

JCC TAX ID: 1220100008  
CONSIDERATION: \$500,000.00

THIS DEED IS EXEMPT FROM TAXATION UNDER VIRGINIA CODE  
§§ 58.1-811 (A)(3) AND 58.1-811(C)(4)

**DEED OF EASEMENT**

**THIS DEED OF EASEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between **BERTRAND E. GEDDY, JR.**, Trustee of the Bertrand E. Geddy, Jr. Living Trust, hereinafter referred to as the “Grantor,” and the **COUNTY OF JAMES CITY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “County” or “Grantee”), whose address is 101 Mounts Bay Road, Williamsburg, Virginia 23185.

**WITNESSETH:**

**WHEREAS**, Grantor is the owner in fee simple of the property located in James City County, Virginia, that is commonly known as 3200 Rochambeau Drive, Toano, Virginia and is identified as number 1220100008 on the James City County Real Estate Tax Map (the “Property”); and described in Exhibit “A” attached, and hereinafter referred to as the “Property”; and

**WHEREAS**, the Grantor has voluntarily agreed to have a portion of the Property, approximately 20.673 acres delineated as “FRPP EASEMENT” on that certain plat entitled “PLAT OF SUBDIVISION OF PROPERTY STANDING IN THE NAME OF BERTRAND E. GEDDY, JR., TRUSTEE OF THE BERTRAND E. GEDDY, JR. LIVING TRUST” made by AES Consulting Engineers and dated April 3, 2006 and updated July 17, 2006, and attached hereto as Exhibit “B”, recorded simultaneously herewith and hereinafter referred to as the “FRPP Easement Property”, be subject to the terms of this Deed of Easement (“Easement”); and

**WHEREAS**, the Easement Property contains an existing residential dwelling commonly known as the Whitehall Tavern, and Grantor has voluntarily applied for a Preliminary Information Form and formal nomination to the Commonwealth of Virginia, Department of Historic Resources State Review Board (“Historic Board”) to have the Whitehall Tavern and certain surrounding historic buildings, hereinafter referred to as the “Tavern Buildings” as shown in the attached Exhibit C, registered on the Virginia Landmarks Register and/or the National Register of Historic Places; and

**WHEREAS**, the Historic Board is authorized by Title 10.1, Chapters 17 and 22 of the Code of Virginia to hold and administer easements, and the Grantor desires that the County shall have in the future the right to assign this easement to the Historic Board as co-holder of this Easement; and

**WHEREAS**, a significant portion of the Easement Property has been identified by the United States Department of Agriculture’s Natural Resources Conservation Service (“NRCS” also

known as the “United States”) as prime or unique soils under the Farm and Ranch Land Protection Program (“FRPP”); and

**WHEREAS**, the Easement Property provides a view shed or scenic vista for the County of James City, the State of Virginia, and the people of the United States worthy of protection; and

**WHEREAS**, the historic, agricultural, and scenic values described above are the “Conservation Values” which are of great importance to the Grantor, the people of the County of James City, the people of the State of Virginia, and the public in general and are worthy of protection; and

**WHEREAS**, the Conservation Values of the Property are documented in an inventory of relevant features, conditions and improvements of the Property (“Baseline Documentation”) which is incorporated by reference into this Conservation Easement, and

**WHEREAS**, the County’s acquisition of the conservation easement identified herein furthers the purposes of the Greenspace Program in that such acquisition, among other things, assures that the County’s resources are protected and efficiently used, establishes and preserves open space, and furthers the goals of the James City County Comprehensive Plan to protect the County’s natural, scenic and historic resources, promotes the continuation of a viable agricultural and forestal industry and resource base, and protects the quality of the County’s surface water and groundwater resources; and

**WHEREAS**, the Grantor has offered to sell a conservation easement and the County has agreed to pay the Grantor the sum of FIVE HUNDRED THOUSAND and 00/100 Dollars (\$500,000.00) for this conservation easement, such sum being based upon the fair market value of the easement, as determined by a qualified appraiser; and

**WHEREAS**, the purpose of the Federal Farm and Ranch Lands Protection Program, 16 U.S.C. § 3838h-i, is to purchase conservation easements on land with prime, unique, or other productive soil for the purpose of protecting topsoil from conversion to nonagricultural uses. Under the authority of the FRPP, the United States has provided \$250,000.00 to the Grantee for the acquisition of the conservation easement, entitling the United States to the certain rights herein; and

**WHEREAS**, by this Easement Grantor and Grantee mutually intend that the Property be preserved in perpetuity in substantially its existing state, thereby furthering conservation and agricultural protection and the protection of open space for the scenic enjoyment of the general public, which preservation will yield a significant public benefit.

