

December 1, 2007

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21 N. King Street
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20071206-0084868

Loudoun County, VA Pgs: 19
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Gary M. Clemens, Clerk

PIN: 077-36-5320

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 5th day of December 2007, among ODP, LLC, a Virginia Limited Liability company ("Grantor"); the VIRGINIA OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA, ("Grantee") (the designations "Grantor" and "Grantee" refer to the Grantor and Grantee and their respective successors and assigns); ACCESS NATIONAL BANK, (the "Bank") and EDMUND D. HARLLEE, Sole Acting Trustee (the "Trustee").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of real property situated on Hibler Road in Loudoun County, Virginia, containing in the aggregate 294.5829 acres as further described below (the "Property"), and desires to give and convey to Grantee a perpetual conservation and open-space easement over the Property as herein set forth; and

WHEREAS, Grantee is a governmental agency of the Commonwealth of Virginia and a "qualified organization" and "eligible donee" under Section 170(h)(3) of the Internal Revenue Code of 1986, as amended (and corresponding provisions of any subsequent tax laws)(IRC) and Treasury Regulation §1.170A-14(c)(1), and is willing to accept a perpetual conservation and open-space easement over the Property as herein set forth; and

WHEREAS, Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the "Open-Space Land Act"), declares that the preservation of open-space land serves a public purpose by curbing urban sprawl, preventing the spread of urban blight and deterioration and encouraging more economic and desirable urban development, helping provide or preserve necessary park, recreational, historic and scenic areas, and conserving land and other natural resources, and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land; and

WHEREAS, pursuant to Sections 10.1-1700 and 10.1-1703 of the Open-Space Land Act, the purposes of this Easement include retaining and protecting open-space and natural resource values of the Property, and the limitation on division, residential construction and commercial and industrial uses contained in Section II ensures that the Property will remain perpetually available for agriculture, livestock production, forest or open-space use, all as more particularly set forth below; and

WHEREAS, Chapter 525 of the Acts of 1966, Chapter 18, Title 10.1, §§10.1-1800 through 10.1-1804 of the Code of Virginia, 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, this Easement is granted “exclusively for conservation purposes” under IRC §170(h)(1)(C) because it effects “the preservation of open space (including farmland and forest land)” under IRC 170(h)(4)(A)(iii). Specifically, the preservation of open space on the Property is pursuant to clearly delineated state and local governmental conservation policies and will yield a significant public benefit; and

WHEREAS, this open-space easement in gross constitutes a restriction granted in perpetuity on the use which may be made of the Property, and is in furtherance of and pursuant to the clearly delineated governmental policies set forth below:

(i) Land conservation policies of the Commonwealth of Virginia as set forth in:

a. Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth’s policy to protect its atmosphere, lands and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

b. The Open-Space Land Act cited above;

c. Chapter 18, of Title 10.1, §§10.1-1800 through 10.1-1804 of the Code of Virginia cited above;

d. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, §§58.1-510 through 58.1-513 of the Code of Virginia, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth’s unique natural resources, wildlife habitats, open spaces and forest resources;

e. Chapter 32, of Title 58.1, §§58.1-3230 through 58.1-3244 of the Code of Virginia, which authorizes special use-value tax assessments for real estate devoted to agricultural, forestal, horticultural and open-space use; and

(ii) Land use policies of the County of Loudoun as delineated in the 2001 Comprehensive Plan to which plan the restrictions set forth in this deed conform as follows:

a. the protection of the Property conforms with County policies, goals, objectives, and strategies to “promote the preservation of forested areas through the use of Agricultural and Forestal Districts, easements and other voluntary means” and to “continue to encourage the use of open space easements as a way to complement and enhance the Green Infrastructure and its elements”;

b. the protection of the Property conforms with the County policy to “proactively promote private, state and federal conservation programs and their allocated resources to advance conservation programs within the County through public and private means such as grants, voluntary easements, dedications, etc.”;

