

JCC TAX ID: # \_\_\_\_\_  
CONSIDERATION: \$ \_\_\_\_\_

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 \_\_\_\_\_, 2007, by and between  
The \_\_\_\_\_, (the "Grantor") and the **COUNTY OF JAMES  
CITY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, (the "County" or  
the "Grantee" and, together with the Grantor, the "Parties").

**WITNESSETH:**

WHEREAS, Grantor is the owner in fee simple of a parcel of property located at  
\_\_\_\_\_ James City County, Virginia and further identified as James City  
County Real Estate Tax Parcel Number \_\_\_\_\_ as more particularly described in  
Exhibit A (the "Property").

WHEREAS, under the County's Purchase of Development Rights ("PDR") Program,  
codified as Chapter 16A in the Code of James City County, as amended (the "County Code"),  
the County is authorized to acquire conservation easements over qualifying properties in order to  
accomplish the purposes of the PDR Program and the Open-Space Land Act (§§ 10.1-1700 et  
seq. of the Code of Virginia, 1950, as amended (the "Virginia Code")); and

WHEREAS, the Grantor has voluntarily agreed to have the Property be subject to the  
terms of this conservation easement; and

WHEREAS, the County's acquisition of the conservation easement identified herein  
further the purposes of the PDR 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 County's Comprehensive Plan by protecting the County's  
natural and scenic resources, conserving wildlife habitat, promoting the continuation of  
agricultural and forestal activities, and protecting 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 \_\_\_\_\_ and 00/100 Dollars (\$-----)  
for this conservation easement, such sum being based upon the fair market value of the  
easement, as determined by a qualified appraiser.

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:

1. 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 Property located \_\_\_\_\_ in James City County, Virginia and further identified as James City County Real Estate Tax Parcel Number \_\_\_\_\_ and as more particularly described in Exhibit A, restricting in perpetuity the use of the Property in the manner set forth in this Deed of Easement.

2. EXISTING STRUCTURES. Existing structures on the Property shall be authorized to continue as follows:

(a). *Existing residential structures.* The (# of existing dwellings allowed to remain as negotiated) dwellings that exist on the Property shown on and more particularly described in the Baseline Study attached as Exhibit B (the "Existing Dwellings") may be repaired, expanded upon, or replaced with the prior written consent of the Grantee, provided, however, that minor repairs that do not materially alter the existing character of either dwelling (e.g., repair of boards, shutters, stairs, railings, shingles, windows, trim, moldings, gutters, etc.) may be completed without prior consent of the Grantee.

(b). *Existing non-residential structures.* The non-residential structures that exist on the Property shown on and more particularly described in the Baseline Study attached as Exhibit B (the "Existing Non-Residential Structures") may be may be repaired, expanded upon, or replaced with the prior written consent of the Grantee, provided, however, that minor repairs to such Existing Non-Residential Structures (e.g., repair of boards, stairs, railings, shingles, windows, trim, moldings, gutters, etc.) may be completed without prior consent of the Grantee.

3. FUTURE STRUCTURES AND IMPROVEMENTS. There shall be no construction, placement or maintenance of any structure or other improvement on the Property unless the structure or improvement is authorized as follows:

(a). *Accessory structures.* Accessory structures, as defined by the County Code and incidental to the Existing Dwellings or otherwise incidental to a *bona fide* agricultural use conducted on the Property shall be permitted.

(b). *Structure Size.* No single structure on the Property, whether residential, accessory, or otherwise, may exceed four thousand five hundred (4,500) square feet without the prior written consent of the Grantee. The total area of all impervious surfaces on the Property shall not exceed ten percent (10%) of the surface area of the Property without prior written consent of the Grantee.

(c). *Structure Location.* No structure shall be located on the Property within \_\_\_\_\_ feet of the centerline of \_\_\_\_\_ (road name) as it is aligned on the date of execution of this Deed of Easement.

(d). *Fencing.* The Grantor may enclose any portion of the Property with fencing without prior written approval from the Grantee, provided, however, that such fencing is less than four feet in height. Fencing exceeding four feet in height may be erected upon the prior written approval of the Grantee. All fencing shall be kept in good repair.

4. **FUTURE USES.** No use may be established on the Property except as approved herein.

(a). *Permitted.* The following uses shall be permitted on the Property without the prior written approval of the Grantee; all uses shall be as defined in the County Code.

