

THIS DEED IS EXEMPT FROM TAXATION UNDER VIRGINIA CODE
§§ 58.1-811 (A)(3) AND 58.1-811(C)(4)

DEED OF EASEMENT

THIS DEED OF EASEMENT, made this _____ day of _____, 2006, by and between _____, Grantor, hereinafter referred to as the "Grantor," and the **COUNTY OF JAMES CITY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter sometimes referred to as the "County," and hereinafter sometimes referred to as the "Grantee" whose address is 101 Mounts Bay Road, Williamsburg, Virginia 23185, and _____, Trustee, hereinafter referred to as the "Trustee," and _____, Beneficiary, hereinafter referred to as the "Beneficiary."

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of the property located in James City County, Virginia, that is described in "Exhibit A" attached and hereinafter referred to as the "Property;" and

WHEREAS, under the County's Purchase of Development Rights ("PDR") Program, codified in the James City County Code as Chapter 16A, the County is authorized to acquire conservation easements over qualifying properties in order to accomplish the purposes of the PDR Program and the Open-Space Land Act (Virginia Code § 10.1-1700 *et seq.*); and

WHEREAS, the Grantor has voluntarily agreed to have the Property be subject to the terms of this conservation easement; and

WHEREAS, the County's acquisition of the conservation easement identified herein furthers the purposes of the PDR Program in that such acquisition, among other things, assures that James City County's resources are protected and efficiently used, establishes and preserves open-space, and furthers the goals of the James City County Comprehensive Plan to protect James City County's natural, scenic and historic resources, promotes the continuation of a viable agricultural and forestal industry and resource base, and protects the quality of James City County's surface water and groundwater resources; and

WHEREAS, the Grantor and the County have entered into a purchase agreement under the terms of which the County has agreed to pay the Grantor the sum of _____ (\$ _____) for this conservation easement, such sum being based upon the fair market value of the easement, as determined by a qualified appraiser.

NOW, THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor hereby grants, conveys, covenants and agrees as follows:

1. GRANT AND CONVEYANCE OF EASEMENT. The Grantor hereby grants and conveys to the Grantee and their successors and assigns, with General Warranty and English Covenants of Title, a conservation easement in gross over the Property more particularly described in “EXHIBIT A” ATTACHED, restricting in perpetuity the use of the Property in the manner set forth in this Deed of Easement.

2. USES AND ACTIVITIES. In order to accomplish the purposes of the PDR Program and the Open-Space Land Act (Virginia Code § 10.1-1700 *et seq.*) the Property shall be subject to the following restrictions:
 - A. Construction, installation, location, placement of structures and improvements. There shall be no construction, placement or maintenance of any structure or improvements on the Property unless the structure or improvements are either on the Property as of the date of this Deed of Easement or are authorized as follows:
 1. Existing dwellings. The repair, expansion or replacement of a dwelling that exists as of the date of this Deed of Easement is permitted.
 2. Types of structures. The following structures may be established: [(a) One (1) single-family dwelling per 100 acres with location approved by the Grantee, and approved location identified on a plat of survey entitled _____, which plat is dated _____, made by _____, a copy of which is recorded in the Clerk’s Office of the City of Williamsburg and James City County, Virginia, as Instrument No. _____ ;(*delete if not allowed)] (b) accessory structures such as outbuildings, swimming pools, gazebos, garages, and tool sheds; and (c) farm buildings and structures.
 3. Size of structures. Each new farm building and farm structure shall have a structural footprint of not more than four thousand five hundred (4,500) square feet and total farm buildings and structures shall not exceed ten (10) percent of the surface area of the property, unless prior written permission for a greater footprint or surface area is obtained from the Grantee.
 4. Improvements. The following may be constructed, installed, located or placed, provided they are otherwise consistent with this Deed of Easement and the PDR Program with prior approval by the Grantee: (a) driveways and other improvements and facilities customary and related to the use of an existing dwelling or a new permitted dwelling; and (b) improvements and facilities related to a land division, as required by the County.

- B. Commercial and industrial uses prohibited; description of uses not deemed to be commercial and industrial uses. There shall be no industrial or commercial uses or activities conducted on the Property, provided however, the following uses are not deemed to be commercial or industrial uses for the purposes of this Deed of Easement:
1. Single-family residential uses.
 2. Agricultural uses, consisting of establishing, reestablishing, maintaining or using cultivated fields, orchards or pastures in accordance with generally accepted agricultural practices for the purpose of producing or maintaining crops, including horticultural specialties; livestock, including all domestic and domesticated animals; and livestock products. The processing of agricultural products is not an agricultural use, except as an accessory use with prior approval by the Grantee.
 3. Forestal uses, consisting of reforestation, timber harvesting and forest management activities undertaken to produce wood products and/or improve the health and productivity of the woodland. The processing of wood products is not a forestal use, except as an accessory use with prior approval by the Grantee.
 4. Seasonal activities that do not permanently alter the physical appearance of the Property that are related to and consistent with an authorized use of the Property delineated herein, including but not limited to the sale of agricultural products grown or raised on the Property, and the granting of licenses to enter and use the Property for hunting or fishing.
 5. Uses that are subordinate and customarily accessory to a principal use of the Property that are not expressly prohibited by this Deed of Easement and are otherwise consistent with the purposes of this Deed of Easement, the PDR Program and the County Code.
 6. Uses or activities not expressly excepted herein, but which are determined by the Grantee in writing not to be a commercial or industrial use or activity, and to be consistent with the purposes of this Deed of Easement, the PDR Program and the County Code. In making this determination, the Grantee may consider, among other things, whether the scope of a use or activity excepted herein has evolved over the term of this Deed of Easement as a result of changes in the law or customary practices.
- C. Billboards and signs. There shall be no display of billboards, signs or other advertisements on the Property, 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 twenty-four (24) square feet.