**NOW, THEREFORE**, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor hereby grants, conveys, covenants and agrees as follows:

- A. **GRANT AND CONVEYANCE OF EASEMENT.** The Grantor hereby grants and conveys to the Grantee and their successors and assigns, with General Warranty and English Covenants of Title, a conservation easement in gross over the Easement Property

more particularly described in the attached Exhibit “B”, restricting in perpetuity the use of the Easement Property in the manner set forth in this Deed of Easement.

- B. **PURPOSE.** The purpose of this Easement is to protect the Conservation Values of the Easement Property, including its agricultural soils, open space and historic characteristics, in perpetuity by requiring that all activities on the Easement Property be carried out consistent with the terms of this Easement
  
- C. **DESCRIPTION.** The Easement Property described in Exhibit “B” is shown as a portion of Tax Parcel ID #1220100008 among the land records of the County. The Easement Property shall be considered to be one parcel for the purposes of this easement, and the restrictions and covenants of this easement shall apply to the Easement Property as a whole.
  
- D. **IMPERVIOUS SURFACE LIMITATION.** Notwithstanding any other provision of this Easement, the total impervious surface on the Easement Property shall not exceed one (1) acre. Impervious surfaces include, without limitation, the footprint of all existing and future buildings, structures and/or improvements, roofs, decks, paved parking and roads areas and any concrete.
  
- E. **USES AND ACTIVITIES.** In order to accomplish the purposes of the County and the Open-Space Land Act (Virginia Code § 10.1-1700 et seq.) the Property shall be subject to the following restrictions:
  - 1. **Construction, installation, location, placement of structures and improvements.** There shall be no construction, placement or maintenance of any structure or improvements on the Easement Property unless the structure or improvements are either existing on the Easement Property as of the date of this Deed of Easement and/or are authorized as follows:
    - a. **Existing buildings.**
      - i. **Non-Historic Agricultural buildings.** Existing agricultural structures and improvements shown in Exhibit “B” may be repaired, replaced, or reasonably enlarged at their current locations in order to carry-out the permitted agricultural uses of the Easement Property.
      - ii. **Historic buildings.** The Whitehall Tavern is the only existing residential dwelling located on the Easement Property as of the date of this Deed of Easement and, together with certain surrounding historic buildings (“Tavern Buildings”), is located in the “Historic Preservation Area” as shown in Exhibit “B”. The Tavern Buildings, which are eligible to be listed on the Register of National Historic Places may not be relocated and must be maintained in accordance with the following:

- A. Documentation. The parties agree that the photographs of the Tavern Buildings and Easement Property taken by Calder Loth of the Department of Historic Resources on [DATE] (Department of Historic Resources negative number\_\_\_\_) accurately document the appearance and condition of the Tavern Buildings and Easement Property as of the date of this Easement. The negatives of the photographs shall be stored permanently in the archives of the Virginia Department of Historic Resources, which is located at 2801 Kensington Avenue, Richmond, Virginia, or its successors. Hereafter, the Tavern Buildings shall be maintained, preserved, and protected in its documented state as nearly as practicable, except for changes that are expressly permitted hereunder.
- B. Exterior Alterations. The Whitehall Tavern and its established historical outbuildings shall not be demolished or removed from the Tavern Property, nor shall they be materially altered, restored, renovated, or extended, except in a way that would, in the opinion of the County, be in keeping with the historic character of the Easement Property, and provided that the prior written approval of the County to such actions shall have been obtained. The County may elect to consult with an architectural historian to assist the County in this determination.
- C. Masonry. The cleaning, repointing, waterproofing or painting of the exterior masonry of the Whitehall Tavern shall not be undertaken unless Grantor has obtained the prior written approval of the County.
- D. Interiors. The character-defining historic interior architectural elements of the Tavern Buildings, including mantels, windows, window frames, doors, door frames, stairs, staircases, baseboards, cornices, chair rails, floorboards, wainscoting, and hardware shall not be altered or removed from the Tavern Buildings without the prior written approval of the County.
- E. Destruction. In the event any of the Tavern Buildings is destroyed or damaged by causes beyond Grantor's reasonable control, including fire, flood, storm, earth movement, or other acts of God, to such an extent that in the opinion of the County the building's historic integrity is irremediably compromised, nothing herein shall obligate Grantor to reconstruct the building or return it to its condition prior to such calamity.
- F. New Construction. No other building, structure, or improvement shall be constructed or placed in the Historic Preservation Area, except as specifically permitted under this Easement. The location

and design of these structures in the Historic Preservation Area shall receive prior written approval by the County that they are consistent with the historic character of the Easement Property. The County may elect to consult with an architectural historian to assist the County in this determination.

