

This sample deed is provided to assist landowners and their attorneys in preparing deeds of easement to be conveyed to Virginia Outdoors Foundation (VOF). As each property contains unique conservation values, staff may recommend provisions appropriate to individual properties. Landowners should discuss present and future land management practices with staff before preparation of the deed of easement. VOF does not provide legal or tax advice or warrant that this sample will meet all IRS or Virginia Department of Taxation requirements or the Virginia Land Conservation Foundation's Conservation Value Review Criteria for easements valued over one million dollars. An easement will permanently change how the property may be used and its market value. Because this change can have major estate planning and tax consequences, landowners should consult legal counsel prior to submission of their proposed easement to the VOF Board of Trustees for its consideration.

July 22, 2009

Prepared by: [landowner's attorney]

TAX MAP NO. or PIN: _____

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

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made this ____ day of _____, 2009, [between or among] _____, [collectively or together "Grantor"] [*Include marital status of Grantor.*]; the VIRGINIA OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA ("Grantee") (the designations "Grantor" and "Grantee" refer to Grantor and Grantee and their respective successors and assigns); [*if lien*] _____ (the "Lender"); and _____ and _____, Trustees.

RECITALS:

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

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

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

R-4 Pursuant to Sections 10.1-1700 and 10.1-1703 of the Open-Space Land Act, the purposes of this Easement include retaining and protecting open-space and natural resource values of the Property, and the limitation on division, residential construction and commercial and industrial uses contained in Section II ensures that the Property will remain perpetually available for agriculture, livestock production, forest or open-space use, all as more particularly set forth below; and

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

R-6 As required under Section 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the County of _____ Comprehensive Plan adopted on _____, and the Property is designated as _____ on the county’s future land use map.

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

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

R-9 This open-space easement in gross constitutes a restriction granted in perpetuity on the use which may be made of the Property, and is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below: [*Cite federal, state or local governmental policies that will be advanced by the preservation of the Property, and the public benefit of such preservation.*]

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

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

b. The Open-Space Land Act cited above;

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

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

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

f., g., h., etc. (any other applicable state policies); and

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

a. its comprehensive plan adopted on _____ to which plan the restrictions set forth in this Easement conform and which contains the following [*enumerate applicable goals, objectives, strategies, visions, or policies, etc.*] _____;

b. [*Applicable if locality has land use value assessment and Property has been given such designation*] Section _____ of the _____ County Code, which provides for use value assessment of real estate devoted to agricultural, forestal, horticultural or open-space uses, the Property having been approved for use value assessment by the County;

c. [*Applicable if Property is in an agricultural, forestal or agricultural and forestal district*] Section ____ of the _____ County Code, which provides certain tax benefits and other protections for agricultural and forest use of land to landowners who voluntarily limit development of their property under the terms of the

applicable district which ordinance was enacted pursuant to the Virginia Agricultural and Forestal Districts Act. The Property is located within the _____ Agricultural and Forestal District, and, as such, has been identified by _____ County as worthy of protection for conservation purposes;

d., e., f., etc. [*any other applicable local policies*]; and

R-___ [*Cite here any other studies or plans that will be advanced by the Property’s preservation, conservation awards or other recognition that the Property has received.*]; and

R-___ [*List here the particular conservation attributes of the Property, the public benefit they yield, and how the restrictions set forth below protect such attributes.*]; and

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

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

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

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

NOW, THEREFORE, in consideration of the foregoing recitals incorporated herein and made a part hereof and in consideration of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant and convey to Grantee a conservation and open-space easement in gross (Easement) over, and the right in perpetuity to restrict the use of, the Property, which is described below [*or in SCHEDULE “A” attached hereto and made a part hereof*] [*VOF prefers that the legal description be set forth below and not in SCHEDULE A*] and consists of _____ acres located in _____ County, Virginia, near _____, fronting on State Route _____ [*or road name*] to-wit:

_____ [*attorney to insert legal description*] _____

The Property is shown as Tax Map No. [or PIN] _____ among the land records of the County of _____, Virginia. Even if the Property consists of more than one parcel for real estate tax or any other purpose, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

