Prepared by**: _____**

TAX MAP NO: _____

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

DEED [OF GIFT] OF EASEMENT

THIS **DEED [OF GIFT] OF EASEMENT** (this "Easement"), dated the ___ day of _____, 2____, by and between _____, ([*collectively*] "Grantor"); the COUNTY OF CLARKE, VIRGINIA, ("County"), the CLARKE COUNTY CONSERVATION EASEMENT AUTHORITY ("Authority"), and, _____ ("_____"), (collectively, "Grantee"), parties of the second part; (the designations "Grantor" and "Grantee" refer to the Grantor and Grantee and their respective successors and assigns); _____ (*if lien*), (the "Bank"), party of the third part; and _____ and _____, Trustees (the "Trustees") party of the fourth part.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of real property situated on _____ (*road or highway*) in Clarke County, Virginia, containing in the aggregate _____ acres as further described in attached SCHEDULE A (the "Property"), and desires to give and convey to Grantee a perpetual conservation and open-space easement over the Property; and

WHEREAS, the County and the Authority are authorized by the Open-Space Land Act to accept, hold, and administer open-space easements and possess the authority

to accept and are willing to accept this easement under the terms and conditions hereinafter set forth; and

WHEREAS, Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, Section 10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the "Open-Space Land Act"), declares that the preservation of open-space land serves a public purpose by the following: curbing urban sprawl, preventing the spread of urban blight and deterioration, and encouraging more economic and desirable urban development; helping provide or preserve necessary park, recreational, historic, and scenic areas, conserving land and other natural resources; and authorizing the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land; and

WHEREAS, 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 limiting division, residential construction, and commercial and industrial uses contained in Section II, ensuring that the Property will remain perpetually available for agriculture, livestock production, forest or open-space use, all as more particularly set forth below; and

WHEREAS, this Easement is granted "exclusively for conservation purposes" under IRC §170(h)(1)(C) because it effects "the preservation of open space (including farmland and forest land)" under IRC 170(h)(4)(A)(iii). Specifically, the preservation of open space on the Property is pursuant to clearly delineated state and local governmental conservation policies and will yield a significant public benefit; and

WHEREAS, this open-space easement in gross constitutes a restriction granted in perpetuity on the use that may be made of the Property and is in furtherance of and pursuant to the clearly delineated governmental 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; (*if VOF a co-holder*)

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, 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. (*If applicable*) Chapter 32, of Title 58.1, §§58.1-3230 through 58.1-3244 of the Code of Virginia, which authorizes special use-value tax assessments for real estate devoted to agricultural, forestal, horticultural, and open-space use;

f. (*If applicable*) The Agricultural and Forestal Districts Act, Chapter 43 of Title 15.2, §§15.2-4300 through 15.2-4314 of the Code of Virginia, which encourages the conservation, protection, development, and improvement of agricultural and forestal lands for the production of food and other agricultural and forestal products and as valued natural and ecological resources that provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes and as an economic and environmental resource of major importance.

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

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

a. its Comprehensive Plan to which plan the restrictions set forth in this deed conform and that contain the following goals, objectives and strategies: to "preserve and protect the agricultural, natural, and open-space character of unincorporated areas", "encourage agricultural operations and

productivity and ensure the preservation and availability of agricultural lands for the continued production of crops and livestock", "preserve the natural beauty and protect the ecology of forested areas to ensure that development in those areas is in conformance with their environmental limitations", and "protect natural resources, including soil, water, air, scenery, and fragile ecosystems"; and

b. its tax code, Article VII, 11-23 of the Clarke County Code, which specifically recognizes the importance of the continued preservation of the Property as open space, forestal, and agricultural land by providing special assessment of the Property for real property tax purposes; and

WHEREAS, at the time of execution of this Easement, the Property consists of _____ acres, more or less, and has allocated to it an aggregate of _____ (__) unused Dwelling Unit Rights (DURs) pursuant to Section 3-D-2 of the Clarke County Zoning Ordinance, and ____ (___) Exception[s] [_____] pursuant to Section 3-D-4. _____ (__) DURs and _____ (__) Exception [_____] will remain with the Property; _____ (__) DURs are being terminated by the Grantor incidental to this Easement; and

WHEREAS, (*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

WHEREAS, (*List here the particular conservation attributes of the Property and the public benefit they yield*); and

WHEREAS, this Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in Section I; and

WHEREAS, 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

WHEREAS, 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, which values are reflected in Section I; and

WHEREAS, Grantee has determined that the Restrictions 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

WHEREAS, 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 and 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, the Property being more particularly described in SCHEDULE "A", which is attached hereto and made a part hereof, and consists of _____ acres located in _____Magisterial District, Clarke County, Virginia.

