

This sample deed is provided to assist landowners and their attorneys in preparing deeds of easement to be conveyed to the County. As each property contains unique conservation values, staff may recommend provisions appropriate to individual properties. The County does not provide legal or tax advice or warrant that this sample will meet all IRS or Virginia Department of Taxation requirements. An easement will permanently change how the property may be used and its market value. Because this change can have major estate planning and tax consequences, landowners should consult legal counsel.

DRAFT

\_\_\_\_\_, 2005

Prepared by: \_\_ (landowner's attorney) \_\_

TAX MAP NO. OR PIN:

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

THIS DEED OF GIFT OF EASEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_, herein called (together or collectively) the "Grantor"; the COUNTY OF FLUVANNA, a political subdivision of the COMMONWEALTH OF VIRGINIA, herein called the "Grantee", whose address is P.O. Box 540, Palmyra, Virginia 23219 and, \_\_\_\_\_ (if lien) \_\_, "the Noteholder," and \_\_\_\_\_, Trustees, herein called Trustees.

WITNESSETH:

WHEREAS, the Open Space Land Act of 1966, Chapter 461 of the 1966 Acts of the Assembly, (Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as amended) declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth by curbing urban sprawl and encouraging more desirable and economical development of natural resources, authorizes the use of easements in gross to maintain the character of open-space land and authorizes the County to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space and recreational lands of the Commonwealth; and

WHEREAS, the Grantor is the owner in fee simple of the real property hereinafter described (the "Property"); and

WHEREAS, [Give here citations from the Comprehensive Plan of the locality indicating that preserving the property in open-space is consistent with that Plan.]; and

WHEREAS, the Grantor and the Grantee desire to protect in perpetuity the Open Space Values herein specified; and

WHEREAS, the Grantor and the Grantee intend to accomplish such protection by restricting the use of the Property as hereinafter set forth; and

WHEREAS, the Grantee has determined that the restrictions hereinafter set forth (the "Restrictions") will preserve and protect in perpetuity the "Open Space Values" of the Property, which values are reflected in the preceding paragraphs, the Grantee's evaluation of the Property, and the documentation of the condition of the Property as contained in its files and records; and

WHEREAS, the conservation purpose of this easement is to preserve and protect in perpetuity the Open Space Values of the Property; and

WHEREAS, the Grantee has determined that the Restrictions will limit the uses of the Property to those uses consistent with, and not adversely affecting the Open Space Values of the Property, or the governmental conservation policies furthered by this easement.

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by the Grantee, the GRANTOR does hereby GIVE, GRANT AND CONVEY WITH GENERAL WARRANTY AND ENGLISH COVENANTS OF TITLE unto the GRANTEE, an open-space easement in gross over, and the right in perpetuity to restrict the use of, the real estate consisting of approximately \_\_\_\_\_ acres described below/ or in SCHEDULE "A",

\_\_\_\_\_ (lawyer to insert legal description) \_\_\_\_\_

The above-described property is shown as Tax Map and parcel numbers: \_\_\_\_\_ among the land records of Fluvanna County and total \_\_\_\_\_ acres in the aggregate. The restrictions and covenants of this easement shall apply to the Property as a whole.

Restrictions are hereby imposed on use of the Property pursuant to the public policies set forth above. [Optional addition (discuss with tax counsel): The Grantor covenants that no acts or uses that are inconsistent with the conservation purposes of this easement shall be conducted or undertaken on the Property] The acts that the Grantor covenants to do and not to do upon the Property, and the Restrictions that the Grantee is hereby entitled to enforce, are and shall be as follows:

1. TRASH. Accumulation or dumping of trash, refuse, or junk is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting or the storage of farm machinery, organic

matter, agricultural products or agricultural byproducts on the Property, as long as such practices are conducted in accordance with applicable laws and regulations.

2. SIGNS. Display of billboards, signs, or other advertisements that are visible from outside the Property is not permitted on or over the Property except to: (i) state the name and/or address of the owners or 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 (including, but not necessarily limited to, no trespassing and other “posted” signs), (v) give directions to visitors, or (vi) recognize historic status or participation in a conservation program. No such sign shall exceed nine square feet in size.