SECTION I - PURPOSE

The purpose of this Easement is to preserve and protect the conservation values of the Property in perpetuity by imposing the restrictions on the use of the Property set forth in Section II and providing for their enforcement in Section III. The conservation values of the Property are described in the above recitals, are documented in the Documentation Report described in Section IV below and include the Property's open-space [*and if applicable-* scenic, natural, historic, scientific or recreational] values and its value as land preserved for rural uses such as [*Add as applicable:* forestry *and/or* agriculture (including livestock production)]. [*In Section II add specific restrictions needed to provide protection for such values.*] Pursuant to the Virginia Land Conservation Foundation's (VLCF's) Conservation Value Review Criteria the further purpose of this Easement is preservation of land for [*Insert one or more from VLCF criteria as applicable:* agricultural use, forestal use, natural habitat and biological diversity, historic preservation, natural resource-based outdoor recreation or education, watershed preservation, preservation of scenic open space, or preservation of open space designated by local government.]

[Additional optional language. Consult with attorney about whether to include this overarching provision regarding exercise of reserved rights. Grantor covenants that no acts or uses that are inconsistent with the purpose of this Easement or the conservation values herein protected shall be conducted on the Property.]

SECTION II – RESTRICTIONS

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

- 1. DIVISION.** Separate conveyance of a portion of the Property or division, or subdivision of the Property is prohibited. [*Alternate where appropriate:* The Property shall not be divided or subdivided into, or separately conveyed as, more than _____ parcels. Grantor shall give Grantee written notice prior to making any division of the Property. In the event of a division of the Property as provided in this Paragraph 1, the grantor making the conveyance retains the right to make any further permitted division(s) of the Property unless the permitted division(s) are allocated by that grantor in the instrument creating the division or other recorded instrument.] [*See VOF Guidelines for suggested density.*]

Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered separate conveyances of portions of the Property or divisions or subdivisions of the Property, provided that Grantee approves such adjustments, is made party to any deed creating a boundary line adjustment, and at least one of the following conditions is met:

- (i) The entire adjacent parcel is subject to a recorded open-space easement owned by Grantee; or
- (ii) The proposed boundary line adjustment shall have been reviewed and approved in advance by the Board of Trustees of Grantee.

[If applicable: In the event that a permitted division of the Property requires a road or street dedication, such dedication shall not be considered a separate conveyance of a portion of the Property or a division or subdivision of the Property.]

2. **BUILDINGS, STRUCTURES, ROADS, AND UTILITIES.**

(i) No buildings, structures, roads or utilities, other than the following, are permitted on the Property:

(a) **Dwellings.** _____ single-family dwelling(s) or dwelling unit(s) such as barn or garage apartments, *[In general, a maximum of two dwellings per parcel. See VOF Guidelines for further information.]* which shall not exceed an aggregate of _____ square feet of above-ground enclosed living area *[6,500 square feet per parcel suggested]*. Such dwelling(s) shall not [*“individually” if more than one*] exceed _____ square feet *[4,500 square feet generally suggested, depending on the character of the property]* of above-ground enclosed living area without Grantee’s prior review and written approval, which approval shall take into consideration the impact of the size, height and siting of the proposed dwelling(s) on the scenic and other conservation values of the Property. Dwellings currently existing on the Property shall be counted in the number of permitted dwellings and in the permitted aggregate square feet of above-ground enclosed living area. Grantor shall give Grantee 30 days’ written notice before beginning construction or enlargement of any dwelling on the Property. *[If applicable: In the event of division of the Property as provided in Section II, Paragraph 1, permitted dwellings shall be allocated (between or among) the parcels in the instrument creating the division or other recorded instrument];* and

[Alternatively, the number and square footage of dwellings may be set forth above, distinguishing between primary and secondary dwellings. For example, one parcel could have a main or primary dwelling and one secondary dwelling, such as a tenant house, cabin, or guest cottage.]