c. the protection of the Property conforms with the County policy to “establish a strategy to expand passive recreational use of Scenic Rivers and the Potomac River ... [and] the County will seek to complete its portion of the Potomac Heritage Trail through public and private efforts as proactively coordinated with County resources”;

d. Loudoun County has identified policies to protect stream corridors and scenic rivers, specifically the Potomac River, within the County by the creation of riparian buffers and has identified the Potomac River as a critical environmental area planned for special protection; and

e. the protection of the Property conforms with the County policy to “protect structures and other features of historic significance in the context of their natural settings and will work with landowners to convey the historic value of the resource to the community at large”; and

f. Loudoun County has recognized the importance of the continued preservation of the Property as real estate devoted to agricultural and forest use and has granted use value assessment and taxation to the Property; and

WHEREAS, the Property has approximately 0.6 miles of frontage on the Potomac River, including approximately 140 acres of floodplain along the Potomac River; and

WHEREAS, the Potomac River is recognized as a natural, scenic, and historical landscape of great significance by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia; and

WHEREAS, the Property is located across the river from the C & O Canal National Historic Park, located in Montgomery County, Maryland, and contributes to the scenic views enjoyed by the public therefrom; and

WHEREAS, the Property is located within the Catoclin Rural Historic District, which is listed on the National Register of Historic Places and the Virginia Landmarks Register; and

WHEREAS, the Property contains an historic house, known as the Colonel White House (ca. 1880), which is eligible for listing on the National Register of Historic Places as a contributing resource to the Catoclin Rural Historic District, and several historic outbuildings; and

WHEREAS, local legend says that Colonel White watched the Potomac at White's Ford from a second floor porch on the historic house during the Civil War and, at low water, crossed his troops to fight at Antietam and Gettysburg; and

WHEREAS, a Phase I archeological investigation carried out in 2006 on the Property identified eighteen archeological sites, including one site associated with 19th century agriculture, two sites associated with late 18th century dwellings including a potential association with enslaved or tenant households, and one site that indicates occupation during the Late Archaic period (2500 – 1000 BC); and

WHEREAS, this Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in Section I; and

WHEREAS, Grantor and Grantee desire to protect in perpetuity the conservation values of the Property as specified in Section I by restricting the use of the Property as set forth in Section II; and

WHEREAS, Grantee has determined that the restrictions set forth in Section II (the Restrictions) will preserve and protect in perpetuity the conservation values of the Property, which values are reflected in Section I; and

WHEREAS, Grantee has determined that the Restrictions will limit use of the Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by the Easement; and

WHEREAS, Grantee, by acceptance of this Easement, designates the Property as property to be retained and used in perpetuity for the preservation and provision of open-space land pursuant to the Open-Space Land Act.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant and

convey to Grantee a conservation and open-space easement in gross (Easement) over, and the right in perpetuity to restrict the use of, the Property, which is described below, and consists of 294.5829 acres located in Catoctin Magisterial District, Loudoun County, Virginia, near Leesburg, fronting on State Route 656 (Hibler Road) to-wit:

ALL of that certain tract or parcel of land lying and being in Catoctin Magisterial District of Loudoun County, Virginia, described in a "Certificate of Confirmation by Owner", recorded August 7, 2007 among the land records of Loudoun County, Virginia as Instrument Number 20070807-0058707, said parcel containing 294.5829 acres of land described in a boundary description made by Christopher Consultants, Ltd., dated July 13, 2007, and is comprised within the following metes and bounds:

Beginning at an iron pipe found in the northerly right-of-way line of State Route Number 656 – Hibler Road (30' prescriptive right-of-way). Said pipe being a corner common to the land of Tang and the land of Brassel. Thence, departing the land of Tang and running with said land of Brassel and the aforementioned right-of-way line of State Route 656 the following two (2) courses and distances: N 83 degrees 02' 46" E 70.36 feet to an iron pipe set, S 89 degrees 35' 34" E 159.67 feet to an iron pipe found in said right-of-way line of State Route 656 and a corner to the land of Brassel. Thence, departing said right-of-way line of State Route 656 and running with the land of Brassel the following two (2) courses and distances: N 02 degrees 41' 19" E 569.78 feet to an iron pipe found, S 88 degrees 13' 06" W 229.94 feet to an iron pipe found a corner to the land of Brassel and the aforementioned land of Tang. Thence, departing the land of Brassel and running with the land of Tang N 02 degrees 39' 12" E 450.86 feet to an iron pipe found, a corner to the land of Tang and the land of McKeever. Thence, departing the land of Tang and running with the land of McKeever N 02 degrees 35' 53" E 1,350.82 feet to an iron pipe found, a corner to the land of McKeever and the land of Judge. Thence, departing the land of McKeever and running with the land of Judge N 02 degrees 33' 23" E 855.42 feet to a stone found, a corner to the land of Judge and the land of Swaim. Thence, departing the land of Judge and running with the land of Swaim S 86 degrees 56' 15" E 607.19 feet to an iron pipe found, a corner to the land of Swaim and the land of Cox. Thence, departing the land of Swaim and running with the land of Cox the following two (2) courses and distances: S 86 degrees 49' 02" E 1,609.10 feet to a corner fence post found, S 02 degrees 32' 21" W 1,882.72 feet to an iron pipe found, a corner to the land of Cox and the land of Wood. Thence, departing the land of Cox and running with the land of Wood and continuing with the aforementioned land of Cox S 02 degrees 44' 12" W (passing over an iron pipe found at 518.91 feet) 738.99 feet to an iron pipe set. Thence, continuing with the land of Cox S 32 degrees 47' 51" E (passing over an iron pipe set at 195.37 feet in the aforementioned northerly right-of-way line of State Route 656; 228.73 feet to an iron pipe set in the southerly right-of-way line of State Route 656; 1,635.68 feet to a stone found) 1,714.39 feet to a point, a corner to the land

of Cox and the northerly bank of the Potomac River. Thence, departing the land of Cox and running with said bank of the Potomac River the following twelve (12) courses and distances: S 44 degrees 57' 00" 192.54 feet to a point, S 45 degrees 26' 59" W 403.27 feet to a point, S 51 degrees 39' 37" W 221.17 feet to a point, S 62 degrees 44' 26" W 516.16 feet to a point, S 59 degrees 28' 29" W 315.90 feet to a point, S 58 degrees 52' 58" W 160.52 feet to a point, S 55 degrees 38' 44" W 247.37 feet to a point, S 68 degrees 22' 52" W 107.72 feet to a point, S 75 degrees 32' 01' W 212.77 feet to a point, S 79 degrees 57' 10" W 518.15 feet to a point, S 82 degrees 25' 55" W 178.24 feet to a point, S 75 degrees 54' 09" W 176.80 feet to a point, a corner to the aforementioned land of Tang. Thence, departing the said bank of the Potomac River and running with the aforementioned land of Tang the following five (5) courses and distances: N 16 degrees 43' 19" W (passing over an iron pipe set at 30.00 feet, an iron pipe found at 2,354.59 feet) 2,369.59 feet to a point in the center line of the aforementioned State Route 656. Thence, continuing with the center line of State Route 656, N 73 degrees 13' 05" E 104.58 feet to a point, N 71 degrees 44' 27" E 126.16 feet to a point, 129.60 feet along the arc of a curve to the right; said curve having a radius of 753.38 feet, a central angle of 09 degrees 51' 23" and a chord which bears N 76 degrees 40' 08" E 129.44 feet to a point. Thence, departing said centerline of State Route 656 N 01 degrees 25' 55" E 14.74 feet to the point of beginning.

**CONTAINING 294.5829 ACRES OF LAND MORE OR LESS
- INCLUDING 140.8 ACRES WITHIN THE MAJOR
FLOODPLAIN AND 0.7 ACRES WITHIN THE MINOR
FLOODPLAIN FOR A TOTAL OF 140.8 ACRES OF
FLOODPLAIN.**

AND BEING the same property, with inaccurate legal description, conveyed to QDP, L.L.C., by Deed dated April 1, 2005 and recorded April 4, 2005, among the land records of Loudoun County as Instrument Number 200504-040034294.

