

GPIN(S) _____

DEED
OPEN SPACE EASEMENT
Preservation Lot

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”); and _____
(Name of Owners’ Association in CAPS)
_____ (“the Association”).

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 Property 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 Preservation Lot, 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 Preservation Lot in its present state, and have a common purpose of conserving the Preservation Lot, promoting and encouraging the preservation of farmland, promoting and enhancing agriculture as an important

industry within the County, preserving the dominant rural character of the Preservation Lot, and preventing the use or development of the Preservation Lot 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 recognize this Easement as an easement appurtenant to land retained by the Association designated as Common Open Space; and

WHEREAS the County is authorized by the Open Space Land Act to accept, hold and administer the Open Space Easement, and the County and the Association possess the authority to accept and are 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 to the Association and their 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 Preservation Lot for the purpose of preserving the important features of the Preservation Lot and maintaining permanently the rural, natural and scenic character of the Preservation Lot; and

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

1. This Easement shall be perpetual. The Easement conveyed to the County is an easement in gross. The Easement interest of the Association benefits and is appurtenant to land retained by the Association. The Easement shall run with the land as an incorporeal interest in the Preservation Lot enforceable by the County and the Association, against the Grantor and its

successors and assigns. The Grantor for itself, its 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 Preservation Lot. There shall be no dumping, storage or placement on the Preservation Lot of any stumps, brush, grass or other land clearing debris from off-site. This paragraph shall be reasonably interpreted so as to permit activities that are consistent with sound agricultural and silvicultural practices, such as the composting of vegetative materials grown or used on site, the amendment of soils to be used for agriculture, and the proper storage of inoperative machinery, fencing materials, etc. for repair, reuse or recycling. In addition, this paragraph shall not be deemed to prohibit reasonable activities ancillary to any residential use of the Preservation Lot, such as the incineration of household refuse produced on site, the disposal of ashes from the incinerator, fireplaces and wood stoves, the composting of vegetative household waste, etc.

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 Preservation Lot.

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 Preservation Lot; or

e. Removal of only such vegetation as is reasonably necessary for construction and improvements or good farming practices 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 forests and plantations. All forestry practices shall serve the dual purpose of :

(i) Protecting the soils, drainage and water quality of the Property;
and

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

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. Agricultural activities conducted in accordance with practices and standards developed by State and federal regulatory agencies shall not constitute an activity detrimental or adverse to water conservation, erosion control, or soil conservation.

6. Development of the Preservation Lot shall not be permitted except as provided in this Easement or as provided in the Hanover County Zoning Ordinance, and use of the Preservation Lot shall be permitted only in accordance with the Hanover County Zoning Ordinance. The Preservation Lot shall not be further divided, subdivided, or conveyed in fee except in the tracts described in the Plat and shall be maintained as open space.

7. There shall be no alteration of the topography of the Preservation Lot, except as required for the construction of structures, roads, ponds, 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 successors or assigns substantially as shown 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 Preservation Lot.

b. Improve, repair, restore, alter, remodel or replace the permitted structures depicted in the Conceptual Plan with structures of similar size and purpose and construct any other improvements in areas depicted on the Conceptual Plan provided that the

changes are compatible with the conservation purposes of the Preservation Lot and all other provisions of this Easement.

c. Continue the use of the Preservation Lot for all purposes not inconsistent with this Easement and the Zoning Ordinance.

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 or the Association, or both, and their successors and assigns, individually or jointly, 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 Preservation Lot to a condition in compliance with this Easement. The County and the Association, their 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 and authorized representatives of the Association, and their successors and assigns, have the right, with an appointment which shall be arranged by the owner within four (4) days of a request being made, to enter the Preservation Lot with an owner and a representative of the County for the purpose of inspecting the Lot to determine whether the Grantor, or its successors or assigns, are complying with the terms, conditions and restrictions of this Easement. There shall be no more than two (2) such inspections within one (1) calendar year. This right of inspection does not include the interior of any dwellings. No more than three authorized representatives of the Association may enter the Property. Three (3) representatives

shall be elected by the Association, and their names shall be furnished to the owner prior to an appointment.

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 successors and assigns to give notice in writing to the County of the names and addresses of any parties to whom the Preservation Lot is to be transferred, at the time of transfer.

14. The County and the Association agree 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, and the property retained by the Association will be benefited by this Easement, it shall not be construed to convey a right to the

public of access or use of the Preservation Lot, and the Grantor, its 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 Preservation Lot and shall take precedence over this Easement to the extent that those requirements are more restrictive than the terms of this Easement. This paragraph shall not be construed to impair vested rights.

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.

OWNERS' ASSOCIATION:

(NAME OF OWNER'S ASSOCIATION IN CAPS)

By: _____

Name Printed: _____

Title: _____

COMMONWEALTH OF VIRGINIA)

) to-wit:

COUNTY OF HANOVER)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, on behalf of _____ (Name of Owners' Association in CAPS).

My commission expires:

Notary Public

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