

This document was prepared by:
Albemarle County Attorney
County of Albemarle
401 McIntire Road
Charlottesville, Virginia 22902

Parcel ID Number [insert 14-digit number]

This deed is exempt from taxation under *Virginia Code* §§ 58.1-811(A)(3) and 58.1-811(C)(4) and from Clerk's fees under *Virginia Code* § 17.1-266.

DEED OF EASEMENT

THIS DEED OF EASEMENT, made this 1st day of November 2010, between _____ and _____, Grantors, hereinafter collectively referred to as the "Grantors" and the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter sometimes referred to as the "County," whose address is 401 McIntire Road, Charlottesville, Virginia, 22902, and the **ALBEMARLE COUNTY PUBLIC RECREATIONAL FACILITIES AUTHORITY**, a political subdivision of the Commonwealth of Virginia established pursuant to *Virginia Code* § 15.2-5600 *et seq.*, hereinafter sometimes referred to as the "PRFA," whose address is 401 McIntire Road, Charlottesville, Virginia, 22902; the County and the PRFA are hereinafter collectively referred to as the "Grantees."

WITNESSETH

WHEREAS, the Grantors are the owners in fee simple of the real property located in Albemarle County that is described below and hereinafter referred to as the "Property;"

WHEREAS, the Grantees are authorized to acquire and hold open-space easements (hereinafter "conservation easements") over qualifying properties under the County's Acquisition of Conservation Easements (hereinafter "ACE") Program, codified in Appendix A.1 of the *Albemarle County Code*, in order to accomplish the purposes of the ACE Program and under the Open-Space Land Act (*Virginia Code* § 10.1-1700 *et seq.*);

WHEREAS, the Grantors have voluntarily offered and agreed to have the Property be subject to the terms of this conservation easement (hereinafter, the "Easement");

WHEREAS, the Property is composed of ___ separate parcels of record totaling in the aggregate _____ acres;

WHEREAS, the Property has a total of _____ (___) division rights, as that term is defined in Appendix A.1 of the *Albemarle County Code*, which, if fully exercised, could

result in the establishment of up to _____ (___) parcels and _____ (___) dwelling units on the Property;

WHEREAS, at the time of the granting of this Easement, there are ____ principal dwelling units on the Property and other improvements documented in the Baseline Report executed by the Grantors, a copy of which is on file with the County;

WHEREAS, the Property possesses significant conservation values [*insert the appropriate values from the following: retaining or protecting the natural or open-space values of the Property, including but not limited to those for the scenic enjoyment of the general public; assuring the Property's availability for agricultural, forestal, recreational, or open-space use; protecting natural resources, including but not limited to mountain ridges, water resources, and environmentally sensitive lands; maintaining or enhancing air or water quality, including those to conserve and protect biodiversity and wildlife and aquatic habitat; or preserving the historical, architectural or archaeological qualities of the Property*];

WHEREAS, the Property contains [*describe the specific qualities of the Property for which it scored points under the ACE criteria by which it was evaluated*];

WHEREAS, the conservation resources on the Property to be protected by this Easement are [*identify the specific qualities of the Property that will be protected by the Easement, including the restriction of division rights*];

WHEREAS, [*identify the federal, state or local governmental conservation policies (for local policies, address Comprehensive Plan policies below) that will be advanced by the Easement and the resulting public benefit; example:*

WHEREAS, *the Property is within the Chesapeake Bay watershed and contributes in its undeveloped state to the water quality of the Chesapeake Bay and its watershed and to the goal set by the Governor of the Commonwealth of Virginia and the Administrator of the United States Environmental Protection Agency to conserve 432,535 acres of land in Virginia by the year 2010; in the Chesapeake 2000 Agreement, the Governor of the Commonwealth of Virginia and the Administrator of the United States Environmental Protection Agency acknowledged "that future development will be sustainable only if we protect our natural and rural resource land, limit impervious surfaces and concentrate new growth in existing population centers" and a goal of the Chesapeake 2000 Agreement is to "expand the use of voluntary and market-based mechanisms such as easements...to protect and preserve natural resource lands;"*]