(b) **Non-residential outbuildings and structures.** Non-residential outbuildings and structures commonly and appropriately incidental to dwellings

permitted in Section II Paragraph 2(i)(a) above, and sized appropriately to serve as amenities to single-family residential use, provided that the aggregate footprint of non-residential outbuildings for each permitted dwelling shall not exceed 2,500 square feet in ground area unless prior written approval shall have been obtained from Grantee that a larger footprint is permitted considering the purpose of this Easement and the scale of the proposed outbuilding or structure in relation to the surrounding area. [*Optional addition:* Additionally, all non-residential outbuildings shall be located near such dwellings. For the purpose of this paragraph (b), “near” means within 200 feet of such dwelling, unless prior written approval shall have been obtained from Grantee that a greater distance is permitted considering the purpose of this Easement and the scale of the proposed outbuilding in relation to the surrounding area]; and

(c) **Farm buildings or structures.** Farm buildings or structures, except that a farm building or farm structure exceeding _____square feet in ground area [*4,500 square feet recommended for properties over 50 acres. VOF staff will work with landowner to determine an appropriate size for large and actively farmed agricultural properties.*] may not be constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the conservation values of the Property. For purposes of this paragraph (c), a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in Section II Paragraph 3(i or ii) below; and

(d) **Roads.** Private roads to serve permitted buildings or structures [*if applicable:* private roads to parcels created by permitted division(s) of the Property], [*if applicable:* public roads required to be constructed in conjunction with permitted division(s) or subdivision(s) of the Property, provided that Grantee determines that the construction of such public roads will not impair the conservation values of the Property and gives prior written approval of such construction,] and roads with permeable surfaces for other permitted uses, such as farming or forestry; and

(e) **Utilities.** Public or private utilities to serve permitted buildings or structures [*if applicable:* and public or private utilities to serve parcels created by permitted division(s) of the Property]. Public or private utilities to be constructed in whole or in part to serve other properties shall not cross the Property unless Grantee determines that the construction and maintenance of such utilities will not impair the conservation values of the Property and gives its prior written approval for such construction and maintenance, which approval shall take into consideration the visibility and other impact of such utilities on the conservation values of the Property. Grantor reserves its separate rights to approve such public or private utilities.

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

(iii) To protect the scenic values of the Property, no building larger than _____ square feet in ground area shall be constructed within ____ feet of State Route ____ as measured from [*Select: the center line of the road or the edge of the right of way*]. [*Add where appropriate: or above the _____ contour elevation or within the designated no-build area shown on the sketch attached hereto as Exhibit ____.*] [*In order to comply with Treasury Regulation §1.170-14(e)(2) it is strongly recommended that site control of dwellings and other buildings be included herein to prevent destruction of significant conservation interests such as scenic vistas, historic features, farmland, etc.*]

(iv) The collective footprint of all buildings and structures on the Property, excluding roads, shall not exceed 1% of the total area of the Property, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values of the Property, Grantee may approve such increase. For the purpose of this paragraph the collective footprint is the ground area measured in square feet of the buildings and structures set forth in Section II Paragraph 2(i)(a) through (c) above and all other impervious surfaces, excluding roads. [*Addition where appropriate: In the event of division of the Property, the collective footprint of the buildings and structures and all other impervious surfaces on each parcel, excluding roads, shall not exceed 1% of the total area of such parcel unless otherwise allocated in the instrument of transfer or other recorded instrument.*] [*Proviso: Carefully calculate the permitted footprint for any parcel(s) with small acreage. For example, the 1% collective footprint for a five-acre parcel is 2,178 square feet unless otherwise allocated in the instrument of transfer.*]

3. INDUSTRIAL OR COMMERCIAL ACTIVITIES. Industrial or commercial activities are prohibited with the exception of the following:

- (i) agriculture (including livestock production), equine activities and forestry;
- (ii) small-scale incidental commercial or industrial operations related to activities set forth in (i) above that Grantee approves in writing as being consistent with the conservation purpose of this Easement;
- (iii) processing and sale of products produced on the Property as long as no additional buildings are required;
- (iv) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property and that do not diminish the conservation values of the Property herein protected; and
- (v) activities that can be and in fact are conducted within permitted buildings without material alteration to their external appearance.

