

## EXECUTION COPY

Prepared by: Paul F. Lerner, Esq.

TAX MAP NO. OR PIN: 5-1-16, 5-3-2, 5-3-3

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

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made this 13<sup>TH</sup> day of December, 2005, between PAUL F. LARNER and ROSITA MCKEE, husband and wife, whose address is 6015 Foxhall Farm Road, Catonsville, MD 21228 ("Grantor"), the VIRGINIA OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA, whose address is 203 Governor Street, Suite 302, Richmond, Virginia 23219 ("Grantee"), RAPPAHANNOCK NATIONAL BANK, whose address is P.O. Box 179, Washington, VA 22747 ("Bank") and MICHAEL T. LEAKE, a "Trustee" under a deed of trust which secures a loan from Bank to Grantor.

## 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, and authorizes the use of easements in gross to maintain the character of open-space land; and

WHEREAS, Chapter 18, Title 10.1 of the Code of Virginia (§§ 10.1-1800 through 10.1-1804, as amended) declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Virginia Outdoors Foundation to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space and recreational lands of the Commonwealth; and

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

WHEREAS, the Property possesses significant scenic, natural, and open-space values (the "Open Space Values"), the preservation of which will benefit the citizens of the Commonwealth; and

WHEREAS, the Comprehensive Plan of Louisa County currently in effect dated September 4, 2001, specifies that the number one goal of Louisa County is to preserve its rural character (p.II-3), and, in addition, the Louisa County Comprehensive Plan contains numerous other statements, objectives and references to Louisa County's policy of preserving open space, and the natural and historic environment of Louisa County, and to a policy of conservation of rural and open space and waterways of Louisa County (p. II-5, III-10, IV-1); and

WHEREAS, the Property consists primarily of gently rolling pasture and hay land with areas of mixed forest, creek bottom and approximately 900' of frontage on the North Anna River and 5000' feet of perennial stream frontage as well as road frontage on State Route 620 and State Route 639; and

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

WHEREAS, the Property is in the Green Springs Magisterial District and proximate to the Green Springs Historic District of Louisa County designated and administered by the National Park Service; and

WHEREAS, the Grantor and the Grantee intend to accomplish such protection by restricting the use and residential density 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 local, state, and federal 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 to the Grantee an open-space Easement in gross over, and the right in perpetuity to restrict the use and residential density of, the real estate consisting of 260.46+/- acres described below, located in Green Springs Magisterial District, Louisa County, Virginia, near the intersection of Doctors Road and Vawter Corner Road, with frontage on State Routes 620 and 639 and herein referred to as the "Property" and more particularly described as follows:

*ALL that certain tract or parcel of land lying and being situate in Green Spring Magisterial District, Louisa County, Virginia, containing 260.46+/- acres, more or less, and being shown on plat entitled "Boundary Line Adjustment survey prepared for William W. Gray" by Todd M. Lenning, L.S. dated June 18, 2004, and recorded in the Clerk's Office of the Circuit Court of Louisa County, Virginia in Plat Book 8 at Page 1894. Said parcel is carried in the land Books of Louisa County, Virginia as Tax Map and Parcel numbers: 5-1-16, 5-3-2, and 5-3-3. The Property shall be considered to be two parcels for the purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.*

AND SUBJECT, HOWEVER, to the restriction that the Grantee may not transfer or convey the open-space Easement herein conveyed to the Grantee unless the Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in the conveyance accomplished by this deed are to be continued in perpetuity, and (2) the transferee is an organization then qualifying as an eligible donee as defined by section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated there under.