WHEREAS, [*identify the federal, state or local studies whose findings or recommendations would be advanced by placing the Property under the Easement; example: “the County of Albemarle’s hydro-geologic assessment of the Mechums River and Ivy Creek basin rates the Property’s groundwater recharge potential as ‘high,’ and protecting forested land cover is the best way to protect this recharge potential”*];

WHEREAS, [*state the specific goals and objectives of the Comprehensive Plan that will be advanced by placing the Property under the Easement; examples:*

From the Rural Areas Plan:

WHEREAS, *the Rural Areas Plan of the Albemarle County Comprehensive Plan states among its goals the following:*

“Protect Albemarle County’s rural land through planned management to prevent exploitation, destruction, or neglect, and permanently preserve rural land as an essential and finite resource.”

“Protect critical natural resources identified in the Comprehensive Plan from the impacts of residential development.”

“Reduce the level and rate of residential development in the Rural Areas, and minimize the impacts of permitted development.”

From the Natural Resources and Cultural Assets Plan:

WHEREAS, *the Natural Resources and Cultural Assets Plan of the Albemarle County Comprehensive Plan states among its goals and objectives the following:*

“Preserve and manage the County’s natural resources in order to protect the environment and conserve resources for future use.”

“Recognize the importance of protecting biological diversity in both the Rural Areas and the Development Areas for the ecological, aesthetic, ethical, and economic benefits to the community.”

“Protect Albemarle County’s agricultural lands and forests as a resource base for its agricultural and forestry industries and for related benefits they contribute towards the County’s rural character, scenic quality, natural environment, and fiscal health.”

“Recognize the value of Albemarle’s mountains, including protecting water quality and drinking reservoir capacity, soil conservation, forest resources, plant and animal habitat, scenic values, tourism, and the economic impact of these resources.”

“Preserve the County’s scenic resources as being essential to the County’s character, economic vitality and quality of life.”

“Protect the County’s open space for its environmental, aesthetic, cultural, agricultural/forestal and recreational value.”

Statements may be more specific, for example: “the Natural Resources and Cultural Assets Element of the Albemarle County Comprehensive Plan identifies the following as key objectives: maintaining the integrity of existing stream channels, with the intent to maintain both biological functions and drainage; protecting the availability and quality of surface drinking water supplies; protecting the availability and quality of groundwater resources; conserving ecological communities to ensure their continued genetic diversity, and to protect ecosystems that provide essential services to humans; and promoting the protection of those important open space lands that cannot be adequately protected through regulation”];

WHEREAS, the protection of the Property by this Easement will yield significant public benefits because [*identify factors, including: the uniqueness of the Property or its resources; all proximate agricultural and forestal districts, open-space easements (including riparian buffer easements and easements on rural preservation tracts), conservation easements, and historic resources; the public’s ability to enjoy the scenic values of the Property; how the Property’s natural, historic and scenic resources would be degraded by development; the importance of the Property in preserving the local or regional landscape that attracts tourism or commerce to the area*];

WHEREAS, the Grantors desire to establish an easement on the Property for the purpose of preserving such lands as open space in perpetuity in order to protect the values described herein;

WHEREAS, the Grantees’ acquisition of this Easement furthers the purposes of the ACE Program (*Albemarle County Code § A.1-101*) in that the acquisition, among other things, assures that Albemarle County’s resources are protected and efficiently used, establishes and preserves open-space, and preserves the rural character of Albemarle County;

WHEREAS, the Grantors and the County have entered into an agreement under the terms of which the County has agreed to pay the Grantors the total sum of _____ (\$_____) for this Easement.