The Property is shown as PIN 077-36-5320 among the land records of the County of Loudoun, Virginia. Even if the Property consists of more than one parcel for real estate tax or any other purpose, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

SECTION I - PURPOSE

The conservation purpose of this Easement is to preserve land for agricultural use, watershed preservation, and preservation of scenic open space, and to protect the conservation values of the Property in perpetuity by imposing the restrictions on the use

of the Property set forth in Section II and providing for their enforcement in Section III. The conservation values of the Property are its open-space, scenic, natural, and historic values and its values as land preserved for open-space and rural uses including agriculture, livestock production and forestry Grantor covenants that no acts or uses that are inconsistent with the purpose of this Easement or the conservation values herein protected shall be conducted on the Property.

SECTION II – RESTRICTIONS

Restrictions are hereby imposed on the use of the Property pursuant to the public policies set forth above. The acts that Grantor covenants to do and not to do upon the Property, and the restrictions that Grantee is hereby entitled to enforce, are and shall be as follows:

1. **DIVISION.** The Property shall not be divided into, or separately conveyed as, more than three parcels. Grantor shall give Grantee written notice prior to making any division of the Property. In the event of a division of the Property as provided in this Paragraph 1, the grantor making the conveyance retains the right to make the further permitted division of the Property unless the permitted division is allocated by that grantor in the instrument creating the division or other recorded instrument. One of the permitted parcels must be less than 25 acres in size and must be located on the north side of Hibler Road.

Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered divisions of the Property, provided that Grantee is made party to the deed creating the boundary line adjustment and at least one of the following conditions is met:

- (i) The entire adjacent parcel is subject to a recorded open-space easement owned by Grantee; or
- (ii) The proposed boundary line adjustment shall have been reviewed and approved in advance by the Board of Trustees of Grantee.

2. **BUILDINGS AND STRUCTURES.** No buildings or structures other than the following are permitted on the Property:
 - (i) two single-family dwellings, which shall not individually exceed 4,500 square feet of above-ground enclosed living area without Grantee's prior review and written approval; and
 - (ii) one single-family dwelling, which shall not exceed 3,500 square feet of above-ground enclosed living area without Grantee's prior review and written approval; and
 - (iii) two secondary dwellings, or dwelling units such as barn or garage apartments, which shall not individually exceed 2,000 square feet of above-ground enclosed living area; and

(iv) non-residential outbuildings and structures commonly and appropriately incidental to the dwellings permitted in subsections (i), (ii) and (iii) of this paragraph, and sized appropriately to serve as an amenity to single-family residential use; and

(v) farm buildings or structures, except that a farm building or farm 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 shall have been obtained from Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the conservation values of the Property. For 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 3(i).

In the event of division of the Property as provided in paragraph 1, permitted dwellings shall be allocated among the parcels in the instrument creating the division or other recorded instrument.

Grantor shall give Grantee 30 days' written notice before beginning construction or enlargement of any dwelling on the Property.

The historic house ("Colonel White House"), the only existing house on the Property at the time of the Easement and containing approximately 2,673 square feet of enclosed living area based on the Loudoun County Real Estate Tax records, shall not be demolished or removed from the Property without the prior written approval of the Grantee. The historic house may be renovated or enlarged and shall be considered one of the dwellings permitted in Paragraph 2 (i), 2 (ii), or 2 (iii). In the event that any historic building or structure is destroyed or damaged by causes beyond the Grantor's reasonable control including but not limited to fire, flood, storm, or earth movement, to such an extent that in the opinion of the Grantee, in consultation with Virginia Department of Historic Resources, the building or structure's historic integrity is irremediably compromised, nothing herein shall obligate the Grantor to reconstruct the building or return it to its condition prior to such calamity.