Temporary outdoor activities involving 100 or more people shall not exceed 7 consecutive days in any 90-day period without prior written approval of Grantee.

[*Optional*: Notwithstanding any other provision of this easement, no commercial recreational use (except for *de minimis* commercial recreational uses) shall be allowed on the Property.]

4. **MANAGEMENT OF FOREST.** Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any timber harvest (other than those in the following paragraph) or land-clearing activity is undertaken. All material timber harvest activities on the Property shall be guided by a Forest Stewardship Management Plan approved by Grantee. A pre-harvest plan consistent with the Forest Stewardship Management Plan shall be submitted to Grantee for approval 30 days before beginning any material timber harvest, which approval shall be limited to determination of whether or not the pre-harvest plan is in compliance with the Forest Stewardship Management Plan and is consistent with the purpose of this Easement. Without limiting the foregoing requirement regarding submission of pre-harvest plans, Grantee shall be notified 30 days prior to the clearing of over 10 acres of forestland for conversion into grassland or crop land or in association with the construction of permitted buildings.

Neither a Forest Stewardship Management Plan nor a pre-harvest plan shall be required for the following permitted non-commercial activities: (i) cutting of trees for the construction of permitted roads, utilities, buildings and structures, (ii) cutting of trees for trail clearing, (iii) cutting of trees for firewood, or for other domestic uses of Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

Deleted: .

[*VOF strongly recommends a riparian buffer for properties abutting or containing a section of a river, creek, perennial stream, etc., and may require a riparian buffer if the watercourse is, for example, a native trout stream or upstream from a public water supply intake. Landowners should discuss present and future land management practices with staff in the development of the riparian buffer provision.*]

- 5 **RIPARIAN BUFFER.** To protect water quality, riparian buffer strips shall be maintained as follows:

A ____-foot buffer strip shall be maintained along (the, each) edge of the _____ [*Add as appropriate*: River, Creek, perennial stream, intermittent stream] as measured from the top(s) of the bank(s) [*or if applicable*: from the high water mark(s) in tidal rivers, creeks, etc.].

(i) Within the buffer strip(s) there shall be (a) no buildings or other substantial structures constructed, (b) no storage of compost, manure, fertilizers, chemicals, machinery or equipment, (c) no removal of trees except removal of invasive

species or removal of dead, diseased or dying trees, or trees posing a threat to human or livestock health or safety, and (d) no plowing, cultivation, filling, or other earth-disturbing activity, except as may be reasonably necessary for the activities set forth in Section II Paragraph 5(ii) below.

[Recommended additional language: Livestock shall be excluded from the buffer strip(s), except (1) for brief periods of flash grazing, (2) during times of drought or other emergencies, (3) for stream crossings or (4) for watering at limited access points.]

(ii) Notwithstanding the foregoing, permitted within the buffer strip(s) are (a) wetland or stream bank restoration, or erosion control, pursuant to a government permit, (b) fencing along or within the buffer strip(s), (c) construction and maintenance of stream crossings for pedestrians, livestock and vehicles that minimize obstruction of water flow, (d) creation and maintenance of trails with unimproved surfaces, (e) planting of non-invasive species, and (f) dam construction to create ponds.

(iii) Should the _____ [*whatever watercourse(s)*] meander or change course naturally, the buffer strip(s) shall remain the same width, but move relative to the movement of the _____. In such event, any buildings or structures that were outside of the original buffer strip(s) and are determined to be within the new buffer strip(s) shall not be considered in violation of these restrictions and may be maintained at such location(s).

6. **GRADING, BLASTING, FILLING AND MINING.** Grading, blasting, filling, or earth removal shall not materially alter the topography of the Property except for (i) dam construction to create ponds, (ii) wetlands or stream bank restoration pursuant to a government permit, (iii) erosion and sediment control pursuant to an erosion and sediment control plan, or (iv) as required in the construction of permitted buildings, structures, roads, and utilities. 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. Grading, blasting, filling, or earth removal in excess of one acre for the purposes set forth in subparagraphs (i) through (iv) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities shall not constitute a material alteration. Surface mining, subsurface mining, dredging on or from the Property, or drilling for oil or gas on the Property is prohibited.
7. **ACCUMULATION OF 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 on the Property.
8. **SIGNS.** Display of billboards, signs, or other advertisements is not permitted on or over the Property except to: (i) state the name and/or address of the owners of

the Property, (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) provide notice necessary for the protection of the Property, (v) give directions to visitors, or (vi) recognize historic status or participation in a conservation program. Temporary political signs are allowed. No sign visible from outside the Property shall exceed nine square feet in size.