The Property is shown as Tax Map No. _____ among the land records of the County of Clarke, 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 conservation purpose of this Easement is to preserve land for (*State one or more from DCR 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) and to 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 its open-space (*and if applicable*- scenic, natural, historic, scientific or recreational) values and its values as land preserved for open-space and rural uses including agriculture, livestock production, and forestry (*In Section II add specific restrictions needed to provide protection for such values.*) 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. DWELLING UNIT RIGHTS. The Property currently has _____ ( ) unused dwelling unit rights (DURs) pursuant to Section 3-D-2 of the Clarke County Zoning Ordinance, and _____ ( ) Exception[s] pursuant to Section 3-D-4 of the Clarke County Zoning Ordinance. Pursuant to Section 3-D-3 of the Clarke County Zoning Ordinance, the Grantor does hereby voluntarily and permanently terminate _____ ( ) unused DURs on the Property, leaving _____ ( ) unused DUR[s] and _____ ( ) Exception[s] remaining on the Property.

2. DIVISION.

A. Division of the Property is prohibited. The Property shall not be sold, conveyed, or devised except as a whole. [(*alternate where appropriate*: *See VOF guidelines*: The Property shall not be divided 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 2, the grantor making the conveyance retains the right to make any further permitted division(s) of the Property unless permitted divisions are allocated by that grantor in the instrument creating the division or other recorded instrument.]

B. Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered divisions of the Property, provided that Grantee is made party to the deed creating the 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 Authority.

3. BUILDINGS AND STRUCTURES.

A. No buildings or structures other than the following are permitted on the Property:

(i) _____ single-family dwelling(s), of which ____ exist(s) on the date of this Easement. Such dwellings except for the existing dwelling(s) shall not (*"individually" if more than one)* exceed 4,500 square feet of above-ground enclosed living area without Grantee's prior review and written approval *[See Guidelines for guidance as to number of dwellings.];* and

(ii) [_____] secondary dwelling(s), of which ____ exist(s) on the date of this Easement, not to exceed [600 square feet of above-ground enclosed,

heated living space if no dwelling unit right is used] [2000 square feet of above-ground enclosed, heated living space if a dwelling unit right is used]; and

(iii) non-residential outbuildings and structures commonly and appropriately incidental to the dwellings permitted in subsections (i) and (ii) of this paragraph, and sized appropriately to serve as an amenity to single-family residential use, *(Optional addition: select one)* provided that the aggregate footprint of such nonresidential outbuildings and structures for each permitted dwelling shall not exceed 2500 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; and

(iv) farm buildings or 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 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 subparagraph, a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in paragraph 4(i).

B. (*If applicable*) In the event of division of the Property as provided in paragraph 1, permitted dwellings shall be allocated (between/among) the parcels in the instrument creating the division or other recorded instrument.

C. Grantor shall give Grantee 30 days' written notice before beginning construction or enlargement of any dwelling on the Property.

D. [*Add where appropriate*: To protect the scenic values of the Property, no dwelling or other building shall be constructed within 200 feet of the

_____State Road, or above the _____ contour elevation, or within the designated no-build area shown on the sketch attached hereto as Exhibit ___.]

E. Private roads and utilities to serve permitted buildings or structures, (*if applicable:* private roads and utilities to parcels created by permitted divisions of the Property) and roads with permeable surfaces for other permitted uses, such as farming or forestry, may be constructed and maintained. Public or private utilities whose construction and maintenance Grantee determines will not impair the Property's conservation values may be constructed and maintained if Grantee gives its prior written approval; provided, however, easements for the location of underground utilities are permitted pursuant to paragraph 10.

F. The collective footprint of all buildings and structures on the Property, excluding roads, shall not exceed 1% (*staff may recommend adjusting this percentage depending upon the characteristics of the Property)* 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 protected herein, Grantee may approve such increase. For the purpose of this paragraph the collective footprint is the ground area measured in square feet of the structures set forth in subsections (i) through (iv) above and all other impervious surfaces, excluding roads. *(Addition where appropriate:* In the event of division of the Property, the collective footprint of all 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 either in the instrument of transfer or in other recorded instrument.)

4. INDUSTRIAL OR COMMERCIAL ACTIVITIES. Industrial or commercial activities other than the following are prohibited: (i) agriculture, livestock production (animal husbandry), equine activities, forestry, and related small-scale incidental commercial or industrial operations that Grantee approves in writing as being consistent with the conservation values of this Easement; (ii) processing

and sale of products produced on the Property; (iii) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property and that do not diminish the conservation values herein protected; and (iv) 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 the 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.]