To protect the scenic values of the Property and the view from the C & O Canal National Historic Park, no dwelling or other building shall be constructed within 600 feet of the Potomac River or in the two designated "No Build Zones" located north of Hibler Road. To protect the archeological resources identified on the Property, no dwelling or other building shall be constructed in the two designated "No Build Zones" south of Hibler Road. The "No Build Zones" are shown in the baseline documentation report. These prohibitions shall not apply to the construction or maintenance of fencing, livestock feeding or watering troughs, mailboxes, gate posts, or permitted signs.

Private roads and utilities to serve permitted buildings or structures, private roads and utilities to parcels created by permitted divisions of the

Property, and roads with permeable surfaces for other permitted uses, such as farming or forestry, may be constructed and maintained. The location of new roads or access ways, other than farm or forest roads, shall require review and written approval of Grantee prior to construction. Public or private utilities whose construction and maintenance Grantee determines will not impair the Property's conservation values may be constructed and maintained if Grantee gives its prior written approval.

The collective footprint of all buildings and structures on the Property, excluding roads, shall not exceed 1% the total area of the Property, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values protected herein, Grantee may approve such increase. For the purpose of this paragraph the collective footprint is the ground area measured in square feet of the structures set forth in subsections (i) through (v) above and all other impervious surfaces, excluding roads. In the event of division of the Property, the collective footprint of all structures and all other impervious surfaces on each parcel, excluding roads, shall not exceed 1% of the total area of such parcel unless otherwise allocated in the instrument of transfer or other recorded instrument.

3. **INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Industrial or commercial activities other than the following are prohibited: (i) agriculture, livestock production (animal husbandry), equine activities and forestry, and related small-scale incidental commercial or industrial operations that Grantee approves in writing as being consistent with the conservation values of this Easement; (ii) processing and sale of products produced on the Property as long as no additional buildings are required; (iii) 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 (iv) activities that can be and in fact are conducted within permitted buildings without material alteration to their external appearance. Temporary outdoor activities involving 100 or more people shall not exceed 7 consecutive days in any 90-day period without prior written approval of the Grantee.

4. **MANAGEMENT OF FOREST AND AGRICULTURAL PRODUCTION.** Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any timber harvest or land-clearing activity is undertaken. All material timber harvest activities on the Property shall be guided by a Forest Stewardship Management Plan approved by Grantee. A pre-harvest plan consistent with the Forest Stewardship Management Plan shall be submitted to Grantee for approval 30 days before beginning any material timber harvest. Grantee shall be notified 30 days prior to the clearing of over 10 acres of forestland for grassland, crop land, or in association with the construction of permitted buildings.

Non-commercial *de minimis* harvest of trees for trail clearing, firewood or Grantor's domestic use, trees that pose an imminent hazard to human health or safety, or removal of invasive species shall not require a Forest Stewardship Management Plan.

As long as the Property has five (5) contiguous acres or more devoted to the production for sale of plants or animals under standards prescribed by the Commissioner of Agriculture and Consumer Services, or land devoted to a soil conservation program under an agreement with any agency of the federal government, the Grantor shall maintain a current written conservation plan concerning all such activities. The plan shall stipulate the use of Best Management Practices (BMP's), such as proper nutrient management, utilization of cover crops, and stabilization of highly erodible lands, and it shall be developed in consultation with the local Soil and Water Conservation District or the Natural Resources Conservation Services.

5. **RIPARIAN BUFFER.** To protect water quality, a 100-foot buffer strip along the edge of the Potomac River as measured from the top of the bank and a 35-foot buffer strip along each edge of the unnamed stream shall be maintained in forest or be permitted to revegetate naturally. Within this buffer strip there shall be (a) no buildings or other substantial structures constructed, (b) no storage of compost, manure, fertilizers, chemicals, machinery or equipment, (c) no removal of trees except removal of invasive species or removal of dead, diseased or dying trees or trees posing an imminent human health or safety hazard, and (d) no cultivation or other earth-disturbing activity, except as may be reasonably necessary for (i) wetland or stream bank restoration, or erosion control, pursuant to a government permit, (ii) fencing along or within the buffer area; (iii) construction and maintenance of stream crossings that do not obstruct water flow, (iv) creation and maintenance of foot or horse trails with unimproved surfaces, including the Potomac Heritage Trail, a special project identified in the Loudoun County Comprehensive Plan, and (v) dam construction to create ponds. Limited mowing to control non-native species or protect trees and other plants planted in forested buffers is permitted. There shall be no grazing of livestock in the buffer strip.