- G. Notwithstanding anything to the contrary, the Tavern Buildings shall be subject to the standards of rehabilitation as defined by the National Park Service, Department of Interior, codified in 36 C.F.R. 68.1 et.al.

b. Future structures.

- i. Except for the Farm Support Housing, any new structure permitted below may have a footprint of not more than four-thousand five hundred (4,500) square feet, unless prior written approval for a greater footprint is obtained from the Grantee.
- ii. Other than the Farm Support Housing allowed directly below, no additional residential dwellings may be built on the Easement Property.
- iii. Farm Support Housing. One single-family apartment or structure of no more than 2,500 square feet in living area, to be used primarily to house farm tenants, farm employees or others currently engaged in agricultural production on the Property (“Farm Support Housing”) may be built in the Farmstead Area inside or contained within a farm building or structure (such as a barn or stable). Such Farm Support Housing shall not be subdivided from the Easement Property. Grantee shall only grant permission for the construction of such structure if Grantor demonstrates to Grantee’s satisfaction that such Farm Support Housing is reasonable and necessary for the agricultural operation of the Easement Property. The occupancy of the Farm Support Housing shall comply at all times with the James City County Zoning Ordinance.
- iv. Agricultural Buildings. New farm buildings and other structures and improvements to be used solely for agricultural purposes on the Easement Property, may be built in the Farmstead Area. Such buildings, structures or improvements proposed for locations outside the Farmstead Area may only be built with the written permission of the Grantee when the Grantee determines that such construction is consistent with the purposes of this easement and necessary for agricultural production and only if the building(s) are not located on prime or unique soils. Any farm building or other

structure or improvement to be used for agricultural purposes located outside of the Farmstead Area may not have any residential dwelling unit located inside of it.

- v. Outbuildings. Non-residential outbuildings and structures commonly and appropriately incidental to the permitted dwellings, such as garden structures may be built within the Farmstead Area.
- vi. Fences. Existing fences may be repaired and replaced, or removed and new fences may be built on the Easement Property for purposes of reasonable and customary management of livestock and wildlife.

c. Other Improvements.

- i. Roads. Construction or maintenance of unpaved farm roads for necessary improvements and uses permitted on the Easement Property are allowed, provided the construction of new roads outside the Farmstead Area is limited to agricultural uses. Other than roads and yard areas indicated within the Farmstead Area, no portion of the Easement Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious surface material, unless approved in writing by Grantee in its sole discretion as being consistent with the purposes of the Easement.
- ii. Utilities. Installation of new utilities is prohibited, except that, with prior written approval, the Grantor may install utilities necessary for permitted uses of the Easement Property as long as such installation is not inconsistent with the purposes of this Easement, is done in such a manner as to minimize to the greatest extent possible the impact on prime, unique, and important soils, and is in a location approved in writing by the Grantee. Existing utilities may be replaced or repaired at their current locations.
- iii. Cell phone towers. Cell phone towers are prohibited on the Easement Property.

2. Industrial and commercial activities and property use. Industrial or commercial activities, including commercial recreational activities, other than the following are prohibited: (1) plant and animal agriculture, including but not limited to horticulture, raising of livestock, and commercial and recreational equine activities, including training, boarding and riding; (2) temporary or seasonal outdoor activities consistent with the purposes of the easement; (3) and activities which can be and in fact are conducted within permitted buildings without material alteration to the external appearance thereof. None of the foregoing permitted activities shall harm prime agricultural soils or permanently alter the

physical appearance of the Easement Property. None of the foregoing permitted activities, and no noncommercial activity, which involves 100 or more people shall occur on more than seven days in any calendar month unless approved by the Grantee in advance in writing; and (4) De minimus and undeveloped recreational and educational activity is permitted as long as such activity is consistent with the purposes of this easement and does not adversely impact the soils and/or agricultural operations on the Easement Property. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or helicopters pads, motocross biking, or any other improvement or activity inconsistent with current or future agricultural production be permitted on the Easement Property.