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 Grantors hereby grant, convey, covenant and agree as follows:

1. **GRANT AND CONVEYANCE OF EASEMENT.** The Grantors hereby grant and convey to the Grantees and their successors and assigns, with GENERAL WARRANTY AND ENGLISH COVENANTS OF TITLE, a conservation easement in gross over the Property described below, restricting in perpetuity the use of the Property in the manner set forth herein:

[Legal description to be inserted by County Attorney]

The Property is also identified in the County's tax maps as Parcel ID Number(s) _____, and is the same land acquired by the Grantors by a deed recorded in the land records of the Clerk's Office of the Circuit Court of the County of Albemarle, Virginia, in Deed Book ____, page ____.

2. **USES AND ACTIVITIES.** In order to accomplish the purposes of the ACE Program and the Open-Space Land Act, all uses and activities on the Property shall conform to all applicable provisions of the Albemarle County Comprehensive Plan and comply with the applicable requirements of the Albemarle County Zoning Ordinance (*Albemarle County Code*, Chapter 18). The Grantors covenant and agree that no activities or uses shall be conducted or undertaken on the Property that are inconsistent with the conservation purposes of this Easement. The acts and uses that the Grantors covenant and agree to do and not to do upon the Property, and the terms and conditions that each Grantee is hereby entitled to enforce, are and shall be as follows:

A. **Division of the Property and boundary line adjustments.** The Property may not be divided and its boundary lines may be adjusted only as provided herein:

1. **Division.** The Property is currently composed of ____ (__) parcel[s]. For all purposes of this Easement, the Property shall be considered to be one (1) parcel. The Property shall not be divided or subdivided and it may be sold or conveyed only as a whole [Alternative: *The Property may be divided or subdivided into not more than ____ (__) separate parcels; provided that if the Property is divided into ____ (__) parcels, all but one(1) of the resulting parcels shall be at least one hundred (100) acres in size. If the Property is divided or subdivided as provided in this paragraph, then each resulting parcel may be sold or conveyed separately.*]

2. **Boundary line adjustments.** The exterior boundary lines of the Property shall not be adjusted unless the abutting parcel sharing the same boundary line is subject to a substantially equivalent conservation easement and the adjustment is approved in writing by each

Grantee. Boundary line adjustments within the Property shall be approved if the adjustment is consistent with the Easement.

B. 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 Easement or are authorized as follows:

1. [Optional: Location of structures. Any structure allowed hereunder shall be located on a building site *within the building envelope(s) shown on Attachment ____*].

2. Types of structures. No permanent or temporary building or structure shall be built or maintained on the Property other than:

(a) [optional: _____ single-family dwelling(s) or dwelling unit(s), which shall not exceed an aggregate of 6,500 square feet of above-ground enclosed living area per parcel without Grantees' 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. Such dwelling(s) shall not individually exceed 4,500 square feet of above-ground enclosed living area per parcel without Grantees' 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. The dwelling(s) 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;]

(b) non-residential outbuildings and structures commonly and appropriately incidental to dwellings permitted above, that are sized appropriately to serve as amenities to single-family residential use, and that are neither designed, equipped nor furnished for sleeping or cooking (such as outbuildings, swimming pools, decking detached from the single-family dwelling units, gazebos, garages, and tool sheds), 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 Grantees that a larger footprint is permitted considering the purpose of this Easement and the scale of the proposed outbuilding in relation to the surrounding area. Additionally, all non-residential outbuildings shall be located near such dwellings. For the purpose of this paragraph, "near" means within 200 feet of such dwelling, unless prior written approval shall have been obtained

from Grantees 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 farm structures, except that a farm building or farm structure exceeding 4,500 square feet in ground area may not be constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantees, 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, a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in Section 2(C)(2) below.

3. Repair, Reconstruction, or Replacement of Structures. Any structure permitted hereunder may be repaired, reconstructed, or replaced in a manner consistent with the Easement if it is damaged, destroyed or demolished; provided that the repair, reconstruction or replacement of the structure is permitted by and complies with all applicable regulations.