6. **GRADING, BLASTING, MINING.** Grading, blasting or earth removal shall not materially alter the topography of the Property except for (i) dam construction to create ponds, (ii) wetlands or stream bank restoration pursuant to a government permit, (iii) erosion and sediment control pursuant to a government-required erosion and sediment control plan, or (iv) as required in the construction of permitted buildings, structures, roads, and utilities. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in such construction. Grading, blasting or earth removal in excess of one acre for the purposes set forth in subparagraphs (i) through (iv) above require 30 days' prior notice to Grantee.

Generally accepted agricultural activities shall not constitute a material alteration. Surface mining, subsurface mining, dredging on or from the Property, or drilling for oil or gas on the Property is prohibited.

7. **ACCUMULATION OF TRASH.** Accumulation or dumping of trash, refuse, junk or toxic materials 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.
8. **SIGNS.** Display of billboards, signs, or other advertisements is not permitted on or over the Property except to: (i) state the name and/or address of the owners of the 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. Temporary political signs are allowed. No signs visible from outside the Property shall exceed nine square feet in size.

SECTION III – ENFORCEMENT

1. **RIGHT OF INSPECTION.** Representatives of Grantee may enter the Property from time to time for purposes of inspection (including photographic documentation of the condition of the Property) and enforcement of the terms of this Easement after permission from or reasonable notice to Grantor or Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with notice to Grantor or Grantor's representative being given at the earliest practicable time.
2. **ENFORCEMENT.** 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 Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay shall not waive or forfeit its right to take such action as may be necessary to insure compliance with this Easement, and Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by Grantee. Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage or change to

the condition of the Property caused by fire, flood, storm, Act of God, governmental act or other cause outside of Grantor's control or any prudent action taken by Grantor to avoid, abate, prevent or mitigate damage or changes to the Property from such causes.

SECTION IV – DOCUMENTATION

Documentation retained in the office of Grantee including, but not limited to, the Baseline Documentation Report ("Documentation Report"), describes the condition and character of the Property at the time of the gift. The Documentation Report may be used to determine compliance with and enforcement of the terms of this Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. Grantor has made available to Grantee, prior to donating this Easement, documentation sufficient to establish the condition of the Property at the time of the gift. The parties hereby acknowledge that the Documentation Report contained in the files of Grantee is an accurate representation of the Property.

SECTION V – GENERAL PROVISIONS

1. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions and restrictions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property. Landowner's rights and obligations under this Easement terminate upon proper transfer of Landowner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
2. **NO PUBLIC ACCESS.** Although this Easement 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. Grantor retains the exclusive right to such access and use, subject to the terms hereof.
3. **TITLE.** Grantor covenants and warrants that Grantor has good title to the Property, that Grantor has all right and authority to grant and convey this Easement and that the Property is free and clear of all encumbrances (other than utility and access easements) including, but not limited to, any mortgages not subordinated to this Easement.
4. **ACCEPTANCE.** Acceptance of this conveyance by Grantee is authorized by Virginia Code Section 10.1-1801 and is evidenced by the signature of a Deputy Director, by authority granted by Grantee's Board of Trustees.

5. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property which is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage or open-space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.
6. **CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a "qualified conservation contribution" as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations §1.170A-14, 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.
7. **REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property.
8. **NOTICE TO GRANTEE.** Grantor agrees to notify Grantee in writing (i) before exercising any reserved right that Grantor believes may have an adverse effect on the conservation or open-space values or interests associated with the Property; and (ii) at or prior to closing on any *inter vivos* transfer, other than a deed of trust or mortgage, of all or any part of the Property.
9. **TAX MATTERS.** 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 and audit by all appropriate tax authorities. 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. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.