Restrictions are hereby imposed on use of the Property pursuant to the public policies set forth above. 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, (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.** The Property is currently composed of three parcels all of which, prior to the placement of this Easement, could be conveyed separately and two of which are permitted as a matter of right to be further subdivided. However, for all purposes of this Easement, the Property shall be considered to be two parcels of land as though the Tax Parcel 5-1-16 and Tax Parcel 5-3-3 are combined into one parcel of land ("Parcel 1") and Tax Parcel 5-3-2 shall be considered one parcel ("Parcel 2"). Parcel 1 and Parcel 2 shall remain separate and may be sold or conveyed separately, or together; however, the Property shall not be divided, subdivided or reconfigured into more than two (2) separate parcels and the Property may not be sold or conveyed as more than two (2) separate parcels however configured. Provided however that the owners of Parcel 1 and Parcel 2

may make boundary adjustments between these two parcels so long as there are never more than two parcels created and the prior written consent of the Virginia Outdoors Foundation is obtained in advance, such consent not to be unreasonably withheld or delayed.

Private roads, well and septic and other utilities may be constructed on each parcel.

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 VOF at least 30 days prior to beginning such commercial timber harvesting.

The primary objectives of the forest stewardship plan shall be to improve wildlife habitat and conserve soil and water resources.

5. **RIPARIAN BUFFER.** A forested buffer extending 35 feet from the bank of the North Anna River abutting the Property 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. There shall be no plowing, cultivation, or similar earth disturbing activity within 35 feet of the bank of the North Anna River.

In addition there will be no plowing or cultivation within 35 feet of the banks of the perennial streams on the Property.

6. **GRADING, BLASTING, and MINING.** Grading, blasting or earth removal shall not materially alter the topography of the Property except for dam construction to create private ponds or lakes, or as required in the construction of permitted buildings, structures, connecting private roads, and utilities as described in this Easement. 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. Construction of lakes and ponds on the Property shall be permitted so long as all applicable permits are obtained and construction is completed in accordance with such permits.

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

(i) two single family dwellings, neither of which may be visible from the pavement of State Route 620 or State Route 639 fronting the Property, or if such single family dwelling is visible for State Route 620 or State Route 639 it shall not exceed 5000 square feet of livable space unless Grantee so approves in writing, and non-residential outbuildings or structures commonly

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and appropriately incidental to the permitted single family dwellings described in this paragraph (i),

(ii) a total of two secondary dwellings (*or*: dwelling units, e.g. barn or garage apartment) not to exceed 2,000 square feet of livable space each, and non-residential outbuildings or structures commonly and appropriately incidental thereto, and

(iii) the existing frame house fronting on Vawter Corner Road, the existing antique farm house residence structure in the open pasture and approximately 200' east of the existing driveway entering the Property off Vawter Corner Road, and the existing three sided metal storage shed approximately 100 feet east of the driveway entering the Property off Vawter Corner Road; all three of these structures are currently uninhabited, and all of which may be restored but not expanded,

(iv) farm buildings or structures, except that a farm building or 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 is obtained from the Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the Open-Space Values of the Property; 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 8(i).

8. **INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Industrial or commercial activities other than the following are prohibited: (i) agriculture, viticulture, aquaculture, silviculture, horticulture, equestrian and other equine activities, shooting clays and hunting, (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. Temporary outdoor activities involving 100 or more people shall not exceed seven days in duration unless approved by the Grantee in advance in writing. 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.
9. **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 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 non-compliance, and to enjoin non-compliance by *ex parte* temporary or permanent injunction. 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 does not waive or forfeit 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.

10. **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.
11. **EXTINGUISHMENT.** The Grantor and the Grantee 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 Section 10.1-1700 *et seq.* Restrictions set forth in the Easement can be extinguished only by judicial proceeding and only if such extinguishment also complies with the requirements of section 10.1-1704 of the Virginia Code. In any sale or exchange of the Property subsequent to such extinguishment, the Grantee 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 Grantor agrees that the donation of the perpetual conservation restriction in this Easement gives rise to a property right, immediately vested in the Grantee, 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 Grantee 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 Section 10.1-1704.
12. **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.
- The Grantor warrants that he has made available to the Grantee, prior to the time the donation is made, documentation sufficient to establish the condition of the Property at the time of the gift. Such documentation is designed to protect the conservation interests associated with the Property, which, although protected in perpetuity by the Easement, could be adversely affected by the exercise of the reserved rights. The parties hereby acknowledge that the documentation supplied and contained in the files of the Grantee is an accurate representation of the Property.
13. **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.
14. **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.