4. Size of structures. [*Optional: No accessory structure, including any accessory dwelling unit, other than a farm building or farm structure, shall exceed a structural footprint of two thousand (2,000) square feet unless prior written permission for a greater footprint is obtained from each Grantee.*]

5. Impervious Surfaces. 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 the Grantor(s) can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values of the Property, the Grantees 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 2(B)(2) 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.*]

6. Improvements. The following may be constructed, installed, located or placed, provided they are otherwise consistent with this Easement: (a) driveways and other improvements and facilities customary and related to the use of a single parcel; and (b) improvements and facilities related to a land division including, but not limited to, public streets or private roads, and drainage and other utility facilities required by the County. [*Optional: The*

improvements identified in this paragraph may be constructed, installed, located or placed only within the areas designated for such purposes on Attachment ___ unless prior written permission to establish such improvements in other locations is obtained from each Grantee.]

C. Commercial and industrial uses prohibited; description of uses not deemed to be commercial and industrial uses. No industrial or commercial uses shall be conducted on the Property; provided, however, that the following uses are not deemed to be commercial or industrial uses for purposes of this Easement and are expressly permitted:

1. *De minimis* commercial recreational uses.
2. Agricultural uses including, but not limited to, establishing, reestablishing, maintaining or using cultivated fields, orchards or pastures (including clearing woodland areas for conversion to crop or pastureland) in accordance with generally accepted agricultural practices, 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.
3. Forestal uses consisting of reforestation, site preparation, 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.
4. Temporary or seasonal activities that do not permanently alter the physical appearance of the Property and are otherwise consistent with this Easement 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. Activities that can be and in fact are conducted within permitted buildings, without material alteration to the external appearance thereof, including, but not limited to, tourist lodging. For purposes of this Easement, the term “tourist lodging” means one or more rooms located within a single-family dwelling which is actually used as such, which rooms are used secondarily to such single-family use for the temporary accommodation of transients in return for compensation, whether or not such rooms are used in conjunction with other portions of such dwelling, or as such term is hereafter defined in the Albemarle County Zoning Ordinance.
6. Uses subordinate and customarily incidental to a principal use of the Property that are not expressly prohibited by and are otherwise consistent with this Easement.

7. Uses or activities not expressly excepted herein, but which are determined by each Grantee in writing not to be a commercial or industrial use, to be consistent with all other terms and conditions of this Easement, and to not interfere with the essential resources of the Property to be protected by this Easement. In making these determinations, the Grantees may consider, among other things, whether the scope of a use or activity excepted herein has evolved over time as a result of changes in the law or customary practices.

D. 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 Grantors, 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 as permitted by this Easement; (4) give directions to visitors; or (5) provide warnings pertaining to trespassing, hunting, dangerous conditions and other similar such warnings. No sign shall exceed _____ (___) square feet.

E. Grading, blasting, earth removal and mining. Grading, blasting or earth removal shall not materially alter the topography of the Property; provided that grading, blasting or earth removal shall be allowed for dam construction to create private conservation ponds or lakes, and during the construction of permitted structures or associated improvements, and that such activities employ applicable Best Management Practices. Common agricultural activities such as plowing, erosion control and restoration, and the burial of dead animals, are not activities that materially alter the topography of the Property. Mining on the Property is prohibited.

F. Use of best management practices for all construction, agricultural and forestal activities. The applicable Best Management Practices, as established by a responsible state agency, shall be undertaken in all construction, agricultural and forestal activities to control erosion and protect water quality.

G. 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 or manure piles, or the routine and customary short-term accumulation of household trash.

