

DEED OF EASEMENT

Exempt from recordation taxes under §58.1-801 pursuant to
Sections 58.1-811(A)(3)

THIS DEED OF EASEMENT, dated this ____ day of _____, 200__, between _____ and _____, ("Grantor") (even though more than one), parties of the first part; the COUNTY OF CLARKE, VIRGINIA, ("County"), the CLARKE COUNTY CONSERVATION EASEMENT AUTHORITY ("Authority"), and _____, ("_____"), herein collectively called "Grantees", parties of the second part; _____, herein called the "Bank", party of the third part; and _____, herein called the "Trustee", party of the fourth part.

WITNESSETH:

WHEREAS, Grantor is the fee simple owners of that certain tract of land containing _____ acres, located in _____ Magisterial District, Clarke County, Virginia, said property being more particularly described on Exhibit A, attached hereto and made a part hereof, (the "Property"); and

WHEREAS, the Property is subject to the lien of a certain Deed of Trust dated _____, _____, and recorded in the Clarke County land records in Deed Book ___ at Page _____, wherein the Property was conveyed unto _ and _____, Trustees, either of whom my act, in trust, to secure a certain indebtedness, as more specifically set forth therein; and

WHEREAS, the Property has agricultural, natural, scenic, and historic resources;

and

[**WHEREAS**, (reference particular significant resources or specific attributes of land); and]

WHEREAS, the Open-Space Land Act (Title 10.1, Chapter 17 of the Code of Virginia) declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth by curbing urban sprawl and encouraging more desirable and economical development of natural resources, and authorizes the use of easements in gross to maintain the character of open-space land; and

WHEREAS, in furtherance of the purposes of the Open-Space Land Act, [and in furtherance of the provisions of Section _____, et seq., Code of Virginia, as to _____] the Grantor is willing to grant a perpetual open space conservation easement over the Property, on the terms and conditions hereinafter set forth, the preservation of which will benefit the citizens of the Commonwealth and Clarke County; and

WHEREAS, the Grantees are willing to accept such easement; and

WHEREAS, as required by §10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the Clarke County Comprehensive Plan; and

WHEREAS, [if the easement is, in whole or in part, to be a charitable gift qualifying for tax credit] this easement is intended, in part, to constitute a “qualified conservation contribution”, as that term is defined in §170(h)(1) of the Internal Revenue Code (the “IRC”); and

WHEREAS, [if the easement is, in whole or in part, to be a charitable gift qualifying

for tax credit] each Grantee is a “qualified organization” as defined in §170(h)(3) of the IRC, and each Grantee is a qualified body under the Open-Space Land Act; and

WHEREAS, the County and the Authority are authorized by the Open- Space Land Act to accept, hold, and administer open space easements, and possess the Authority to accept and are willing to accept this easement under the terms and conditions hereinafter set forth; and

[**WHEREAS**, (insert authority of co-holder to hold easement; for example, if the co-holder is the Virginia Outdoors Foundation, the authority would be Section 10.1-1800, et seq., Code of Virginia)].

NOW, THEREFORE, for good and valuable consideration, receipt of which all properties acknowledge, and in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, the Grantor hereby grants and conveys to the Grantees a perpetual open space conservation easement (“Easement”) over the Property, and do hereby subject, in perpetuity, the Property to the following terms, conditions, and restrictions:

1. **PERPETUAL**: This Easement is perpetual. It is a easement in gross and runs with the land.

2. **DWELLING UNIT RIGHTS**: The Property currently has ___ (____) dwelling unit rights (DUR's) [and ___ Exceptions] pursuant to paragraph 3-D-2 of the Clarke County Zoning Ordinance. Pursuant to Section 3-D-3 of the Clarke County Zoning Ordinance, the Grantor does hereby voluntarily and permanently terminate _____ (____) DUR's on the Property, leaving _____ (____) DUR's [and ___ Exceptions] remaining on the Property.

3. **SUBDIVISION**: The Property shall not be divided or subdivided in any manner. [Alternate: The Property may not be divided or subdivided into more than parcels (if applicable, describe limitations on parcel sizes).]

4. **BOUNDARY LINE ADJUSTMENTS**: Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered a prohibited division of the Property, provided that each of the Grantees are notified in writing prior to the completion of any such boundary line adjustment and at least one of the following conditions is met:

- (a) The entire adjacent parcel is subject to an existing, recorded open space easement conveyed to the Grantees; or
- (b) The proposed boundary line adjustment is reviewed and approved in advance by each of the Grantees as consistent with the intent and purposes of this Easement.