SECTION III – ENFORCEMENT

1. **RIGHT OF INSPECTION.** Representatives of Grantee may enter the Property from time to time for purposes of inspection (including photographic documentation of the condition of the Property) and enforcement of the terms of this Easement after permission from or reasonable notice to Grantor or Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with notice to Grantor or Grantor's representative being given at the earliest practicable time.

2. **ENFORCEMENT.** Grantee has the right to bring an action at law or in equity to enforce the Restrictions contained herein. This right specifically includes the right (i) to require restoration of the Property to its condition at the time of the donation or to its condition prior to the violation, provided that such prior condition was in compliance with the Restrictions set forth herein; (ii) to recover any damages arising from non-compliance; and (iii) to enjoin non-compliance by *ex parte* temporary or permanent injunction. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay shall not waive or forfeit its right to take such action as may be necessary to ensure compliance with this Easement, and Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by Grantee. Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage to the Property or change in the condition of the Property (i) caused by fire, flood, storm, Act of God, governmental act or other cause outside of Grantor's control or (ii) resulting from prudent action taken by Grantor to avoid, abate, prevent or mitigate such damage to or changes in the condition of the Property from such causes.

SECTION IV – DOCUMENTATION

Documentation retained in the office of Grantee including, but not limited to, the Baseline Documentation Report ("Documentation Report"), describes the condition and character of the Property at the time of the gift. The Documentation Report may be used to determine compliance with and enforcement of the terms of this Easement; however,

the parties are not precluded from using other relevant evidence or information to assist in that determination. Grantor has made available to Grantee, prior to donating this Easement, documentation sufficient to establish the condition of the Property at the time of the gift. The parties hereby acknowledge that the Documentation Report contained in the files of Grantee is an accurate representation of the Property.

SECTION V – GENERAL PROVISIONS

1. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions and restrictions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

2. **NO PUBLIC ACCESS AND GRANTOR'S RETENTION OF USE.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Subject to the terms hereof, Grantor retains the exclusive right to such access and use [*Optional addition:* including, but not limited to, the right to hunt, fish or trap on the Property].

3. **TITLE.** Grantor covenants and warrants that Grantor has good title to the Property, that Grantor has all right and authority to grant and convey this Easement and that the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record) including, but not limited to, any mortgages or deeds of trust not subordinated to this Easement.

4. **ACCEPTANCE.** Acceptance of this conveyance by Grantee is authorized by Virginia Code Section 10.1-1801 and is evidenced by the signature of a Deputy Director, by authority granted by Grantee's Board of Trustees.

5. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, has been or shall be 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 any other property pursuant

to a transferable development rights scheme, cluster development arrangement or otherwise.

6. **CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses consistent with the purpose of and not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a “qualified conservation contribution” as that term is defined in IRC Section 170(h)(1) and Treasury Regulation Section 1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.

7. **REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property. Failure of Grantor to comply with this requirement shall not impair the validity of the Easement or limit its enforceability in any way.

8. **NOTICE TO GRANTEE AND GRANTOR.** For the purpose of giving notices hereunder the current address of Grantee is Capitol Place Building, 1108 East Main Street, Suite 700, Richmond, Virginia 23219, and any notice to Grantor shall be given to the recipient at the address at which the real estate tax bill is mailed for the Property or portion thereof that is the subject of the notice and which is currently _____.
Failure to comply with this requirement shall not impair the validity of the Easement or limit its enforceability in any way.