3. Rural enterprises. Grantor shall retain the right to conduct rural enterprises consistent with the purpose of this Easement, such as a bed and breakfast establishment, especially the economically viable use of the Easement Property for agriculture, forestry and open space and the conservation of agriculturally and silviculturally productive so long as such uses are subordinate to the agricultural uses of the Easement Property and are carried out within the structures otherwise permitted under this Easement.
4. Division of the Property. The Easement Property is currently comprised of single legal parcel described in Exhibit "A". The Grantor shall maintain the single parcel comprising the Easement Property, and all interests therein, under common ownership.
5. Billboards and signs. There shall be no display of billboards, signs or other advertisements on the Easement Property, except to: (1) state solely the name of the Grantor, the name of the farm, and/or the address of the Easement Property; (2) advertise the sale or lease of the Easement Property; (3) advertise the sale of goods or services produced pursuant to a permitted use of the Easement Property; (4) give directions to visitors; or (5) provide warnings pertaining to trespassing, hunting, dangerous conditions and other similar such warnings. No sign shall exceed thirty-two (32) square feet nor shall it be internally illuminated.
6. Grading, blasting, mining. Extraction of soil, sand, gravel, natural gas, or other minerals is prohibited, except that the Grantor may extract soil, sand and gravel solely for use on the Easement Property as necessary and incidental to carrying out the improvements and agricultural uses permitted on the Easement Property. Such removal shall not exceed one acre, shall not breach the water table, shall be sited so as to minimize the impact to prime, unique, and important soils, and shall be consistent with the purposes of the conservation easement. The area disturbed by such grading, blasting, or soil removal shall be restored to its natural state to the greatest extent practicable immediately upon completion of the activity. Mining including exploration for or extraction of minerals and hydrocarbons by any surface methods on the Easement Property is prohibited.

7. Management of agricultural and forestal resources. The application of Best Management Practices, as established by the Virginia Department of Agriculture and the Virginia Department of Forestry, shall be undertaken in all agricultural and forestal activities to control erosion and protect water quality provided; however, the Best Management Practices for agricultural use as established by the Virginia Department of Agriculture must be consistent with the Conservation Plan. Management of forest resources, including commercial timber harvest, shall be in accord with a forest stewardship plan approved by the Grantee. All forestry activities shall be carried out so as to preserve the environmental and scenic qualities of the area. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material forestry activity is undertaken. No timber harvest shall be permitted within 50 feet on either side of any permanent stream on the Easement Property, except that the cutting of trees that have died naturally, that, were they not removed, would jeopardize the health of the forest or that would present an imminent hazard to human health or safety is permitted. The Grantor shall notify the Grantee no later than 30 days prior to the start of any material forest activity as well as within 7 days of its completion.
8. Trash. Accumulation or dumping of trash, refuse, or junk is not permitted on the Easement 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 Easement Property, as long as such practices are in accordance with Federal, state, and local laws and regulations and are consistent with the Conservation Plan. For the purposes of this paragraph, agricultural products and byproducts shall include products that are generally accepted as necessary for agricultural production, such as but not limited to: machinery fuel, livestock and crop protection products, livestock feeds and supplements and commercial fertilizers.
9. Off-Road Vehicles. Off-Road Vehicles may not be used on the Easement Property except on roads, as necessary for agricultural use, or as necessary for limited de minimus recreational use (for example, to pick up a downed game animal)
10. Water courses, ponds, and riparian buffers. Grantor retains the right to use, maintain, and improve water sources, water courses and water bodies on the Easement Property if that activity does not impair the water quality in violation of applicable Virginia water quality standards or alter the natural course or flow volume of water over or through the Easement Property, provided that alteration of the natural flow of water over the Easement Property is permitted in order to improve drainage of agricultural soils, reduce soil erosion, or improve the agricultural potential of the Easement Property, if such alteration is consistent with the Conservation Plan. Any exercise of this retained right must be done in a manner consistent with the conservation purposes of this easement, including the

protection of prime and unique soils, and protection of floodplains and jurisdictional wetlands.

Any ponds constructed shall be for agricultural or storm-water management purposes only, shall not exceed two acres in size, and shall be located in areas so that disturbance to prime, unique, and important soils is minimized.