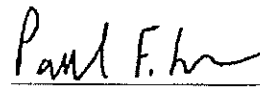
Bank is the Noteholder under a certain Deed of Trust dated March 17, 2005 and recorded in the Clerk's Office of the Circuit Court of Louisa County, Virginia in Deed Book 907 at Page 626, which subjects the Property to the Bank's lien. The Bank hereby consents to the terms and intent of this Easement, and agrees that the lien represented by said Deed of Trust shall be held subject to this 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.

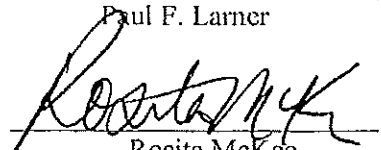
Although this Easement in gross will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. The Grantor retains the exclusive right to such access and use, subject to the terms hereof.

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 Virginia Outdoors Foundation 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 this Deed of Easement and further acknowledges that the Grantee has not provided any goods or services to the Grantor in consideration of the grant of this Deed of Easement.

Acceptance of this conveyance by the Grantee is authorized by section 10.1-1801 of the Code of Virginia and is evidenced by the signature of its Deputy Director hereto.

WITNESS the following signatures and seals.

  
 \_\_\_\_\_  
 Paul F. Larner

  
 \_\_\_\_\_  
 Rosita McKee

\_\_\_\_\_, Trustee  
Michael T. Leake

Bank:

By: \_\_\_\_\_  
Michael T. Leake

Its: \_\_\_\_\_  
Chief Executive Officer

Accepted:

VIRGINIA OUTDOORS FOUNDATION:

By: Tamara A. Vance  
Name: Tamara A. Vance  
Deputy Director

STATE OF MARYLAND,  
COUNTY OF BALTIMORE, TO WIT:

I, Christopher A. Zienty, a Notary Public for the Commonwealth  
aforesaid, hereby certify that Paul F. Larner and Rosita McKee, Grantor, personally appeared before  
me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 6 day of December, 2005.

Christopher A. Zienty  
Notary Public

My commission expires: Dec. 4, 2007 (SEAL)



[Signature], Trustee  
Michael T. Leake

Bank: [Signature]  
By: [Signature]  
Michael T. Leake

Its: Chief Executive Officer  
Chief Executive Officer

Accepted:

VIRGINIA OUTDOORS FOUNDATION:

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

STATE OF MARYLAND,  
COUNTY OF BALTIMORE, TO WIT:

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

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


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

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

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

I, Anna G. Christolm, a Notary Public for the Commonwealth aforesaid, hereby certify that Tamara A. Vance of the Virginia Outdoors Foundation, personally appeared before me this day and acknowledged the foregoing instrument on behalf of the Virginia Outdoors Foundation.

WITNESS my hand and official seal this 20th day of December, 2005.

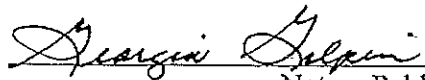
  
\_\_\_\_\_  
Notary Public

My commission expires: 31 OCT 2007 (SEAL)

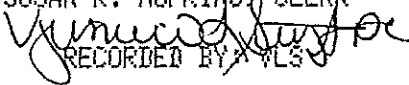
COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF RAPPAHANNOCK, TO WIT:

I, Georgia Gilpin, a Notary Public for the Commonwealth aforesaid, hereby certify that Michael T. Leake, as Chief Executive Officer of Rappahannock National Bank and Trustee, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 13 day of December, 2005.

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

MY COMMISSION EXPIRES: 12 12 11 00 (SEAL)

INSTRUMENT #05015648  
RECORDED IN THE CLERK'S OFFICE OF  
LOUISA COUNTY ON  
DECEMBER 21, 2005 AT 01:58PM  
SUSAN R. HOPKINS, CLERK  
  
RECORDED BY: WLS