5. **BUILDINGS AND STRUCTURES**: No permanent or temporary building or structure shall be erected or constructed on the Property other than (i) one (1) single family dwelling and non-residential outbuildings or structures commonly and appropriately incidental thereto; (ii) accessory dwellings, such as guest or tenant houses, and non-residential outbuildings commonly and appropriately incidental thereto, and (iii) farm buildings or structures. Farm buildings or structures exceeding 4,500 square feet in ground area may not be constructed on the Property unless prior written approval for said building or structure is obtained in writing from Grantees. Grantees' approval shall be limited to consideration of the impact of the size, height, and siting of the proposed structure on the conservation values of the Property. Private roads and utilities that serve permitted buildings or structures may be constructed. [In the event of the division or subdivision of the Property

as provided in Paragraph 3, above, permitted buildings or structures, connection private roads, and utilities may be constructed on each parcel.]

6. **GRADING, BLASTING, MINING:** Grading, blasting or earth removal shall not materially alter the topography of the Property, except for dam construction to create private ponds or lakes, or as required in the construction of permitted buildings, connecting private roads, and utilities as described in Paragraph 6, above. Generally accepted agricultural activities shall not constitute any such material alteration. Best management practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in the construction of permitted private roads. Notwithstanding the foregoing, no grading, blasting, or earth removal is permitted on the Property if it will materially diminish or impair the conservation values protected by this Easement. Mining on the Property is prohibited.

7. **SIGNS**: Display of billboards, signs, or other advertisements on the Property is prohibited, except to: (1) state solely the name of the Grantor, the name of the farm, and/or the address of the Property; (2) advertise the sale or lease of the Property; (3) advertise the sale of goods or services produced pursuant to a permitted use of the Property; (4) give directions to visitors; or (5) provide warnings pertaining to trespassing, hunting, dangerous conditions, and other similar such warnings. No sign shall exceed nine (9) square feet or the County's Zoning Ordinance requirements, whichever is more restrictive.

8. **TRASH**: Accumulation or dumping of trash, refuse, or junk 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 on the Property, as long as such practices are conducted in accordance with applicable governmental laws and regulations. The dumping into, or filling in of, any pond, wetland, or waterway is prohibited, except as may be permitted by applicable laws for the purpose of combating erosion. The dumping, storage, or placement on the property of stumps, brush, grass, or other land-clearing debris from off-site is prohibited.

9. **MANAGEMENT OF FOREST**: Management of forest resources, including commercial timber harvest, shall be in accord with a forest stewardship plan approved by the Grantees. All forestry activities shall be carried out so as to preserve the environmental and scenic qualities of the area. Best management practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material forestry activity is undertaken. The Grantor, or their successors and

assigns, shall notify the Grantees no later than 30 days prior to the start of any material forestry activity as well as within 7 days of its completion. (Optional language: The primary objective(s) of the forest stewardship plan shall include (use those that apply) management of woodlands to provide wildlife habitat; forest stand management to maintain the health of the forest; maintenance of a scenic forest; protection of rare or unique natural areas; management of timber for income, soil, and water conservation; preservation of historical and cultural resources, etc.)

10. **INDUSTRIAL OR COMMERCIAL ACTIVITIES**: Industrial or commercial activities other than the following are prohibited: (i) agriculture, viticulture, aquaculture, silviculture, horticulture, and equine activities, (ii) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property, and that do not diminish the conservation values herein protected, (iii) activities that can be and in fact are conducted within permitted buildings without material alteration to the external appearance thereof. Temporary outdoor activities involving 100 or more people shall not exceed seven days in duration unless approved by the Grantees in advance in writing.

11. [Add provision for protection of special resources on individual properties]

12. **RIGHTS OF GRANTOR**: Notwithstanding any of the foregoing provisions, the Grantor expressly reserves to themselves, their successors and assigns, the right to:

(a) Continue the agricultural, forestry, and naturalistic uses of the Property.

(b) Continue to hunt, fish, or trap on the Property, subject to relevant laws.

(c) Improve, repair, restore, alter, remodel, or replace the existing and the permitted structures with structures of similar size and purpose, provided that the changes are compatible with the conservation purposes of the Property and all other provisions of this Easement.