**F. CONSERVATION PLAN.**

Conservation Plan. As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, his heirs, successors, or assigns, shall conduct all agricultural operations on the Property in a manner consistent with a conservation plan (hereinafter referred to as the “Conservation Plan”) prepared in consultation with the Natural Resources Conservation Service of the United States Department of Agriculture (hereinafter referred to as “NRCS”) and approved by the Colonial Soil and Water Conservation District. This Conservation Plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect the day the easement is signed. However, the Grantor may develop and implement the Conservation Plan with a higher level of conservation if it is consistent with the NRCS Field Office Technical Guide standards and specifications.

NRCS shall have the right to enter upon the Easement Property, with advance notice to the Grantor, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the Conservation Plan, NRCS will inform Grantee of the Grantor’s noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Conservation Plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the Conservation Plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

**G. CONTINGENT RIGHT OF THE UNITED STATES**

Contingent Right in the United States of America. In the event that the Grantee fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary of the United States Department of Agriculture, the said Secretary of Agriculture and his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. In the event that the Grantee attempts to terminate, transfer, or otherwise divest itself of any right, title, or interest in this Easement without the prior consent of the Secretary of the United States Department of Agriculture, then, at the option of such Secretary, all right, title, and interest of the Grantee in this Easement shall become vested in the UNITED STATES OF AMERICA.

H. **MISCELLANEOUS PROVISIONS.**

1. No public right-of-access to Easement Property. This Deed of Easement does not create, and shall not be construed to create, any right of the public to enter upon or to use the Easement Property or any portion thereof, except as Grantor may otherwise allow in a manner consistent with the terms of this Deed of Easement.
2. Easement applies to the whole Easement Property and runs with the land. The covenants, terms, conditions, and restrictions of this Deed of Easement shall apply to the Easement Property as a whole, and shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs, and be considered a servitude running with the land in perpetuity.
3. Enforcement and monitoring. Grantee shall have the right to enforce by proceedings at law or in equity the provisions of this easement, including, but not limited to, the right to require the restoration of the Easement Property to its condition on the date of this easement, subject to the reserved rights of Grantor set forth herein. Grantor and Grantee acknowledge that they each have received a copy of the Baseline Documentation Report which shall serve as an objective information baseline for the purpose of monitoring compliance with the terms of this easement, but shall not preclude the use of other evidence to establish the condition of the Easement Property on the date of this easement in the event of a controversy over the use of the Easement Property. Grantee's prior failure to act shall not waive or forfeit its right to take such action as may be necessary to ensure compliance with the terms and conditions of this easement.

Grantor and Grantee agree that monetary damages would not be an adequate remedy for the breach of any of the terms, conditions and restrictions of this Deed of Easement and, therefore, in the event that the Grantor violates or breaches, or attempts or threatens to violate or to breach any of such terms, conditions and restrictions, the Grantee may institute a suit, and shall be entitled, to enjoin by ex parte temporary and/or permanent injunction such violation (including any attempted or threatened violation), and to require the restoration of the Easement Property to its prior condition. The Grantee shall be entitled to the costs, including reasonable attorney fees, of enforcing any of the terms, conditions and restrictions

contained herein; provided, however, that if Grantor ultimately prevails in a judicial enforcement proceeding, each party shall bear its own costs.

Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against Grantor for any changes to the Easement Property due to causes beyond Grantor's control, such as changes caused by fire, flood, storm, natural deterioration or unauthorized acts of third parties. Grantor shall take reasonable action to prevent and to mitigate the effects of such causes.

Grantee shall have the right to enter the Easement Property upon advanced notice to the Grantor, his heirs, successors or assigns for the purposes of: inspecting the Easement Property to determine compliance with the provisions of this easement or to obtain evidence for the purpose of seeking judicial enforcement.

4. No right of enforcement by the public. This Deed of Easement does not create, and shall not be construed to create, any right of the public to maintain a suit for any damages against the Grantor for any violation of this Deed of Easement.
5. Failure to enforce does not waive right to enforce. The failure of Grantee to enforce any term of this Deed of Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantor from thereby complying with any such term. Furthermore, the Grantor hereby waives any defense of laches, estoppel, or prescription.
6. Monitoring. Employees or agents of Grantee may enter the Easement Property from time to time, at reasonable times, for the purpose of monitoring compliance with the terms of this Deed of Easement. Grantee shall have the right to photograph the Easement Property, and the interior and exterior of all structures on the Easement Property. The Grantee shall give reasonable prior notice before entering the Easement Property.
7. Baseline Data. In order to establish the present condition of the Easement Property, the Grantee has examined the Easement Property and prepared an inventory of relevant features, conditions, and improvements (“Baseline Documentation”) which is incorporated by this reference. A copy of the Baseline Documentation has been provided to Grantor, and the original shall be placed and remain on file with Grantee. The Grantor and Grantee agree that the Baseline Documentation is an accurate representation of the Easement Property at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with this Deed of Easement. The Grantor and Grantee further agree that in the event a controversy arises with respect to the condition of the Easement Property or a particular resource thereof, the Grantor and Grantee shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy.