5. MANAGEMENT OF FOREST.

A. 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 or land-clearing activity is undertaken. A Forest Stewardship Management Plan approved by the VA Department of Forestry shall guide all material timber harvest activities on the Property. A preharvest plan consistent with the Forest Stewardship Management Plan shall be submitted to Grantee for approval 30 days before beginning any material timber harvest. [*Optional language: Select from this menu where appropriate:* The objectives of the Forest Stewardship Management Plan may include, but are not limited to, forest health, biodiversity, timber management, wildlife habitat, scenic forest, aesthetics, recreation, water and air quality, carbon or other mitigation banking programs, historic and cultural resource preservation, natural area preservation, or any combination thereof.] Grantee shall be notified 30 days prior to the clearing of over 10 acres of forestland for grassland, crop land, or in association with the construction of permitted buildings.

B. Noncommercial *de minimis* harvest of trees for trail clearing, firewood, or Grantor's domestic use or trees that pose an imminent hazard

to human health or safety, or that are an invasive species shall not require a Forest Stewardship Management Plan.

RIPARIAN BUFFER (*provision where land adjacent to the body of water is forested or naturally vegetated*)

6. RIPARIAN BUFFER. To protect water quality, a 100-foot buffer strip shall be maintained in forest or be permitted to revegetate naturally along (the, each) edge of the _____ [River, Creek, perennial stream, intermittent stream] as measured from the top of the bank (or if applicable from the high water mark in tidal creeks, streams, etc.)]. Within this buffer strip 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 an imminent human health or safety hazard; and (d) no cultivation or other earth-disturbing activity, except as may be reasonably necessary for (i) either wetland or stream bank restoration or erosion control, pursuant to a government permit, (ii) fencing along or within the buffer area; (iii) construction and maintenance of stream crossings that do not obstruct water flow; (iv) creation and maintenance of foot or horse trails with unimproved surfaces; and (v) dam construction to create ponds. Limited mowing to control non-native species or protect trees and other plants planted in forested buffers is permitted.

RIPARIAN BUFFER (*provision where the land adjacent to the body of water is not forested or naturally vegetated*)

6. RIPARIAN BUFFER. To protect water quality there shall be no plowing, cultivation, or other earth-disturbing activity in a 100-foot buffer strip along (the, each) edge of the _____ [River, Creek, perennial stream, intermittent stream] as measured from the top of the bank (or if applicable from the high water mark in tidal creeks, streams, etc.), except as may be reasonably necessary for (i) either wetland or stream bank restoration or erosion control, pursuant to a government permit; (ii) fencing along or within the buffer area; (iii)

construction and maintenance of stream crossings that do not obstruct water flow; (iv) creation and maintenance of foot or horse trails with unimproved surfaces; and (v) dam construction to create ponds. Within this buffer strip there shall be (a) no buildings or other substantial structures constructed; (b) no storage of compost, manure, fertilizers, chemicals, machinery or equipment; and (c) no removal of trees except removal of invasive species or removal of dead, diseased, or dying trees or trees posing an imminent human health or safety hazard. Mowing within buffer areas is permitted.

7. **GRADING, BLASTING, MINING**. Grading, blasting, 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 a government-required 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, 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. [*If mineral rights are retained, add a provision conditioning the exercise of such rights on Grantee's approval, 30 days prior to the exercise of any such rights, of a plan submitted by Grantor showing how the proposed activities will affect the conservation values of the Property both during and after completion of such activities.*]

8. **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

creating brush piles, composting, or storing farm machinery, organic matter, agricultural products, or agricultural byproducts on the Property.

9. **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 signs shall exceed nine square feet in size or the County's Zoning Ordinance requirements, whichever is more restrictive.

10. **UTILITY EASEMENTS:** Easements for the location of underground utilities may be placed on the property by voluntary conveyance either by Grantor or by condemnation.

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

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

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

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

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

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 to require restoration of the Property to a condition of compliance with the terms of this Easement as existed on the date of the gift of the Easement, except to the extent such condition thereafter changed in a manner consistent with the Restrictions; to recover any damages arising from noncompliance; and to enjoin noncompliance 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 insure 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 or change to the condition of the Property caused by fire, flood, storm, Act of God, governmental act, or other cause outside of Grantor's control or by any prudent action taken by Grantor to avoid, abate, prevent, or mitigate damage or changes to 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. Landowner's rights and obligations under this Easement terminate upon proper transfer of Landowner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

2. **NO PUBLIC ACCESS.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public either a right of access to or use of the Property. Grantor retains the exclusive right to such access and use, subject to the terms hereof.

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

utility and access easements) including, but not limited to, any mortgages not subordinated to this Easement.

4. **ACCEPTANCE.** Acceptance of this conveyance by Grantee is authorized by Virginia Code Section 10.1-1701 [*If a co-holder will take under the Conservation Easement Act, add:* and Section 10.1-1010] [*If the Virginia Outdoors Foundation is a co-holder add:* Section 10.1-1801] and is evidenced by the signature of the Chair of the Authority, by authority granted by the Authority Board, and by the Chair of the Board of Supervisors, by authority granted by the Board of Supervisors.