3. DIVISION. Division or subdivision of the Property in any manner is prohibited: the Property may not be sold or conveyed except as a whole. [alternate: The Property shall not be divided or subdivided into, or separately conveyed as more than \_\_\_\_\_ parcels.] Boundary line adjustments with adjoining parcels of land are permitted, subject to the express prior approval of the Grantee to ensure compliance with the purposes of Chapter 5.5 of the County Code, and shall not be considered a prohibited division of the Property, provided that the Grantee is made party to the deed creating the boundary line adjustment; that any property added to the Property shall be made expressly subject to the Restrictions set forth herein; and that no additional parcels shall be created by such boundary line adjustment.

4. MANAGEMENT OF FOREST. Commercial timber harvesting shall be in accord with a forest stewardship plan approved by the Grantee. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when commercial forestry activity is undertaken. A pre-harvest plan consistent with the forest stewardship plan shall be submitted to the Grantee at least 30 days prior to beginning such commercial timber harvesting. [Optional (Select one or two): The primary objectives of the forest stewardship plan shall be to improve wildlife habitat, maintain the health of the forest, maintain a scenic forest, protect uncommon biological communities or natural areas, conserve soil and water, preserve historic and cultural resources, or other (specify objective). ]

[Optional provisions for properties with perennial stream.]

4a. RIPARIAN BUFFER. A forested buffer extending a minimum of \_\_\_\_\_ feet (a minimum of thirty-five (35) feet) from each bank of \_\_\_\_\_ Creek shall be maintained on the Property. This buffer shall be protected from degradation by livestock. Removal of non-native invasive species and minimal harvest of trees is permitted, provided that the function of the buffer to protect water quality is not impaired.

(alternate: There shall be no plowing, cultivation, or similar earth disturbing activity within \_\_\_\_\_ feet (a minimum of thirty-five (35) feet) of each bank of \_\_\_\_\_ Creek on the Property.)  
[Optional additional language: this buffer shall be protected from degradation by livestock].

5. GRADING, BLASTING, MINING. Grading, blasting or earth removal shall not materially alter the topography of the Property except for dam construction to create private ponds, or as required in the construction of permitted buildings, structures, connecting private roads, and

utilities as described in Paragraph 6. Generally accepted agricultural activities shall not constitute any such material alteration. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in the construction of permitted buildings and private roads. Notwithstanding the foregoing, no grading, blasting, or earth removal is permitted on the Property if it will materially diminish or impair the Open Space Values of the Property. Mining on the Property by surface mining or any other method is prohibited.

6. BUILDINGS AND STRUCTURES. No permanent or temporary building or structure may be built or maintained on the Property other than:

(i) One single family dwelling and non-residential outbuildings or structures commonly and appropriately incidental thereto;

(ii) Not more than two secondary dwelling units, (including, *e.g.* barn or garage apartment) not to exceed 2,000 square feet of livable space each if more than one) and non-residential outbuildings or structures commonly and appropriately incidental thereto; and

(iii) farm buildings or structures; for the 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 7(i).

Private roads and utilities that serve permitted buildings or structures in this Paragraph 6 may be constructed.

(If applicable) In the event of subdivision of the Property as provided in Paragraph 3

above, permitted dwellings shall be allocated (between the two/ or among) the parcels in the instrument creating the subdivision, and private roads and utilities may be constructed on each parcel.

7. INDUSTRIAL OR COMMERCIAL ACTIVITIES. Industrial or commercial activities other than the following are prohibited: (i) agriculture, viticulture, aquaculture, silviculture, horticulture, hunting, fishing and equine activities, (ii) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property, and that do not diminish the conservation values herein protected, and (iii) activities that can be and in fact are conducted within permitted buildings without material alteration to the external appearance thereof. Notwithstanding the foregoing, any commercial recreational use of the Property is permitted only to the extent such use would otherwise be permitted under Section 2031(c)(8)(B) of the Internal Revenue Code of 1986 as amended, and all uses shall comply with the Fluvanna County zoning ordinance.