[If applicable H. A _____ (_____) foot wide permanently wooded buffer shall be maintained along each side of all perennial woodland streams and _____ (the "buffers"), as shown on the map attached hereto as Attachment A. The buffers shall be measured from the top of the stream or river bank and shall include both sides of the waterway

where a wooded buffer exists at the time this Easement was granted. In order to maintain the ecological values of the buffers, indigenous vegetation shall be preserved, or be allowed to evolve by natural succession where it does not exist, to the maximum extent possible. The target vegetative cover within the riparian forest buffers shall be indigenous herbaceous, shrub and tree canopy layers. Within the buffers, the Grantors may remove or control, as appropriate: (1) vegetation to control insect and disease infestations and to prevent personal injury or property damage; (2) dead, diseased and dying trees; (3) vegetation that is determined to be an “invasive species,” as such species shall be determined by reference to the appropriate federal or state agency list available at the time of removal or control; (4) fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, where stream bank erosion is a current or potential problem that outweighs any positive effects the fallen tree or trees may have on the stream ecosystem. Prior to removing any indigenous vegetation, the Grantors shall confer with the Grantees to agree on the extent and method of vegetation removal. The Grantees may require mitigation of the removal of indigenous vegetation with the planting of comparable indigenous vegetation. The Grantors shall not plant any non-indigenous species of ground covers, shrubs or trees. Any new trails must be constructed so as to minimize erosion. Trails existing at the time of the granting of this Easement may remain, provided that they are maintained so as to minimize erosion. The purpose of this paragraph is not to require the establishment or creation of new wooded buffers where they do not currently exist but rather to maintain wooded buffers that already exist at the time this Easement is recorded.]

3. MISCELLANEOUS PROVISIONS

A. No public right of access to Property. This 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 the Grantors may otherwise allow.

B. Easement applies to the whole Property and runs with the land. This Easement shall apply to the Property as a whole rather than to individual parcels, and shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs.

C. Enforcement. The parties shall have the following rights and obligations regarding the monitoring of the Property and the enforcement of this Easement:

1. Monitoring. Representatives of either Grantee may enter the Property from time to time for the purpose of inspection and enforcement of the terms of this Easement after permission from or reasonable notice to the Grantors or the Grantors' representative.

2. Restoration. Upon any breach of any term of this Easement by the Grantors, either Grantee may require by written demand to the Grantors that the Property be restored promptly to its condition at the time the Easement was granted.

3. Baseline report. A copy of the Baseline Report is retained in the offices of the County that describes the condition and character of the Property at the time this Easement was granted. This documentation may be used to determine compliance with and enforcement of the terms of this Easement. However, neither the Grantors nor the Grantees are precluded from using other relevant evidence or information to assist in that determination.

4. Legal proceedings. Either Grantee may enforce the terms of this Easement by appropriate legal proceedings, including but not limited to, the right to require the restoration of the Property to its condition at the time this Easement was granted. In addition, it is conclusively presumed that an action at law seeking a monetary remedy is an inadequate remedy for any breach or violation, or any attempted breach or violation, of any term of this Easement.

5. Failure to enforce does not waive right to enforce. The failure of either Grantee to enforce any term of this Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve the Grantors from thereafter complying with any such term.

6. No third party right of enforcement. Nothing in this Easement shall create any right in the public or any third party to maintain any suit or action against any party hereto.

D. No buy-back option. The Grantors shall not have the option to reacquire any property rights relinquished by this Easement.

E. Notice of proposed transfer or sale. The Grantors shall notify each 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 Easement shall be referenced by deed book and page number in the deed of conveyance and shall state that this Easement is binding upon all successors in interest in the Property in perpetuity.

F. Relation to applicable laws. This Easement does not replace, abrogate or otherwise supersede any federal, state or local laws applicable to the Property.

G. Reference to existing laws. All references to existing laws shall include such laws as they may be hereafter amended or recodified, whether they are referenced herein or not.

H. Severability. 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.

I. Recordation. Upon execution by the parties, this Easement shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of Albemarle County, Virginia.

J. Authority to convey easement. The Grantors covenant that they are vested with good title to the Property and may convey this Easement.

K. Authority to accept easement. The Grantees are authorized to accept this Easement pursuant to *Virginia Code* § 10.1-1701. The County, acting by and through its County Executive, duly authorized by resolution adopted by the Board of Supervisors of the County of Albemarle, Virginia, accepts the conveyance of this property pursuant to *Virginia Code* § 15.2-1803, as evidenced by the County Executive's signature hereto and the recordation of this Deed.

