereby grant, bargain, give and convey to the Grantees a temporary construction easement and permanent easement with the right for public use and to erect, construct, and install, and thereafter use, inspect, repair, maintain and replace a public trail system over, across and through the Grantors property. The permanent easement shall be 20-foot wide centered along the constructed trail. The temporary easement shall be 30-foot wide with possible 50 foot equipment staging and vehicular movement areas at locations to be determined during the construction. The Grantees shall restore the property outside of the trail and associated construction areas to it original condition or as close as is feasibly possible once the trail is constructed. This restoration shall include, but not limited to, grading, reseeding, and repairing asphalt or concrete driveways, where applicable. The location and dimensions of the easements will be determined once the construction is complete and the as-constructed record drawings will be recorded in the Lee County Circuit Court Clerk's Office to serve a the permanent easement.

If for any reason that the easement is no longer used as a public trail system, then it shall cease and all rights shall revert back to the current owner of the real estate.

<p>GRANTOR I have read and understand the Agreement and comply with the terms herein</p> <p>_____</p> <p>Grantor swear to</p> <p>_____</p> <p>Date</p> <p>_____</p> <p>ATTEST</p> <p>_____</p> <p>_____</p> <p>Phone number _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Mailing Address _____</p>	<p>GRANTOR STATE OF VIRGINIA, County of Lee to wit: Before me, the undersigned authority, on this day personally appeared</p> <p>_____</p> <p>who is known to me and did subscribe,</p> <p>And acknowledged the foregoing, this the _____ day of _____, 2008</p> <p>My commission expires:</p> <p>_____</p> <p>Notary Public</p> <p>Notary Registration No. : _____</p>
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