- D. Grading, excavation, earth removal, blasting, and mining. Earth removal and blasting are prohibited. The exploration for, or development and extraction of minerals and hydrocarbons by mining or any other method is prohibited. Grading and excavation is allowed but shall not materially alter the topography of the Property; grading and excavation shall be allowed for dam construction to create private containment ponds or lakes, and during the construction of permitted structures or associated improvements. Common agricultural activities such as plowing, erosion control and restoration are permitted activities that do not materially alter the topography of the Property.
- E. Management of agricultural and forestal resources. The application of Best Management Practices, as established by the Virginia Department of Agriculture and the Virginia Department of Forestry, shall be undertaken in all agricultural and forestal activities to control erosion and protect water quality.
- F. Accumulation of waste material. There shall be no accumulation or dumping of trash, refuse or junk on the Property. This restriction shall not prohibit customary agricultural, horticultural or wildlife management practices including, but not limited to, establishing brush, compost piles, or the routine and customary short-term accumulation of household trash.

3. MISCELLANEOUS PROVISIONS.

- A. No public right-of-access to Property. This Deed of Easement does not create, and shall not be construed to create, any right of the public to enter upon or to use the Property or any portion thereof, except as Grantor may otherwise allow in a manner consistent with the terms of this Deed of Easement and the PDR Program.
- B. Easement applies to the whole Property and runs with the land. The covenants, terms, conditions, and restrictions of this Deed of Easement shall apply to the Property as a whole, and shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs, and be considered a servitude running with the land in perpetuity.
- C. Enforcement. In addition to any remedy provided by law or equity to enforce the terms of this Deed of Easement, the parties shall have the following rights and obligations:
 - 1. Monitoring. Employees or agents of Grantee may enter the Property from time to time, at reasonable times, for the purpose of monitoring compliance with the terms of this Deed of Easement. The Grantee

shall give reasonable prior notice before entering the Property. The Grantor shall not unreasonably withhold permission.

2. Baseline Data. In order to establish the present condition of the Property, the Grantee has examined the Property and prepared an inventory of relevant features, conditions, and improvements (“Baseline Documentation”) which is incorporated by this reference. A copy of the Baseline Documentation has been provided to Grantor, and the original shall be placed and remain on file with Grantee. The Grantor and Grantee agree that the Baseline Documentation is an accurate representation of the Property at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with this Deed of Easement. The Grantor and Grantee further agree that in the event a controversy arises with respect to the condition of the Property or a particular resource thereof, the Grantor and Grantee shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy.
3. Action at law inadequate remedy. The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and restrictions herein contained, and therefore, in the event that the Grantors, their successors or assigns, violate or breach any of the terms, conditions and restrictions herein contained, the Grantee, its successors, or assigns, may institute a suit, and shall be entitled, to enjoin by ex parte temporary and/or permanent injunction such violation and to require the restoration of the Property to its prior condition.
4. Restoration. Upon any breach of the terms of this Deed of Easement by Grantor, Grantee may require by written demand to the Grantor that the Property be restored promptly to the condition required by this Deed of Easement. Furthermore the Grantee retains the right to restore the Property to a condition consistent with the terms of this Deed of Easement and assess the cost of such restoration against the owner of the parcel in violation of this Deed of Easement and as a lien against the Property in violation of this Deed of Easement, provided however, that no such lien shall affect the rights of a subsequent bona fide purchaser unless a memorandum of such lien was recorded among the land records prior to such purchase, and such lien shall be subordinate to any deed of trust recorded prior to the recordation of a memorandum of such lien.
5. Failure to enforce does not waive right to enforce. The failure of Grantee to enforce any term of this Deed of Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantor from thereby complying with any such term. Furthermore, the Grantor hereby waives any defense of laches, estoppel, or prescription.