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, shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open-space requirements under otherwise applicable laws, regulations, or ordinances controlling land use and building density. 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, a cluster development arrangement, or otherwise.

6. **GRANTEES' APPROVAL:**

A. The Grantor shall notify the Authority (hereafter "Grantor's Notice") prior to undertaking any activities permitted under Section II, paragraphs [2, 3, 4, 5, 6, and 7].

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

C. In addition, if such permitted activity requires Grantor to obtain a permit or other governmental approval, Grantor shall disclose on the application

for such permit or other governmental approval that the property is subject to this Easement.

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

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

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

G. If the Authority, the County, or any other co-holder should disagree on whether a request should be approved or disapproved, the parties should review possible remedies prior to the expiration of the ninety (90) day period. If no resolution to the disagreement can be found prior to the end of the ninety (90) day period, the disagreement shall be documented in writing and the Authority should notify the Grantor of the disapproval of the request.

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

7. **CONSTRUCTION**. Any general rule of construction to the contrary notwithstanding, this Easement shall liberally be construed in favor of the grant to effect the purposes of the Easement and the policies 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 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 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.

8. NOTICE TO GRANTEE OF ADVERSE EFFECTS. Grantor agrees to notify Grantee in writing before exercising any reserved right that Grantor believes may have an adverse effect on the conservation or the open-space values or interests associated with the Property.

9. 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 and shall specifically reference the obligation for payment of a Transfer Fee upon a sale of the Property, as provided in Paragraph 10.

10. SUBSEQUENT TRANSFER OF PROPERTY/TRANSFER FEE.

A. Grantor agrees to notify Grantee in writing prior to closing on any inter vivos transfer, other than a deed of trust or mortgage, of all or any part of the Property.

B. At the closing on the transfer for value of all or any part of the Property, the purchaser shall pay to the Clarke County Conservation Easement Authority a Transfer Fee equal to one percent (1%) of the full consideration paid for the

Property, or portion thereof, including improvements thereon, and including any contiguous land that is part of the same transfer, including improvements thereon.

11. **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 IRS regulations [see §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.

12. **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.

13. **ASSIGNMENT BY GRANTEE**. Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity and (2) the transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the IRC as amended and in the applicable Treasury Regulations.

14. **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.

15. **EXTINGUISHMENT, CONVERSION, 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 that do not permit extinguishment of open-space easements or loss of open space. Nevertheless, should an attempt be made to extinguish this Easement, such extinguishment can be made only by judicial proceedings and only if in compliance with Section 10.1-1704. In any sale or exchange of the Property subsequent to 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 14 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.

16. **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 affect this Easement's perpetual duration or reduce the Property's conservation values. 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 Clarke, Virginia.

17. **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.

18. **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.

19. **CONTROLLING LAW**. The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.

20. **RECORDING**. This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of Clarke, Virginia, and Grantee may rerecord it any time as may be required to preserve its rights under this Easement.

21. **SUBORDINATION.** _____, herein the Bank, is the Note holder under a certain Deed of Trust dated _____ and recorded in the Clerk's Office of the Circuit Court of Clarke County, Virginia in Deed Book _____ at Page _____, which subjects the Property to the Bank's lien. The Bank 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:

_____

Grantor

_____

Grantor

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

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

_____

Notary Public

My commission expires:_____

Registration No. : _____

(SEAL)

COUNTY OF CLARKE, VIRGINIA, Grantee

By: _____

Chairman, Board of Supervisors

STATE OF VIRGINIA, At-Large

CITY/COUNTY OF _____, To-wit:

The foregoing document was acknowledged before me this _____ day of _____, 2009, by _____, on behalf of THE COUNTY OF CLARKE, VIRGINIA, Grantee.

My Commission expires _____.
Registration No. _____.

_____
NOTARY PUBLIC

(SEAL)

CLARKE COUNTY EASEMENT AUTHORITY, Grantee

By: _____

Chairman, Board of Directors

STATE OF VIRGINIA, At-Large

CITY/COUNTY OF _____, To-wit:

The foregoing document was acknowledged before me this _____ _____ day of _____, 2009, _____ on behalf of THE CLARKE COUNTY EASEMENT AUTHORITY, Grantee.

My Commission expires _____.

Registration No. _____.

_____

NOTARY PUBLIC

(Bank)

By: _____

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

The foregoing document was acknowledged before me this _____ day of _____, 2009, by _____, on behalf of the (Bank).

My Commission expires _____.
Registration No. _____.

_____
NOTARY PUBLIC

(SEAL)

_____
, Trustee

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

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

My Commission expires _____.
Registration No. _____.

_____
NOTARY PUBLIC

(SEAL)