8. Judicial Extinguishment. Grantor agrees that the purchase of the perpetual conservation restriction contained in this Deed of Easement gives rise to a property right, immediately vested in 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 purchase bears to the value of the Easement Property as a whole at that time, which is sixty-five and seventy-eight one hundredths percent (65.78%) as established by the appraisal conducted by Simerlein Appraisal Ltd., dated May 16, 2005 and revised July 21, 2006. If this easement is extinguished by termination or condemnation, in whole or in part, then Grantee and the United States are entitled to their proportional share of the value of the Easement Property above. The proportional shares of the Grantee and the United States are 50% and 50% respectively, representing the proportion of the easement purchase price each party contributed. Due to the federal interest in this action, any condemnation, extinguishment or termination must be consented to by the United States. In addition to the United States' consent, such extinguishment must also satisfy the requirements of the Open-Space Land Act (Virginia Code §§ 10.1-1700 et seq.).
9. Notice of proposed transfer or sale. The Grantor shall notify the Grantee in writing at the time of closing on any transfer or sale of the Easement Property. In any deed conveying all or any part of the Easement Property, this Deed of Easement shall be referenced by deed book and page number in the deed of conveyance and shall state that this Deed of Easement is binding upon all successors in interest in the Easement Property in perpetuity.
10. Relation to applicable laws. This Deed of Easement does not replace, abrogate or otherwise supersede any Federal, State or local laws applicable to the Easement Property.
11. Zoning Ordinance. Notwithstanding any other provision of this Deed of Easement, the James City County Zoning Ordinance shall apply to the Easement Property and shall take precedence over this Deed of Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Deed of Easement.
12. Severability. If any provision of this Deed of Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this Deed of Easement shall not be affected thereby.
13. Recordation. Upon execution by the parties, this Deed of Easement shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of Williamsburg/James City County, Virginia.
14. Authority to accept easement. The Grantee is authorized to accept this Deed of Easement pursuant to Virginia Code § 10.1-1701.

15. Transfer of easement by grantee. Neither Grantee nor their successors and assigns may convey or lease the conservation easement established and conveyed hereby unless the United States consents in writing and the Grantee conditions the conveyance or lease on the requirements that: (1) the conveyance or lease is subject to contractual arrangements that will assure that the Easement Property is subject to the restrictions and conservation purposes set forth in this Deed of Easement, in perpetuity; (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 thereunder, or is a public body within the meaning of Virginia Code § 10.1-1700.
16. Construction. This Deed of Easement shall be liberally construed to promote the purposes of this Deed of Easement, the James City County Comprehensive Plan and the United States' Farm and Ranch Lands Protection Program.
17. Liability and Indemnification. Grantor agrees that neither Grantee nor the United States have any obligations, express or implied, relating to the maintenance or operation of the Easement Property. Grantor agrees to indemnify and hold Grantee and the United States harmless from any and all costs, damages, expenses, causes of action, claims, demands, judgments or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, physical damage, accidents, negligence, damage, or any claim resulting from any act or any omission relating to the Easement Property.
18. Taxes and Assessments. Grantor shall be responsible for paying all taxes, levies, assessments and other governmental charges which may become a lien on the Easement Property.
19. Controlling Law. The interpretation and performance of this Deed of Easement shall be governed by the laws of the Commonwealth of Virginia and applicable laws of the United States.
20. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to this Deed of Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Deed of Easement, all of which are merged herein.
21. Amendments. This Deed of Easement may be amended only with the written consent of the Grantee, Grantor, and the United States and such amendment shall be duly recorded. Any amendment shall be consistent with the Farm and Ranch Lands Protection Program and implementing regulations, 16 U.S.C. 3838h-i, 7 C.F.R. Part 1491, Open-Space Land Act (Virginia Code §§ 10.1-1700 et seq.), James City County Comprehensive Plan. Any such amendment shall also be consistent with the overall purposes and intent of this Deed of Easement.