(d) Continue the use of the Property for all purposes not inconsistent with this Easement.

13. **INSPECTION AND ENFORCEMENT:** This Easement shall be enforceable by any one or more of the Grantees. Representatives of each of the Grantees may enter the Property from time to time for purposes of inspection and enforcement of the terms of this Easement after permission from or reasonable notice to the owner or the owner's representative. This right of inspection does not include the interior of any dwelling.

14. **TRANSFER OF THE PROPERTY:** The Grantor, their heirs, successors, personal representatives, and assigns, shall notify each of the Grantees in writing of the transfer or sale of the Property or any part thereof within sixty (60) days following such transfer or sale.

15. **GRANTEES' APPROVAL:**

A. The Grantor shall notify the Authority (hereafter "Grantor's Notice") prior to undertaking any activities permitted hereunder, including, without limitation, activities permitted under paragraphs [5, 6, and 9].

B. Grantor's Notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to enable the Grantees to make informed judgments as to its consistency with the terms of this Easement.

C. In addition, if such permitted activity requires Grantor to obtain a permit or other governmental approval, Grantor shall disclose on the application for such permit or other governmental approval that the property is subject to this Easement.

D. It shall be the responsibility of the Authority to determine its position and to notify and determine County's and any other co-holder's position on the request for approval. The Authority shall respond to the Grantor within thirty (30) days of receipt of Grantor's Notice, advising the Grantor of the approval or disapproval of the request or advising the Grantor that circumstances require additional time to respond to the request. Such circumstances shall include the complexity of the request or proposed project, the amount of information submitted with the request, and the need for on-site inspections or consultations.

E. If the Authority does not notify Grantor of the decision on the request within ninety (90) days of receipt of the Grantor's Notice, then the Grantees and any co-holder shall be deemed to have approved the request, and the Grantor may proceed with the action for which approval was requested.

F. In order for a request to be approved, it must be approved by each Grantee and any other co-holder.

G. If the Authority, the County, and/or any other co-holder should disagree on whether a request should be approved or disapproved, the parties should review

possible remedies prior to the expiration of the ninety (90) day period. If no resolution to the disagreement can be found prior to the end of the ninety (90) day period, the disagreement shall be documented in writing and the Authority should notify the Grantor of the disapproval of the request.

H. No approval required hereunder shall be unreasonably withheld. In no event, however, shall approval be given to any activity which would result in the termination of this Easement or the development or construction of any structures not provided for herein.

17. **GENERAL TERMS:**

A. Although this Easement in gross will benefit the public in ways recited above, nothing herein shall be construed to convey a right to the public of access or use of the Property. The Grantor, his successors and assigns, retain the exclusive right to such access and use, subject to the terms of this Easement.

B. The Easement shall be construed to promote the purposes of the Virginia Open Space Land Act, the Virginia Conservation Easement Act, the Comprehensive Plan of Clarke County, and the conservation purposes of this Easement.

C. Notwithstanding any other provision of this Deed of Easement, the Clarke County Zoning Ordinance shall also apply to the Property and shall take precedence over this Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Easement.

D. If any provision of this Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this Easement shall not be affected thereby.

E. The terms of this Easement shall inure to the benefit of, and be

binding upon, the parties hereto, their agents, successors, and assigns.

F. Assignment of this Easement by the County and/or the Authority shall be governed by the Open Space Land Act. It is specifically agreed by the parties that this Easement may be assigned by the Grantees, without further approval by Grantor, to the Virginia Outdoors Foundation or other qualified entity as a co-holder of this Easement.

G. The parties agree that monetary damages would not be an adequate remedy for the breach of any of the terms, conditions, and restrictions herein contained, and therefore, in the event that the Grantor, his successors or assigns, violates or breaches any of such terms, conditions, and restrictions herein contained, any one or more of the Grantees, their successors or assigns, shall be entitled to enjoin by ex parte temporary and/or permanent injunction such violation, to require the restoration of the Property to its prior condition, and to obtain such other and further specific performance or relief as is necessary to enforce the terms of this Easement. The Grantees, or any one of them, by any prior failure to act shall not waive or forfeit, and shall not be deemed to have waived or forfeited, the right to take any action as may be necessary to obtain compliance with the terms, conditions, and purposes of this Easement. In the event of a breach of the terms of this Easement, if the Grantees, or any of them, are required to take legal action to enforce the terms of this Easement, the owner of the property shall be responsible for all costs incurred by the Grantees therein, including reasonable attorney's fees.