- ~~Accessory apartments in accordance with section 24-32.~~
- Accessory buildings and structures.
- Accessory uses, as defined herein.
- ~~Communication towers and tower mounted wireless communications facilities, up to a height of 35 feet.~~
- ~~Farmers' markets, limited in area to 2,500 square feet.~~
- General agriculture, dairying, forestry, general farming, and specialized farming, including the keeping of horses, ponies and livestock, but not intensive agriculture as herein defined and not commercial slaughtering or processing of animals or poultry.
- Greenhouses, commercial *for the sale of seasonal products grown on the Property.*
- Home occupations, as defined herein.
- Horse and pony farms (including the raising and keeping of horses), ~~riding stables.~~
- House museums.
- ~~Houses of worship and cemeteries accessory hereto.~~
- ~~Intensive agriculture as herein defined.~~
- ~~Manufactured homes that are on a permanent foundation.~~
- Nurseries.
- ~~Off street parking as required by section 24-53.~~
- Petroleum storage on a farm as an accessory use and not for resale.
- Preserves and conservation areas for protection of natural features and wildlife.
- ~~Rest homes for fewer than 15 adults.~~
- Retreat facilities.
- Single-family detached dwellings.
- Silviculture, with timbering in accordance with section 24-215(c).
- Slaughter of animals for personal use but not for commercial purposes.
- Storage and repair of heavy equipment as an accessory use to a farm.
- Water impoundments, new or expansion of, less than 20 acres and with dam heights of less than 15 feet.
- Wayside stands for seasonal sale of agricultural products, limited in area to 500 square feet.
- ~~Wineries, as herein defined, including a shop for retail sale of wine, but not including other commercial accessory uses.~~

**Comment [JCC1]:** This list is the complete, verbatim list of uses permitted by the zoning ordinance on A 1 property. This is every use that is permitted now on A1 land.

Obviously, not all uses are compatible with PDR.

The intent is that in the process of negotiating the terms of agreement, the land owner will have the first opportunity to strike all uses they do not want to occur on their property. The County will follow suit after the landowner. Once both parties are in agreement on future uses, the negotiations on terms will continue.

The expectation in this proposal is that by actually participating in the process of selecting which development rights are extinguished, the negotiations process will be more transparent, better understood, less contentious and hopefully faster.

~~Wireless communication facilities that utilize alternative mounting structures, or are building mounted, or are camouflaged, and comply with division 6, Wireless Communications Facilities.~~

(b). *Conditionally permitted.* The following uses shall be permitted on the Property only with the prior written approval of the Grantee; uses shall be as defined in the County Code. This prior written approval shall be exclusive of any requirement for a special use permit, if such is required by the County Code.

~~Accessory apartments  
Adult day care centers.  
Airports and landing fields, heliports or helistops and accessory uses.  
Animal hospitals, veterinary offices and kennels.  
Automobile graveyards.  
Automobile repair and service.  
Automobile service stations; if fuel is sold, then in accordance with section 24 38.  
Beauty and barber shops.  
Campgrounds.  
Cemeteries and memorial gardens, not accessory to a church or other place of worship.  
Commercial equipment repair accessory to a dwelling with no outdoor storage or operations and the use occupies a building not larger than 2,000 square feet.  
Communication towers over 35 feet in height.  
Community recreation facilities, public or private, including parks, playgrounds, clubhouses, boating facilities, swimming pools, ball fields, tennis courts and other similar recreation facilities except for facilities approved as part of a subdivision created pursuant to section 24 214(c).  
Contractors' warehouses, sheds and offices.  
Convenience stores; if fuel is sold, then in accordance with section 24 38.  
Day care and child care centers.  
Dinner theaters and dance halls as an accessory use to a restaurant or tavern.  
Electrical generation facilities (public or private), electrical substations with a capacity of 5,000 kilovolt amperes or more, and electrical transmission lines capable of transmitting 69 kilovolts or more.  
Excavation or filling, borrow pits, extraction, processing and removal of sand and gravel and stripping of top soil (but not farm pond construction, field leveling or stripping of sod for agricultural purposes and excavations in connection with development which has received subdivision or site plan approval, which do not require a special use permit.)  
Family care homes, foster homes or group homes serving physically handicapped, mentally ill, mentally retarded or other developmentally disabled persons, for more than five such persons.  
Farm equipment sales and service.  
Farmers' markets over 2,500 square feet in area.  
Feed, seed and farm supplies.  
Fire stations, rescue squad stations, volunteer or otherwise.  
Fish farming and aquaculture.~~