22. Environmental warranty. Environmental Law or Environmental Laws means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

Hazardous Materials means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

Grantor warrants that it is in compliance with and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.

Grantor warrants that it has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property exceeding regulatory limits. Moreover, Grantor hereby promises to indemnify and hold harmless the United States and Grantee against all costs, claims, demands, penalties and damages, including reasonable attorneys fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantors indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

23. Title. Grantor warrants that Grantor has good title to the property, that Grantor has the right to convey this Easement.

24. Approvals. Grantor shall notify the Grantee, in writing, no less than thirty (30) days prior to undertaking any activities requiring notification and/or approval by the Grantee. Grantor's notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to enable the Grantee to make informed judgments as to its consistency with the

conservation purposes of this easement. The Grantee's approval or disapproval, if required, shall be communicated to Grantor in writing with reasonable promptness, taking into account the complexity of the proposed activity.

25. Subordination. Any mortgage or lien arising after the date of this Deed of Easement shall be subordinated to the terms of this Deed of Easement.
26. Notices. All notices required or permitted hereunder will be deemed to have been delivered when posted with the U.S. Postal Service, Federal Express, United Parcel Service, or sent by facsimile, telecopier or other such electronic device, with proof of transmission, directed as follows:

**GRANTOR:**

Bertrand E. Geddy, Jr., Trustee  
8297 Richmond Road  
Toano, Virginia 23168

**NRCS:**

M. Denise Doetzer  
U.S. Department of Agriculture  
1606 Santa Rosa Road  
Richmond, Virginia 23229

**GRANTEE:**

James City County, Virginia  
Attn: Development Management  
101-A Mounts Bay Road  
Williamsburg, Virginia 23185

WITNESS the following signatures and seals:

GRANTOR:

\_\_\_\_\_  
BERTRAND E. GEDDY, JR.  
Trustee of the Bertrand E. Geddy, Jr. Living Trust

COMMONWEALTH OF VIRGINIA

City/County of \_\_\_\_\_, to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this \_\_\_day of Month, 200X, by Bertrand E. Geddy, Jr., Trustee of the Bertrand E. Geddy, Jr. Living Trust, Grantor.

WITNESS my signature and notarial seal.

[SEAL]

Notary Public

My Commission Expires:

The form of this Deed of Easement is approved, and pursuant to Resolution of the Board of Supervisors of James City County, Virginia, duly executed on the \_\_\_day of Month, 200X, and this conveyance is hereby accepted on behalf of said County.

\_\_\_\_\_  
Date County Attorney

COMMONWEALTH OF VIRGINIA

City/County of \_\_\_\_\_, to-wit:

I, \_\_\_\_\_, a Notary Public for the Commonwealth of Virginia, do hereby certify that \_\_\_\_\_, Attorney for James City County, Virginia, has acknowledged the same before me in the jurisdiction aforesaid.

Give under my hand this \_\_\_\_\_ day of Month, 200X.

Notary Public

My Commission Expires:

ACCEPTANCE OF PROPERTY INTEREST BY THE UNITED STATES

NRCS: M. Denise Doetzer  
State Conservationist

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

COMMONWEALTH OF VIRGINIA

City/County of \_\_\_\_\_, to-wit:

I, \_\_\_\_\_, a Notary Public for the Commonwealth of Virginia, do hereby certify that \_\_\_\_\_, of the U.S. Department of Agriculture, has acknowledged the same before me in the jurisdiction aforesaid.

Give under my hand this \_\_\_\_ day of Month, 200X.

Notary Public

My Commission Expires:

## **EXHIBIT "A"**

Parcel 1 A: All that certain tract of land known as "White Hall" in Stonehouse District, James City County, Virginia, commencing on the main county road at a small cedar tree, running in a northeasterly direction to a large sycamore tree back of the old stable; thence to the old spring and down the spring swamp until it strikes the line of R.G. Simmons and the line of J.M. Jennings; thence along the line of J.M. Jennings until it strikes the Richardson's Mill Road' thence in a westerly direction along the Richardson's Mill Road until it strikes the main road near the gate of J.M. Jennings; thence southeast down the main road until it reaches the point of beginning.