8. ENFORCEMENT. Representatives of the Grantee may enter the Property from time to time for purposes of inspection and enforcement of the terms of this easement after permission from or reasonable notice to the owner or the owner's representative. The Grantee shall have the right to bring an action 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 non-compliance; and to enjoin non-compliance by *ex parte* temporary or permanent injunction. The parties hereby stipulate and agree that, in the event that the Grantee shall bring an action for injunction or other equitable relief, Grantee shall be deemed to be without an adequate remedy at law. If the court determines that the Grantor failed to comply with this easement, the Grantor shall reimburse the Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorney's fees, in addition to any other payments ordered by such court. The Grantee shall not be deemed to have waived or forfeited the right to take action as may be necessary to insure compliance with this easement by any prior failure to act and the Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by the Grantee.

9. NOTICES TO GRANTEE. The Grantor shall notify the Grantee in writing at, or prior to, closing on any *inter vivos* transfer or sale of the Property. This deed of easement shall be referenced by deed book and page number, or instrument number, in any deed conveying any interest in the Property.

10. EXTINGUISHMENT. The Grantor and the Grantee intend that this easement be perpetual. No part of the Property may be converted or diverted from open space uses as herein defined except in accordance with Virginia Code Section 10.1-1704.

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

12. SUCCESSORS IN INTEREST. The covenants, terms, conditions and restrictions contained in this easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

13. ENTIRE AGREEMENT. This instrument sets forth the entire agreement of the parties with respect to the easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement. This easement shall not be construed to permit any use of the Property which is otherwise prohibited by federal, state, or local law or regulation.

If any provision of this deed 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.

(If applicable)

\_\_\_\_\_, herein, the Noteholder, is the Noteholder under a certain Deed of Trust dated \_\_\_\_\_ and recorded in the Clerk's Office of the Circuit Court of \_\_\_\_\_ Fluvanna County, Virginia in Deed Book \_\_\_\_\_ at Page \_\_\_\_\_, which subjects the Property to the Noteholder's lien. The Noteholder 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 Deed of Gift of Easement and joins in the Deed to reflect its direction to the Trustee to execute this Deed to give effect to the subordination of such Deed of Trust to this Deed of Easement.

Although this easement in gross will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. The Grantor retains the exclusive right to such access and use, subject to the terms hereof.

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 section 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Grantee makes no express or implied warranties 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. The parties hereto intend that the easement conveyed herein shall be a qualified conservation contribution within the meaning of Section 170(h) of the Internal Revenue Code of 1986, as amended, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this easement from being a qualified conservation contribution. By its execution hereof, the Grantee acknowledges and confirms receipt of the Easement and further acknowledges that the Grantee has not provided any goods or services to the Grantor in consideration of the grant of the Easement.

WITNESS the following signatures and seals.

\_\_\_\_\_ (Seal)  
Grantor

\_\_\_\_\_ (Seal)  
Grantor

[Noteholder]

By \_\_\_\_\_  
Its [describe officer]

\_\_\_\_\_, Trustee

By: \_\_\_\_\_

Accepted:

THE COUNTY OF FLUVANNA

By: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
County Attorney

COMMONWEALTH OF VIRGINIA,  
CITY/THE COUNTY OF \_\_\_\_\_, TO WIT:

I, \_\_\_\_\_, a Notary Public for the Commonwealth aforesaid,  
hereby certify that \_\_\_\_\_, Grantor, personally appeared before me this day and  
acknowledged the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_(SEAL)

COMMONWEALTH OF VIRGINIA,  
CITY/THE COUNTY OF \_\_\_\_\_, TO WIT:

I, \_\_\_\_\_, a Notary Public for the Commonwealth  
aforesaid, hereby certify that \_\_\_\_\_, personally appeared  
before me this day and acknowledged the foregoing instrument on behalf of the County of  
Fluvanna.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_(SEAL)



COMMONWEALTH OF VIRGINIA,  
CITY/THE COUNTY OF \_\_\_\_\_, TO WIT:

I, \_\_\_\_\_, a Notary Public for the Commonwealth aforesaid, hereby certify that \_\_\_\_\_, personally appeared before me this day and acknowledged the foregoing instrument on behalf of \_\_\_\_\_, Trustee.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_(SEAL)

COMMONWEALTH OF VIRGINIA,  
CITY/THE COUNTY OF \_\_\_\_\_, TO WIT:

I, \_\_\_\_\_, a Notary Public for the Commonwealth aforesaid, hereby certify that \_\_\_\_\_, personally appeared before me this day and acknowledged the foregoing instrument on behalf of \_\_\_\_\_, Noteholder

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_(SEAL)

See addendums next pages for further suggested language.

## ADDENDUM 1

Sample language for WHEREAS recitations

Scenic By-way:

WHEREAS, the Property fronts on State Route \_\_\_\_\_, a designated Virginia Scenic By-way, and contributes to the scenic views enjoyed by the public therefrom; and

Drinking Water Supply Watershed:

WHEREAS, the Property lies along the \_\_\_\_\_ River, a principal tributary to the \_\_\_\_\_ Reservoir, a public water supply for the City of \_\_\_\_\_ and/or The County of \_\_\_\_\_; and

Rural Historic District:

WHEREAS, the Property lies within the \_\_\_\_\_ Rural Historic District, which is listed on the National Register of Historic Places (date) and the Virginia Landmarks Register (date); and

Next to other Easements:

WHEREAS, the Property lies adjacent to land under open-space easement deeded to the Grantee and contributes to the open-space values of such land under easement; and

Agricultural/Forestral District:

WHEREAS, the Property lies within the \_\_\_\_\_ Agricultural and Forestal District designated by the Board of Supervisors of Fluvanna County, pursuant to the Virginia Agricultural and Forestal Districts Act (§§15.1 – 1506 et seq. of the Code of Virginia); and

Scenic River Designation:

WHEREAS, the 2002 Virginia Outdoors Plan prepared by the Virginia Department of Conservation and Recreation lists the segment of the \_\_\_\_\_ River along which the Property lies as potentially eligible for State Scenic River designation; and

WHEREAS, the Property fronts for \_\_\_\_\_ miles along the banks of \_\_\_\_\_, designated a Virginia Scenic River by the 2002 Virginia Outdoors Plan, and contributes to the scenic views enjoyed by the public therefrom; and

WHEREAS, the protection of the Property from intensive development will contribute to the goal of the Virginia Scenic Rivers Act to “protect and preserve certain rivers or sections thereof possessing natural or pastoral beauty”; and

WHEREAS, the protection of the Property from intensive development will contribute to the goal of the 2002 Virginia Outdoors Plan to “encourage partnerships through the establishment of private/public conservation easements along designated Scenic Rivers”; and

The County Comprehensive Plan:

WHEREAS, the preservation of the Property will further the Fluvanna County Comprehensive Plan’s goal to \_\_\_\_\_; and

WHEREAS, the Property is located within an area which is designated as \_\_\_\_\_ in the Fluvanna County Comprehensive Plan and the preservation of the Property will further that goal;  
and

ADDENDUM 2:

Language for protection of special resources on individual properties

Building setback from scenic roads, rivers or historic resources:

No building or structure may be constructed within \_\_\_\_\_ feet of the centerline of State Route \_\_\_\_\_. (or, within \_\_\_\_\_ feet of the bank of the \_\_\_\_\_ River). This prohibition shall not apply to the construction or maintenance of fencing, livestock feeding or watering troughs, mailboxes, gate posts, or permitted signs, or to the repair or replacement of any buildings or structures existing as of the date of this Deed of Gift of Easement.

Ridge or mountaintop protection:

No building or structure may be built above the \_\_\_\_\_ foot elevation contour line as shown on the \_\_\_\_\_ quadrangle map prepared by the U.S. Geological Survey.

Viewshed protection for Park, Trail or other public access property:

Buildings or structures visible from \_\_\_\_\_ shall be designed and sited to minimize their visibility from said location(s) in any season of the year.