~~Flea markets, temporary or seasonal.~~  
~~Food processing and storage.~~  
Gift shops and antique shops.  
~~Golf courses and country clubs.~~  
Group quarters for agricultural workers.  
~~Home care facilities.~~  
~~Horse racing tracks.~~  
~~Horse show areas, polo fields.~~  
~~Hospitals and nursing homes.~~  
~~Hunting preserve or club, rifle or pistol range, trap or skeet shooting.~~  
~~Lodges, civic clubs, fraternal organizations or service clubs.~~  
~~Lumber and building supply stores.~~  
Manufacture and sale of wood products.  
~~Manufactured home parks in accordance with the special provisions of article IV.~~  
~~Medical clinics.~~  
~~Petroleum storage, other than on a farm for farm use or accessory for a residence.~~  
~~Post offices and public buildings generally.~~  
~~Professional offices of not more than 2,000 square feet with no more than one office per lot.~~  
~~Race tracks for animals or vehicles, including racing courses for power boats.~~  
~~Railroad facilities, including tracks, bridges, switching yards and stations. However, spur lines, which are to serve and are accessory to existing or proposed development adjacent to existing railroad right of ways, and track and safety improvements in existing railroad right of ways, are permitted generally and shall not require a special use permit.~~  
Rental of rooms to a maximum of three rooms.  
~~Rest homes for 15 or more adults.~~  
Restaurants, taverns.  
Retail sales of plant and garden supplies.  
~~Retail shops associated with community recreation facilities.~~  
~~Sanitary landfills, in accordance with section 24 40, construction debris landfills, waste disposal or publicly owned solid waste container sites.~~  
~~Schools, libraries, museums and similar institutions, public or private.~~  
~~Seminaries.~~  
~~Slaughterhouses.~~  
~~Solid waste transfer stations.~~  
~~Storage and repair of heavy equipment.~~  
~~Storage, stockpiling and distribution of sand, gravel and crushed stone.~~  
~~Telephone exchanges and telephone switching stations.~~  
Tourist homes.  
~~Tower mounted wireless communications facilities in accordance with division 6, Wireless Communications Facilities, over 35 feet in height.~~  
~~Transmission pipelines (public or private), including pumping stations and accessory storage, for natural gas, propane gas, petroleum products, chemicals, slurry coal and any other gases, liquids or solids. However, private extensions or connections to existing pipelines, which are intended to serve an individual residential or commercial customer and which are accessory to existing or proposed development, are permitted generally and shall not require a special use permit.~~

~~Two family dwellings.-  
Upholstery shops.-  
Utility substations.-  
Water facilities (public or private), and sewer facilities (public), including, but not limited to, treatment plants, pumping stations, storage facilities and transmission mains, wells and associated equipment such as pumps to be owned and operated by political jurisdictions. However, private connections to existing mains, with no additional connections to be made to the line, which are intended to serve an individual residential or commercial customer and which are accessory to existing or proposed development, and distribution lines and local facilities within a subdivision or development, including pump stations,, are permitted generally and shall not require a special use permit.-  
Water impoundments, new or expansion of, 20 acres or more or with dam heights of 15 feet or more.-  
Waterfront business activities: marine interests, such as boat docks, piers, yacht clubs, marinas and commercial and service facilities accessory thereto, docks and areas for the receipt, storage, and transshipment of waterborne commerce; seafood and shellfish receiving, packing and shipping plants; and recreational activities primarily conducted on or about a waterfront. All such uses shall be contiguous to a waterfront.  
Wayside stands for sale of agricultural products over 500 square feet in area.  
Wineries, with accessory commercial facilities~~

(c). *Unlisted uses.* The Grantor may petition the Board of Supervisors for approval to establish a use which is: (1) not otherwise prohibited herein, and (2) is consistent with this Deed of Easement, and (3) is otherwise permitted on the Property by the County Code.

5. CONFIGURATION/SUBDIVISION OF THE PROPERTY. (If permitted)

6. GRADING, EXCAVATION, EARTH REMOVAL, BLASTING, AND MINING. Earth removal, except for activities incidental to a *bona fide* agricultural operation, and blasting are prohibited. The exploration for, or development and extraction of minerals and hydrocarbons by mining or any other method is prohibited. Grading and excavation is allowed but shall not materially alter the topography of the Property; grading and excavation shall be allowed for dam construction to create private conservation ponds with prior written approval by the Grantee, and grading and excavation shall be allowed during the construction of permitted structures or associated improvements. Common and customary agricultural or forestal activities such as plowing, erosion control and restoration are permitted activities that do not materially alter the topography of the Property.

7. MANAGEMENT OF AGRICULTURAL AND FORESTAL RESOURCES.

(a). *Silviculture.* All silvicultural activities on the Property shall conform to a Forest Stewardship Plan. The Forest Stewardship Plan shall be prepared by a professional forester recognized by the Virginia Department of Forestry, the U.S. Forest Service, or other recognized professional forest stewardship agency or organization as approved by the Grantee. The Forest

Stewardship Plan shall include recommended Forest Best Management Practices, and other scientifically based recommendations as may be appropriate. The Forest Stewardship Plan shall be updated no later than every five years. Grantor shall provide Grantee a certified, signed and dated copy of the Forest Stewardship Plan, updates and supporting material and information within 30 days of receipt. Grantor shall submit to the Grantee, their successors or assigns, written notice not less than forty-five (45) days prior to the anticipated commencement of any commercial timber harvest. If an aspect of the harvest activities is inconsistent with one or more purposes of this conservation easement, the Grantee reserves the right to require modifications to the harvest activities that will minimize such impacts.

(b). *Agriculture.* All agricultural activities on the Property shall conform with a Farm Conservation Plan prepared by a professional certified and approved by the Virginia Department of Conservation and Recreation, Virginia Department of Agriculture and Consumer Services, an agency of the U.S.D.A., a Virginia Soil and Water Conservation District, or other recognized state or federal Soil and Water Conservation agency or organization as approved by the Grantee. Such Plan shall include recommended Agricultural Best Management Practices and an implementation schedule. Said Plan shall be updated no later than every three years by a certified professional and approved as specified above. The Grantor shall provide the Grantee with a certified, signed, and dated copy of all plans, supporting documents and information within 30 days of receipt.

8. ACCUMULATION OF WASTE MATERIAL. There shall be no accumulation or dumping of trash, refuse, or junk (e.g., old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material) on the Property. This restriction shall not prohibit customary agricultural, horticultural, or wildlife management practices including, but not limited to, establishing brush, compost piles, or the routine and customary short-term accumulation of household trash.

9. NOTICE AND PERMISSION.

(a). *Notice.* Whenever notice is to be given pursuant to any of the provisions of this Deed of Easement, or where a request for permission is required of the Grantee, or for a change of address, such notice or request for permission shall be in writing and shall be deemed to have been given upon (i) delivery by hand, (ii) three days after deposit in the U.S. mail with postage prepaid, for delivery by certified mail, return receipt requested, or (iii) one day after delivery to a recognized national courier service for overnight delivery to:

If to Grantor:

If to County:  
County Administrator  
101-C Mounts Bay Road  
P.O. Box 8784

Williamsburg, VA 23185

With Copy To:  
County Attorney  
101-C Mounts Bay Road  
P.O. Box 8784  
Williamsburg, VA 23185

(b). *Permission.* When permission of the Grantee is sought by the Grantor, the Grantee shall submit such request and any supporting documentation in writing to the County. The request shall be considered by the Board of Supervisors at a public meeting as soon as practicable.

10. MISCELLANEOUS PROVISIONS.

(a). *No public right-of-access to 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 Property or any portion thereof, except as Grantor may otherwise allow in a manner consistent with the terms of this Deed of Easement and the PDR Program.

(b). *Continuation.* The covenants, terms, conditions, and restrictions of this Deed of Easement shall apply to the 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.

(c). *Enforcement.* In addition to any remedy provided by law or equity to enforce the terms of this Deed of Easement, the parties shall have the following rights and obligations:

1. Monitoring. Employees or agents of Grantee may enter the Property from time to time, at reasonable times, for the purpose of monitoring compliance with the terms of this Deed of Easement. The Grantee shall give reasonable prior notice before entering the Property. The Grantor shall not unreasonably withhold permission.

2. Baseline Data. In order to establish the present condition of the Property, the Grantee has examined the 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 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 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.

(d). *Action at law inadequate remedy.* 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 the terms, conditions and restrictions herein contained, the Grantee, 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.

(e). *Restoration.* Upon any breach of the terms of this Deed of Easement by Grantor, Grantee may require by written demand to the Grantor that the Property be restored promptly to the condition required by this Deed of Easement. Furthermore the Grantee retains the right to restore the Property to a condition consistent with the terms of this Deed of Easement and assess the cost of such restoration against the owner of the parcel in violation of this Deed of Easement and as a lien against the Property in violation of this Deed of Easement, provided however, that no such lien shall affect the rights of a subsequent bona fide purchaser unless a memorandum of such lien was recorded among the land records prior to such purchase, and such lien shall be subordinate to any deed of trust recorded prior to the recordation of a memorandum of such lien.

(f). *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.

(g). *Costs of enforcement.* Any reasonable, documented costs incurred by the Grantee in enforcing the terms of this Deed of Easement against the Grantor, including, without limitation, costs of suit and reasonable attorneys' fees shall be borne by the Grantors, provided, however, if the Grantor prevails in any claim, litigation, or administrative order or ruling, the Grantee shall not be entitled to any of the costs or fees described herein.

(h). *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.

(i). *Extinguishment and exchange.* Upon the expiration of twenty-five (25) years from the date on which this Deed of Easement is recorded, the owner or successor in interest to the Property which is subject to this Deed of Easement may petition the James City County Board of Supervisors for the extinguishment of this Deed of Easement in exchange for the conveyance to the Grantee of a Deed of Easement on a different parcel located in James City County and in accordance with the PDR Ordinance in place at the time of the recording of this Deed of Easement.

(j). *Property right.* 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 Property as a whole at that time, which is \_\_\_\_\_ percent ( %) as established by the appraisal conducted by \_\_\_\_\_, dated \_\_\_\_\_, 2007. If a subsequent unexpected change in the conditions surrounding the Property makes impossible or impractical the continued use of the Property for the conservation purposes specified herein, and the restrictions set forth in this Deed of Easement are extinguished, whether in whole or part, by a judicial proceeding, such extinguishment shall also satisfy the requirements of the Open-Space Land Act (Virginia Code §§ 10.1-1700 et seq.) and Chapter 16A of the County Code. The Grantee, upon a sale, exchange or involuntary conversion due to an extinguishment, shall be entitled to a portion of the proceeds determined by multiplying all the proceeds by the proportionate value established above. All proceeds to which Grantee is entitled from such sale, exchange or involuntary conversion shall be used by the Grantee in a manner consistent with the original conservation purposes of this Deed of Easement.

(k). *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 Property. In any deed conveying all or any part of the 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 Property in perpetuity.

(l). *Relation to applicable laws.* This Deed of Easement does not replace, abrogate, or otherwise supersede any federal, state, or local laws applicable to the Property. Notwithstanding any other provision of this Deed of Easement, the County Code shall apply to the Property. In the event of a conflict between any applicable law and this Deed of Easement, the more restrictive provision shall apply.

(m). *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. The Grantor shall remunerate Grantee for the proportionate loss of value in the Conservation Easement as determined by the Board of Supervisors due to any invalidated provision.

(n). *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 for the City of Williamsburg and the County of James City, Virginia.

(o). *Authority to convey easement.* The Grantors covenant that they are vested with good title to the Property and may convey this Deed of Easement.

(p). *Authority to accept easement.* The Grantee is authorized to accept this Deed of Easement pursuant to Virginia Code § 10.1-1701.

(q). *Proceeds from eminent domain.* If all or any part of the Property is taken by

exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Deed of Easement, in whole or part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received. Grantee's share of the balance of the amount recovered shall be determined by multiplying the proceeds by a fraction, the numerator of which shall be the value of the conservation easement as determined in section 10(j) and the denominator of which shall be the value of the Property. Grantee shall have the right to appear as a party in any eminent domain proceeding concerning the Property.

(r). *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 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 Property is subject to the restrictions and conservation purposes set forth in this Deed of Easement, in perpetuity; and (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.

(s). *Construction.* This Deed of Easement shall be construed to promote the purposes of this Deed of Easement and the PDR Program.

(t). *Liability and indemnification.* Grantor agrees that Grantee has no obligations, express or implied, relating to the maintenance or operation of the Property. Grantor agrees to indemnify and hold Grantee harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, accidents, negligence, damage, or any claim relating to the Property. Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property and agrees to hold harmless, indemnify, and defend Grantee from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees arising from or out of the existence, actual or alleged, of any and all environmentally hazardous or toxic substances or materials on or under the Property.

(u). *Taxes and assessments.* Grantor shall be responsible for paying all taxes, levies, assessments and other governmental charges which due to the direct action of the Grantor may become a lien on the Property.

(v). *Controlling law.* The interpretation and performance of this Deed of Easement shall be governed by the laws of the Commonwealth of Virginia.

(w). *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.

(x). *Amendments.* This Deed of Easement may be amended only with the written consent of the Grantee and Grantors, and such amendment shall be duly recorded. Any amendment shall be at the sole discretion of the Grantee, and shall be consistent with the Open-Space Land Act (Virginia Code §§ 10.1-1700 et seq.) and Chapter 16A of the County Code. Any such amendment shall also be consistent with the overall purposes and intent of this Deed of Easement.

WITNESS the following signatures and seals:

GRANTOR:

\_\_\_\_\_

COMMONWEALTH OF VIRGINIA

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

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Grantor.

WITNESS my signature and notarial seal.

[SEAL]

Notary Public

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 --th day of \_\_\_\_\_, 2007 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 \_\_\_\_\_, 2007

Notary Public

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

BASELINE

EXHIBIT C

CONCEPTUAL PLAN

DeedofEasementForm\_Draft.att2