Grantor agrees to notify Grantee in writing (i) before exercising any reserved right that Grantor believes may have an adverse effect on the conservation or open-space values or interests associated with the Property (the purpose of requiring such notice is to afford Grantee an adequate opportunity to monitor such activities to ensure that they are carried out in a manner consistent with the purpose of this Easement; such notice shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement); and (ii) at or prior to closing on any *inter vivos* transfer, other than a deed of trust or mortgage, of all or any part of the Property.

9. **TAX MATTERS.** The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in

Treasury Regulation Section 1.170A-13(c)(5), and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from donation of this Easement, or that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.

10. **NO MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.
11. **ASSIGNMENT BY GRANTEE.** Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (i) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity and (ii) the transferee then qualifies as an eligible donee as defined in IRC Section 170(h)(3) and the applicable Treasury Regulations.
12. **GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the donation of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time.
13. **CONVERSION OR DIVERSION.** Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Section 10.1-1704 of the Open-Space Land Act which does not permit loss of open space.
14. **EXTINGUISHMENT.** Notwithstanding the provisions of Section 10.1-1704 of the Open-Space Land Act, should an attempt be made to extinguish this Easement in whole or in part, such extinguishment can be carried out only by judicial proceedings and only if in compliance with Section 10.1-1704 and IRC Section 170 (h) and applicable Treasury Regulations. In a sale or exchange of the Property resulting from an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Section V Paragraph 12 above, but not to be less than the proportion that the value of this Easement at the time of extinguishment bears to the then value of the Property as a whole. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this Easement and the Open-Space Land Act.

15. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property’s conservation values or add to the restricted property, provided that no amendment shall (i) affect this Easement’s perpetual duration, (ii) conflict with or be contrary to or inconsistent with the conservation purpose of this Easement, (iii) reduce the protection of the conservation values, (iv) affect the qualification of this Easement as a “qualified conservation contribution” or “interest in land” or (v) affect the status of Grantee as a “qualified organization” or “eligible donee”. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded among the land records of the County of _____, Virginia.
16. **SEVERABILITY.** If any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.
17. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement.
18. **CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia, resolving any ambiguities or questions of the validity of specific provisions in order to give maximum effect to its conservation purpose.
19. **RECORDING.** This Easement shall be recorded in the land records in the Circuit Court Clerk’s Office of the County of _____, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.
20. **COUNTERPARTS.** This Easement may be executed in one or more counterpart copies, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto shall not affect the validity of the Easement.

Deleted: ¶

[Subordination, if applicable]

_____, herein the Lender, is the Noteholder under a certain Deed of Trust dated _____ and recorded in the Clerk's Office of the Circuit Court of _____ County, Virginia in Deed Book _____ at Page _____, which subjects the Property to the lender's lien. The Lender hereby consents to the terms and intent of this Easement, and agrees that the lien represented by said Deed of Trust shall be held subject to this Easement and joins in this Deed to reflect its direction to the Trustee to execute this Easement to give effect to the subordination of such Deed of Trust to this Easement.

WITNESS the following signatures and seals:

[Counterpart signature pages follow]

Grantor

Grantor

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

The foregoing instrument was acknowledged before me this ___ day of _____, 2009 by _____.

Notary Public

(SEAL) My commission expires: _____
Registration No. _____

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

The foregoing instrument was acknowledged before me this ___ day of _____, 2009 by _____.

Notary Public

(SEAL) My commission expires: _____
Registration No. _____

Accepted:
VIRGINIA OUTDOORS FOUNDATION,

By: _____

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2009 by _____, a Deputy Director of the Virginia Outdoors Foundation.

Notary Public

(SEAL) My commission expires: _____
Registration No. _____

Lender:

By: _____

Its: _____

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2009 by _____ [*name of officer*], _____ [*title of officer*] of _____ [*name of corporation*], a _____ [*state of incorporation*] corporation, on behalf of the corporation.

Notary Public

(SEAL) My commission expires: _____
Registration No. _____

[Counterpart signature page 3 of 3]

_____, Trustee

_____, Trustee

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2009 by _____, Trustee.

Notary Public

(SEAL) My commission expires: _____
Registration No. _____

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2009 by _____, Trustee.

Notary Public

(SEAL) My commission expires: _____
Registration No. _____