10. **MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.
11. **ASSIGNMENT BY GRANTEE.** Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity and (2) the transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the IRC as amended and the applicable Treasury Regulations.
12. **GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the donation of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is 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.
13. **EXTINGUISHMENT, CONVERSION, DIVERSION.** Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Section 10.1-1704 of the Open-Space Land Act which does not permit extinguishment of open-space easements or loss of open space. Nevertheless, should an attempt be made to extinguish this Easement, such extinguishment can be made only by judicial proceedings and only if in compliance with Section 10.1-1704. In any sale or exchange of the Property subsequent to an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Section 12 above, but not to be less than the proportion that the value of this Easement at the time of extinguishment bears to the then value of the Property as a whole. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this easement and the Open-Space Land Act.
14. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property, provided that no amendment shall affect this Easement's perpetual duration or reduce the Property's conservation values. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded among the land records of the County of Loudoun, Virginia.
15. **SEVERABILITY.** If any provision of this Easement 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.

16. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement.
17. **CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.
18. **RECORDING.** This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of Loudoun, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.

ACCESS NATIONAL BANK, herein the Bank, is the Note holder under a certain Deed of Trust dated 19 May 2006 and recorded in the Clerk's Office of the Circuit Court of Loudoun County, Virginia in Instrument No. 20060530-0047463 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 Easement and joins in this Deed to reflect its direction to the Trustee to execute this Easement to give effect to the subordination of such Deed of Trust to this Easement.

WITNESS the following signatures and seals:

[Counterpart signature pages follow]

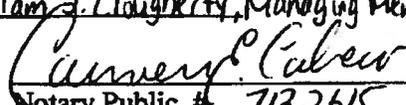
[Counterpart signature page 1 of ⁴5]

QDP, LLC

By: 
Manager

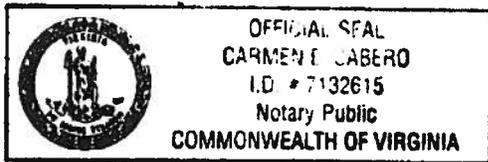
COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF Fairfax, TO WIT:

The foregoing instrument was acknowledged before me this 5th day of
December, 2007, by QDP through William J. Clougherty, Managing Member


Notary Public, # 7132615

My commission expires: 2/28/2011

(SEAL)



[Counterpart signature page 2 of 8]

Accepted:
VIRGINIA OUTDOORS FOUNDATION,

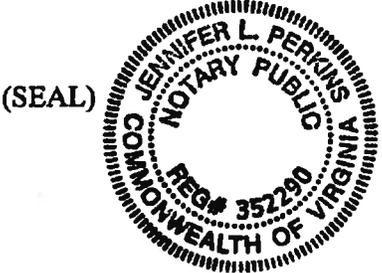
By: Leslie H. Grayson

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

The foregoing instrument was acknowledged before me this 6th day of December 2007, by Leslie H. Grayson, a Deputy Director of the Virginia Outdoors Foundation.

[Signature]
Notary Public

My commission expires: 7.31.2008
352290



[Counterpart signature page 3 of 8]

Bank: ACCESS NATIONAL BANK

By: [Signature]

Its: Executive Vice President

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

The foregoing instrument was acknowledged before me this 10th day of December, 2007, by Joseph Humphries (name of officer), Executive Vice President (title of officer) of Access National Bank (name of corporation), a Virginia (state of incorporation) corporation, on behalf of the corporation.

[Signature]
Notary Public

My commission expires: February 28, 2010

(SEAL)



[Counterpart signature page 4 of 5]

Edmund D. Harlee, Trustee, Trustee
EDMUND D. HARLEE,
Sole Acting Trustee

COMMONWEALTH OF VIRGINIA,
~~CITY~~/COUNTY OF Fairfax, TO WIT:

The foregoing instrument was acknowledged before me this 6th day of
December, 2007 by EDMUND D. HARLEE, Trustee.

Marguerite W. Capen
Notary Public

My commission expires:

