

GPIN(S) _____

DEED
OPEN SPACE EASEMENT
RS District - Common Open Space

THIS DEED OF EASEMENT is entered into _____, 200__

by _____

(herein referred to as "Grantor") and HANOVER COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "County").

WITNESSETH:

WHEREAS Grantor is the fee simple owner of the tract or tracts of land designated "Common Open Space", GPIN(s) _____ located in _____ District, Hanover County, Virginia, described in Exhibit A attached to and recorded with this Deed; and

WHEREAS the Common Open Space owned by the Grantor has agricultural, scenic, natural and aesthetic value in its present state as a natural and rural area; and

WHEREAS in furtherance of the purposes of the Open Space Land Act, Title 10.1, Chapter 17 of the Virginia Code, and as required by the Hanover County Zoning Ordinance, the Grantor is willing to grant a perpetual Open Space Easement applicable to the Common Open Space, restricting and limiting the use of the land, on the terms and conditions and for the purposes set forth below, and the County is willing to accept the Easement; and

WHEREAS the Grantor and the County recognize the value of the Common Open Space in its present state, and have a common purpose of conserving the Common Open Space, preserving the dominant rural character of the Common Open Space, and preventing the use or development of the Common Open Space for any purpose or in any manner which would

conflict with maintenance in accordance with purposes of the Open Space Land Act and the Hanover County Zoning Ordinance; and

WHEREAS the County is authorized by the Open Space Land Act to accept, hold and administer the Open Space Easement, and the County possesses the authority to accept and is willing to accept the Open Space Easement under the terms and conditions described below, and the Grantor, for itself, its successors and assigns waives any objection to the perpetual nature of this easement.

NOW THEREFORE, for good and valuable consideration, receipt of which all parties acknowledge, and in consideration of the mutual covenants and restrictions set forth below, the Grantor conveys to the County and its successors and assigns forever and in perpetuity an Open Space Easement of the nature and character and to the extent set forth below, applicable to the Common Open Space more particularly described in Exhibit A, for the purposes of preserving the important features of the Common Open Space and maintaining permanently the rural, natural and scenic character of the Common Open Space; and

The commitments, conditions and restrictions applicable to the Common Open Space, for the purpose of achieving these goals are set forth below:

1. This Easement shall be perpetual. It is an easement in gross, and shall run with the land as an incorporeal interest in the Common Open Space enforceable by the County against the Grantor and its heirs, successors and assigns. The Grantor for itself, its heirs, successors and assigns waives any objection to the perpetual nature of the Easement.

2. There shall be no dumping of soil, trash, ashes, garbage, waste or offensive material. There shall be no dumping or filling in of any pond, wetland, waterway, or other area except as may be permitted by applicable laws for the purpose of combating erosion.

Accumulation or application of trash, refuse, junk, sludge or other unsightly material is not permitted on the Common Open Space. There shall be no dumping, storage or placement on the Common Open Space of any stumps, brush, grass or other land clearing debris from off-site.

3. Mining, dredging and removal of loam, gravel, soil, rock, sand, coal and other materials are prohibited, except as necessary for:

- a. Application of good farming and forestry practices;
- b. Maintenance of existing accesses; and
- c. Construction and maintenance of accesses to uses and structures permitted

within the provisions of this Deed of Easement. Accesses shall be designed and constructed to cause a minimum of interference with the existing topography, drainage, vegetation, wildlife, and conservation purposes of the Common Open Space.

4. Removal, destruction and cutting of trees, shrubs, or other vegetation is prohibited except as indicated on the Conceptual Plan and for:

- a. Reasonable maintenance of existing accesses or construction and maintenance of accesses permitted by this Deed of Easement; or
- b. Application of good management practices including the prevention or treatment of disease; or
- c. Periodic selective harvest of marketable timber under the supervision of a qualified forester; or
- d. Furtherance and perpetuation of the agricultural, horticultural, silvicultural and naturalistic uses of the Common Open Space; or

e. Removal of only such vegetation as is reasonably necessary for construction and improvements in substantial conformity with the Conceptual Plan and in accordance with this Deed of Easement.

All forestal management activities shall be in accordance with the sound forestry management guidelines promulgated by the Society of American Foresters or successor organization for natural forests and plantations. All forestry practices shall serve the dual purpose of:

(i) Protecting the soils, drainage and water quality of the Common Open Space; and

(ii) Enhancing the sustainable growth, and quality of the tree species suited to the Common Open Space.

5. There shall be no activities or uses detrimental or adverse to water conservation, erosion control, soil conservation and, subject to the permitted uses, the preservation of wildlife habitat.

6. Use, development and improvement of the Common Open Space shall be permitted only in accordance with the Hanover County Zoning Ordinance and as depicted on the Conceptual Plan approved by the Board of Supervisors and referred to in Exhibit A. The Common Open Space shall not be further divided, subdivided, or conveyed in fee except as depicted in the Conceptual Plan, and shall be maintained as open space.

7. There shall be no alteration of the topography of the Common Open Space, except as required for the construction of structures, roads or other improvements in substantial conformity with the Conceptual Plan or reasonably necessary to provide for permitted uses.

8. The features designated on the Conceptual Plan for preservation, including all historic structures, woodlands, and historic sites shall be maintained and preserved by the Grantor, its heirs, successors or assigns substantially as depicted on the Conceptual Plan, and in substantially the same condition as exists on the date of execution of this Deed.

9. The Grantor expressly reserves to itself, its successors and assigns the right to:

a. Continue the agricultural, forestry and naturalistic uses of the Common Open Space.

b. Improve, repair, restore, alter, remodel or replace the permitted structures depicted on the Conceptual Plan with structures of similar size and purpose and construct any other improvements depicted on the Conceptual Plan provided that the changes are compatible with the conservation purposes of the Common Open Space and all other provisions of this Easement.

c. Continue the use of the Common Open Space for all purposes not inconsistent with this Easement.

10. The parties agree that monetary damages would not be an adequate remedy for the breach of any of the terms, conditions and restrictions of this Easement, and therefore, in the event that the Grantor, its heirs, successors or assigns, violate or breach any of these terms, conditions and restrictions, the County and its successors and assigns, may institute a suit and shall be entitled to enjoin by ex parte temporary and/or permanent injunction such violation and to require the restoration of the Common Open Space to a condition in compliance with this Easement. The County, its successors and assigns, by any prior failure to act do not waive or forfeit the right to take any action as may be necessary to insure compliance with the terms, conditions and purposes of this Easement.

11. The County, its successors and assigns, have the right, with reasonable notice, to enter the Common Open Space for the purpose of inspection to determine whether the Grantor, or its successors or assigns, are complying with the terms, conditions and restrictions of this Easement. This right of inspection does not include the interior of any dwellings.

12. The County may assign its rights under this Easement to any State or federal agency charged with the responsibility of conservation of natural or farm areas, or open space, or to any non-profit, tax-exempt organization engaged in promoting conservation of historic, rural or natural areas; and if such assignee shall be dissolved or shall abandon this Easement or the rights and duties of enforcement or if proceedings are instituted for condemnation of this Easement, the Easement and rights of enforcement shall revert to the County; and if the County shall be dissolved and if the terms of the dissolution fail to provide a successor, then the Hanover County Circuit Court shall appoint an appropriate successor.

13. The Grantor agrees for itself, its heirs, successors and assigns to give notice in writing to the County of the names and addresses of any parties to whom the Common Open Space is to be transferred, at the time of transfer.

14. The County agrees to hold this Easement exclusively for conservation purposes, and will not transfer the Easement in exchange for money, other property, or services, except as provided in and permitted by the Open Space Land Act.

15. This Easement shall be construed to promote the purposes of the Virginia Open Space Land Act, to promote the Comprehensive Plan of Hanover County, and to promote the conservation purposes of this Easement, including such purposes as are defined in the Internal Revenue Code.

16. Although this Easement in gross will benefit the public in ways recited above by encouraging and requiring elements of good land management, it shall not be construed to convey a right to the public of access or use of the Common Open Space, and the Grantor, its heirs, successors and assigns shall retain exclusive right to access and use.

The covenants agreed to and the terms, conditions, restrictions and purposes imposed shall be binding not only upon the Grantor, but also its agents, personal representatives, heirs, assigns, and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the above described land, notwithstanding any restrictions at common law on the term of easements in gross, or their enforcement.

17. Notwithstanding any other provision of this Deed of Easement, the Hanover County Zoning Ordinance and other applicable statutes, ordinances and regulations shall apply to the Property and shall take precedence over this Easement to the extent that those requirements are more restrictive than the terms of this Easement.

18. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any provision of this Easement or any ancillary or supplementary agreement relating to the subject matter of this Easement.

Approved as to form:
Hanover County Attorney's Office
November 1, 2001

Approved as to substance:

Director/Deputy Director of Planning

Acceptance of this Deed by Hanover County, a political subdivision of the Commonwealth of Virginia, pursuant to Va. Code Section 15.2-1803, is evidenced by the signature below.

Date: _____

County Administrator/Deputy County Administrator

COMMONWEALTH OF VIRGINIA,
COUNTY/CITY OF HANOVER, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, on behalf of Hanover County, Virginia.

My commission expires: _____

Notary Public

County's Address:
County Administrator
P.O. Box 470
Hanover, Virginia 23069-0470