H. Documentation retained in the offices of the Grantee describes the condition and character of the Property at the time of this conveyance. The documentation may be used to determine compliance with and enforcement of the terms of the easement; however, the parties are not precluded from using other relevant evidence or information to

assist in that determination.

I. [if the easement is, in whole or in part, to be a charitable gift qualifying for tax credit] The parties hereto agree and understand that any value of this easement or any portion thereof claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations (see section 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Grantee makes no express or implied warranties regarding whether any tax benefits will be available to Grantor from donation of this easement, whether any such tax benefits might be transferable, or whether there will be any market for any tax benefits that might be transferable. The parties hereto intend that the easement conveyed herein shall be a qualified conservation contribution within the meaning of Section 170(h) of the IRC, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this easement from being a qualified conservation contribution. By its execution hereof, the Grantee acknowledges and confirms receipt of the Easement and further acknowledges execution hereof, the Grantee acknowledges and confirms receipt of the Easement and further acknowledges that the Grantee has not provided any goods or services to the Grantor in consideration of the grant of the Easement.

J. [if the easement is, in whole or in part, to be a charitable gift qualifying for tax credit] The Grantor and the Grantee intend that this easement be perpetual and not be extinguished, and extinguishment of this easement is not permitted under the Open-Space Land Act, Virginia Code Section 10.1-1700 *et seq.* Restrictions set forth in the easement can be extinguished only by judicial proceeding and only if such extinguishment also complies with the requirements of Virginia Code §10.1-1704. In any sale or exchange of the Property subsequent to such extinguishment, the Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of the perpetual conservation restriction computed as set forth below, but not to be less than the proportionate value that the perpetual conservation restriction at the time of the extinguishment bears to the then value of the Property as a whole. The Grantor agrees that the donation of the perpetual conservation restriction in this easement gives rise to a property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time. The Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purposes of this easement and of the Open-Space Land Act. No part of the Property may be converted or diverted from open-space uses as herein defined except in accordance with Virginia Code §10.1-1704.

K. The Grantees, by their execution of this Deed of Easement, do hereby accept the conveyance of this Easement as set forth herein.

L. The Bank and the Trustees hereby consent to the terms and intent of this Easement, and agree that the lien represented by the above-described Credit Line Deed of Trust shall be held subject to, and subordinate to, this Deed of Easement, and do

hereby subordinate the lien of the said Credit Line Deed of Trust to this Deed of Easement.

WITNESS the following signatures and seals:

_____(SEAL)
_____, Grantor

COUNTY OF CLARKE, VIRGINIA, Grantee

By:
Chairman, Board of Supervisors

CLARKE COUNTY EASEMENT AUTHORITY, Grantee

By:
Chairman, Board of Directors (Bank)

By: _____

_____, Trustee

STATE OF VIRGINIA
CITY/COUNTY OF _____, To-wit:

The foregoing document was acknowledged before me this _____ day of _____, 2006, by _____, Grantor.

My Commission expires _____.

NOTARY PUBLIC

STATE OF VIRGINIA, At-Large
CITY/COUNTY OF _____, To-wit:

The foregoing document was acknowledged before me this _____ day of _____, 2006, by _____, on behalf of THE COUNTY OF CLARKE, VIRGINIA, Grantee.

My Commission expires _____.

NOTARY PUBLIC

STATE OF VIRGINIA, At-Large
CITY/COUNTY OF _____, To-wit:

The foregoing document was acknowledged before me this _____ day
of _____, 2006, _____, on behalf of THE CLARKE COUNTY
EASEMENT AUTHORITY, Grantee.

My Commission expires _____.

NOTARY PUBLIC

STATE OF VIRGINIA
CITY/COUNTY OF _____, To-wit:

The foregoing document was acknowledged before me this _____ day of
_____, 2006, by _____, on behalf of the (Bank).

My Commission expires _____.

NOTARY PUBLIC

STATE OF VIRGINIA
CITY/COUNTY OF _____, To-wit:

The foregoing document was acknowledged before me this _____ day of
_____, 2006, by _____, Trustee.

My Commission expires _____.

NOTARY PUBLIC