L. Proceeds from eminent domain. If the rights or restrictions established by this 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 interests under this Easement, as determined by the ratio of the value of this Easement and the restrictions imposed thereby, to the value of the fee interest in the Property as encumbered by this Easement. The values shall be determined by a qualified appraisal performed by an appraiser mutually agreed to by the Grantors and the County.

M. Transfer of easement by grantees. Neither Grantee nor their successors or assigns may convey or lease this Easement, whether or not for consideration, unless the conveyance or lease is conditioned as follows: (1) the conveyance or lease instrument requires that the conservation purposes that the Easement was originally intended to advance will continue to be carried out, 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 26 C.F.R. § 1.170A-14(c)(1).

N. Extinguishment. The Grantors and the Grantees 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* § 10.1-1700 *et seq.* Restrictions set forth in the Easement may 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 County 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 Grantors agree that the donation of the perpetual conservation restriction in this Easement gives rise to a property right, immediately vested in the Grantees and, in particular, the County, 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 County 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.

O. No warranty by grantees as to qualification for charitable gift. The Grantors and the Grantees 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 Internal Revenue Service regulations (see 26 C.F.R. § 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Grantees make no express or implied warranties regarding whether any tax benefits will be available to the Grantors from 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.

P. Construction. This Easement shall be construed to promote the purposes of this Easement, the ACE Program, and the Open-Space Land Act. 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 the Grantees. 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. The Grantors and the Grantees intend that the grant of this Easement qualify as a “qualified conservation contribution” as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations §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.

Notwithstanding the foregoing, lawful acts or uses not expressly prohibited by this Easement are permitted on the Property.

Q. Controlling law. The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.

R. Optional form of dispute resolution. The Grantors and the Grantees desire to meet and discuss and amicably resolve any disputes that may arise in the interpretation of this Easement, including those provisions pertaining to the uses and activities permitted or prohibited by this Easement. If a dispute cannot be resolved through discussion, the parties may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The Grantors and the County shall share the costs of the services of the third party equally. The existence of a dispute shall not excuse the parties from compliance with the terms of this Easement. The dispute resolution provided for in this paragraph is optional, not mandatory, and shall not be required as a condition precedent to any remedies for enforcement of this Easement.

[Optional: S. Notice of exercise of reserved right. The Grantors shall notify each Grantee in writing before exercising any reserved rights. The reserved rights requiring notification are [list reserved rights].

[If applicable T. Consent of trustee and beneficiary to subordinate lien. By deed of trust dated _____, of record in said Clerk's Office in Deed Book _____, page _____, the Grantors 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.

GRANTOR

GRANTOR

[Name]

[Name]

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____:

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

Notary Public

My Commission Expires: _____
Notary Registration Number _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____:

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

Notary Public

My Commission Expires: _____
Notary Registration Number _____

COUNTY OF ALBEMARLE

**ALBEMARLE COUNTY PUBLIC
RECREATIONAL FACILITIES AUTHORITY**

By: _____
Robert W. Tucker, Jr.
County Executive

By: _____
Charlotte D. Buttrick
Chairman

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____:

The foregoing *Deed of Easement* was signed, sworn to and acknowledged before me this _____ day of _____, ____ by Robert W. Tucker, Jr., County Executive, on behalf of the County of Albemarle, Virginia, Grantee.

Notary Public

My Commission Expires: _____
Notary Registration Number _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____:

The foregoing *Deed of Easement* was signed, sworn to and acknowledged before me this _____ day of _____, ____ by Charlotte D. Buttrick, Chairman, on behalf of the Albemarle County Public Recreational Facilities Authority, Grantee.

Notary Public

My Commission Expires: _____
Notary Registration Number _____

Approved as to form:

By: _____
County Attorney