6. Costs of Enforcement. Any costs incurred by the Grantee in enforcing the terms of this Deed of Easement against the Grantor, including, without limitation, costs of suit and reasonable attorneys' fees shall be borne by the Grantor.
 7. No right of enforcement by the public. This Deed of Easement does not create, and shall not be construed to create, any right of the public to maintain a suit for any damages against the Grantor for any violation of this Deed of Easement.
- D. No buy-back option. The Grantor shall not have the option to reacquire any property rights relinquished by this Deed of Easement.
- (Or)*
- [*Extinguishment and Exchange. Upon the expiration of twenty-five (25) years from the date on which this Deed of Easement is recorded, the owner or successor in interest to the Property which is subject to this Deed of Easement may petition the James City County Board of Supervisors for the extinguishment of this Deed of Easement in exchange for the conveyance to the Grantee of a Deed of Easement on a different parcel located in James City County and in accordance with the PDR Ordinance in place at the time of the recording of this Deed of Easement.]
- E. Notice of proposed transfer or sale. The Grantor shall notify the Grantee in writing at the time of closing on any transfer or sale of the Property. In any deed conveying all or any part of the Property, this Deed of Easement shall be referenced by deed book and page number in the deed of conveyance and shall state that this Deed of Easement is binding upon all successors in interest in the Property in perpetuity.
- F. Relation to applicable laws. This Deed of Easement does not replace, abrogate or otherwise supersede any Federal, State or local laws applicable to the Property.
- G. Zoning Ordinance. Notwithstanding any other provision of this Deed of Easement, the James City County Zoning Ordinance shall apply to the Property and shall take precedence over this Deed of Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Deed of Easement.
- H. Severability. If any provision of this Deed of Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this Deed of Easement shall not be affected thereby.
- I. Recordation. Upon execution by the parties, this Deed of Easement shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of Williamsburg/James City County, Virginia.

- J. Authority to convey easement. The Grantor covenants that he is vested with good title to the Property and may convey this Deed of Easement.
- K. Authority to accept easement. The Grantee is authorized to accept this Deed of Easement pursuant to Virginia Code § 10.1-1701.
- L. Proceeds from eminent domain. If the rights or restrictions established by this Deed of Easement are extinguished by eminent domain or other similar proceedings, the County shall be entitled to the proceeds pertaining to the extinguishment of its rights and interest under this Deed of Easement, as determined by the ratio of the value of this Deed of Easement and the restrictions imposed thereby, to the value of the fee interest in the Property as encumbered by this Deed of Easement. The values shall be determined by a qualified appraisal performed by an appraiser mutually agreed to by the Grantor and by the County.
- M. Transfer of easement by grantee. Neither Grantee nor their successors and assigns may convey or lease the conservation easement established and conveyed hereby unless the Grantee conditions the conveyance or lease on the requirements that: (1) the conveyance or lease is subject to contractual arrangements that will assure that the Property is subject to the restrictions and conservation purposes set forth in this Deed of Easement, in perpetuity; and (2) the transferee is an organization then qualifying as an eligible donee as defined by Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder, or is a public body within the meaning of Virginia Code § 10.1-1700.
- N. Construction. This Deed of Easement shall be construed to promote the purposes of this Deed of Easement and the PDR Program.
- O. Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its employees, agents, successors and assigns from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees arising from or in any way connected with the result of a violation or alleged violation on the Property, of any State or Federal environmental statute or regulation.
- P. Controlling Law. The interpretation and performance of this Deed of Easement shall be governed by the laws of the Commonwealth of Virginia.
- Q. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to this Deed of Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this

Deed of Easement, all of which are merged herein. Any amendments to this Deed of Easement shall be in writing, signed by each of the parties.

[R. Consent of trustee and beneficiary to subordinate lien. By deed of trust dated _____, of record in said Clerk's Office in Deed Book ____ at Page ____, the Grantor conveyed the subject Property to _____, Trustee, to secure an outstanding obligation owed to _____, Beneficiary. Pursuant to the authorization of the Beneficiary, as evidenced by its signature hereto, the Trustee joins in this deed to subordinate the lien of such deed of trust to the easement conveyed hereby.]

WITNESS the following signatures and seals on the date first above written:

GRANTOR

[NAME]

TRUSTEE

BENEFICIARY

[Name]
[Title]

[Name]
[Title]

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this _____ day of _____, 2005, by _____, Grantor.

WITNESS my signature and notarial seal.

[SEAL]

Notary Public

My Commission Expires: _____

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this _____ day of _____, 2005, by _____, Trustee.

WITNESS my signature and notarial seal.

[SEAL]

Notary Public

My Commission Expires: _____

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this _____ day of _____, 2005, by _____, Beneficiary.

WITNESS my signature and notarial seal.

[SEAL]

Notary Public

My Commission Expires: _____

The form of this Deed of Easement is approved and, pursuant to Resolution of the Board of Supervisors of James City County, Virginia, duly executed on the ____ day of _____, 2005, this conveyance is hereby accepted on behalf of said County.

Date

County Attorney

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

I, _____, a Notary Public for the Commonwealth of Virginia, do hereby certify that _____, Attorney for James City County, Virginia, has acknowledged the same before me in the jurisdiction aforesaid.

Give under my hand this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____