

DEED OF OPEN SPACE EASEMENT

Permit number: _____ Tax Map ID: _____

Project Name & Address: _____

THIS DEED OF OPEN SPACE EASEMENT, ("Deed"), made this _____ day of _____, 20____, between (insert full property owner's name(s)) _____, and ROCKINGHAM COUNTY, VIRGINIA hereinafter referred to as the "Rockingham County."

WITNESSETH:

WHEREAS, the Property has agricultural, scenic, natural aesthetic value in its present state as a natural and rural area which has not been subject to development; and

WHEREAS, in furtherance of the purposes of the Stormwater Management Act, Title 62.1, Chapter 3.1, Article 2.3 of the Virginia Code, the Grantors are willing to grant a perpetual Open Space Easement over the Property as shown on the Easement Exhibit prepared by _____, dated _____, which is attached hereto as "**Exhibit A**"; thereby precluding the further subdivision of the Property and restricting and limiting the use of the land, on the terms and conditions and for the purposes hereinafter set forth, and the County is willing to accept such Easement; and

WHEREAS, the Grantors and County recognize the agricultural, scenic, natural and aesthetic value of the Property in its present state, and have, by the conveyance of an Open Space Easement to the County, a common purpose of conserving the natural and cultural values of the property, preserving the dominant agricultural, woodland, or wetland character of the Property, and preventing the use or development of the Property for any purpose or in any manner which would conflict with the maintenance of the Property in its scenic, agricultural, woodland or wetland condition or with purposes of the Stormwater Management Act.

WHEREAS, the County is authorized by the Stormwater Management Act to accept, hold, and administer Open Space Easements, and possess the authority to accept and is willing to accept this Open Space Easement under the terms and conditions hereinafter described;

NOW, THEREFORE, for good and valuable consideration, receipt of which all parties acknowledge, and in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, the Grantors hereby grant, convey, and assigns forever and in perpetuity

an Open Space Easement (the "Easement") of the nature and character and to the extent hereinafter set forth over the Property, as more particularly bounded and described on the Easement Exhibit, the purposes of which are to preserve the environment of the Property and to maintain permanently the natural and cultural values and the dominant scenic, agricultural, woodland, or wetland character of the Property.

To achieve these objectives, the terms, conditions and restrictions of this Open Space Easement are hereinafter set forth.

1. This Easement shall be perpetual. It is an easement in gross and as such is inheritable and assignable and runs with the land as an incorporeal interest in the Property enforceable with respect to the Property by the County, against the Grantors and their successors and assigns.
2. No industrial or commercial activities, with the exception of farming and forestry activities shall be conducted on the Property.
3. No billboard or advertising material shall be erected on the Property.
4. 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 or waterway except as may be permitted by applicable laws for the purpose of combating erosion. Accumulation of trash, refuse, junk, sludge, or other unsightly material is not permitted on the Property.
5. Excavation, dredging, mining and removal of loam, gravel, soil, rock, sand, coal, and other materials are prohibited, except as necessary for application of good farming and forestry practices.
6. Removal, destruction and cutting of trees, shrubs, or other vegetation is prohibited except for:
 - (a) Reasonable maintenance of existing access or construction and maintenance of access permitted within the provisions of this Deed of Easement; or
 - (b) Application of good husbandry practices including the prevention or treatment of disease; or
 - (c) Periodic selective harvest of marketable timber under the supervision of a registered forester; or
 - (d) Furtherance and perpetuation of the agricultural, horticultural, silvicultural and naturalistic uses of the Property.

All forestall management activities shall be in accordance with sound forestry management guidelines promulgated by the Society of American Foresters for natural 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 site.

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

8. No building, facility or other structure shall be erected or constructed on the Property.

9. The Property subject to this easement shall not be further subdivided.

10. Notwithstanding any of the foregoing provisions, the Grantors expressly reserve to themselves, their successors and assigns the right to:

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

11. The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and restrictions herein contained, and therefore, in the event that the Grantors, their successors or assigns, violate or breach any of such terms, conditions and restrictions herein contained, the County, its successors or 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 Property to its prior condition. The County, its successors and assigns, by any prior failure to act shall not waive or forfeit, and shall not be deemed to have waived or forfeited, the right to take any action as may be necessary to insure compliance with the terms, conditions and purposes of this Easement.

12. The County and/or the Department of Environmental Quality, its successors and assigns, shall have the right, with reasonable notice, to enter the Property once every five years for the purpose of inspecting the Property to determine whether the Grantors, or their successors or assigns, are complying with the terms, conditions and restrictions of this Easement. This right of inspection does not include the interior of the dwellings.

13. It is the intention of the parties hereto that this Easement, which is by nature and character negative in that the Grantors have restricted and limited their right to use the subject Property rather than granted any affirmative rights to the County except as otherwise set forth herein, be construed at all times and by all parties to effectuate its terms, conditions and purposes. 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 to any non-profit, tax-exempt organization engaged in promoting conservation of farm or natural areas; and if such assignee shall be dissolved or shall abandon this easement or the rights and duties of enforcement herein set forth, 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 Court shall appoint an appropriate successor. The County will give the Grantors notification if third party inspectors are used.

14. The Grantors agree for themselves, their successors and assigns to send in writing to the County the names and addresses of any parties to whom any portion of the property subject to this Easement is to be transferred at the time said transfer is executed.

15. The County agrees to hold this Easement exclusively for conservation purposes, i.e., it will not transfer the Easement in exchange for money, other property, or services, except as provided in and permitted by the Stormwater Management Act.

16. This Easement shall be construed to promote the purposes of the Virginia Stormwater Management Act, to promote the Virginia Stormwater Management Regulations, and to promote the conservation purposes of this Easement.

17. Although this Easement in gross will benefit the public in ways recited above by encouraging and requiring elements of good land management, nothing herein shall be construed to convey a right to the public of access or use of the Property, and the Grantors, their successors, and assigns shall retain exclusive right to access and use.

18. Notwithstanding any other provision of this Deed of Open Space Easement, the Rockingham County Zoning Ordinance shall apply to the Property and shall take precedence over this Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Easement.

The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall not only be binding upon the Grantors, but also their agents, personal representatives, heirs, assigns, and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the above described land.

Agricultural operations shall enjoy the protection of the Right to Farm Act, Section 3.2-300, et seq. of the Code of Virginia, as amended.

The undersigned respectively warrants that this Deed is made and executed pursuant to authority properly granted by the partnership agreement of the Grantors.

Attest by OWNER(S):

OWNER(S) Signature

OWNER(S) Print Name

Date

OWNER(S) Signature

OWNER(S) Print Name

Date

COMMONWEALTH OF VIRGINIA

COUNTY OF ROCKINGHAM

The foregoing Agreement was acknowledged before me this _____ day of _____,

_____, by _____.

NOTARY PUBLIC

My commission expires: _____

My commission No. is: _____