Parcel 1 B: That certain portion of "White Hall" situate in Stonehouse District, James City County, Virginia, bounded and described as follows: Commencing at the public road at the line of John M. Geddy's land; thence running up said road to a cross fence just back of the old stable; thence following said old fence down to the swamp, and thence in a straight line until it strikes the line of R.G. Simmons; thence along the Simmons line to the land of W.R. Branch and then along the W.R. Branch land to the land of John M. Geddy, and then along the last mentioned line to the point of beginning. Parcel 1 B is a portion of the same property as that devised to the said R.B. Geddy by the Will of Lucy E. Geddy, dated August 18, 1903 and probated before the Circuit Court of James City County on the 11<sup>th</sup> day of October, 1906, and recorded in James City County Will Book 2, page 412. But the following described parcel of land, formerly a portion of the foregoing "White Hall," tract, containing 11 acres, more or less, is expressly excluded from the operation of this conveyance, namely, that certain tract of parcel of land, conveyed by R.B. Geddy and wife, to L.J. Haley by deed dated November 8, 1919 and recorded in James City County Deed Book 20, page 67, bounded and described as follows: On the southwest side by Main Stage Road; on the southwest side by the road leading from the Main Road at L.J. Haley's gate to Richardson's old mill; and on the southeast by a private road leading from the main road to the road above mentioned leading to Richardson's Mill.

There is expressly excluded from this conveyance the following parcel of land: All that certain parcel of land in the Stonehouse District of James City County, Virginia, shown and described as "PARCEL A, 726, 427 SF+/-, 16.68 AC +/-" on a plat of survey entitled "16.68 +/- ACRES FOR CONVEYANCE TO: ROBERT W. SR. & JUDY G. COWAN, JAMES CITY COUNTY, VIRGINIA", on which plat is dated October 15, 1997, revised January 22, 1998, was made by Charles Reid Scheckler, Certified Land Surveyor, and a copy of which plat is recorded as part of a certain Deed, and Boundary Line Agreement between Bertrand E. Geddy, Jr. and Sharon W. Geddy, husband and wife, and Robert W. Cowan and Judy G. Cowan, husband and wife dated January 24, 1998 and recorded as James City County Instrument No. 980002028.

This conveyance is also subject to (1) a certain easement of right of way conveyed to the Virginia Electric and Power Company by deed from R.B. Geddy, and wife, dated September 5, 1929, and recorded in James City County Deed Book No. 25, at page 279; and (2) that certain parcel or strip of land containing .29 acre which was conveyed to the Commonwealth of Virginia, for highway purposes by deed from R.B. Geddy and wife, dated March 14, 1929, and recorded in James City County Deed Book No. 24, at pages 553-4.

Together with all and singular the buildings and improvements thereon, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Subject to all easements, restrictions covenants and conditions of record affecting said property.

Parcel 2: All that certain lot, piece or parcel of land situate in James City County, Virginia, as shown on a plat entitled, "Survey of 0.50 Acres Standing in the name of Trittie W. Geddy To Be Conveyed to Bertrand Edward Geddy, Jr., Stonehouse District, James City County, Virginia," dated September 14, 1976, and made by Paul C. Small, C.L.S., a copy of which is recorded in James City County Deed Book 171, page 584 and on which plat the property is more particularly described as follows: Beginning on the easterly right-of-way Line of Dept Street where the property hereby described, the property of the Geddy Estate and said Depot Street converge, thence South 40° 22' 25" East, a distance of 149.58 feet to an iron pipe, thence South 50° 42' 00" West, a distance of 145.61 feet to an iron pipe, thence North 40° 22' 25" West, a distance of 149.58 feet to an iron pipe, thence North 50° 42' 00" East a distance of 146.61 feet to an iron pipe which is the point of beginning and being bounded on the Northwest by said Depot Street and on all other sides by the Geddy Estate and being the same property conveyed to Bertrand E. Geddy, Jr. and Sharon W. Geddy by deed dated April 17, 1977 and recorded in James City County Deed Book 176 at page 406.

Together with all and singular the buildings and improvements thereon, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Subject to all easements, restrictions, covenants and conditions of record affecting said property.

BEING the same property conveyed unto Bertrand E. Geddy, Jr., Trustee under the Bertrand E. Geddy, Jr. Living Trust dated November 30, 2005 by deed of transfer from Bertrand E. Geddy, Jr., dated November 30, 2005 and recorded in the Circuit Court Clerk's Office of the City of Williamsburg and County of James City on December 22, 2005 as Instrument Number 050030505.