

VOF
COPY

040005440

Exempted from recordation tax
under the Code of Virginia (1950), as amended,
§58.1-811 (A) (3), §58.1-811 (D) and §10.1-1803
and from Circuit Court Clerk's fee under §17.1-266

FIPS CODE 197
Tax Map No. 31-21A, 31A-1-37

Prepared by: David S. Saliba

THIS DEED OF GIFT OF EASEMENT, made this 1st day of December, 2004,
between ANN HOLLIS FARRIS, unmarried, and MARY LOU S. FARRIS, hereinafter
collectively called the "Grantor", and the VIRGINIA OUTDOORS FOUNDATION, an
Agency of the COMMONWEALTH OF VIRGINIA, herein called the "Grantee", whose
address is 203 Governor Street, Suite 317, Richmond, VA. 23219,

WITNESSETH:

WHEREAS, the Open Space Land Act of 1966 (Chapter 17, Title 10.1, §§10.1-1700 to
10.1-1705 of the Code of Virginia, as amended) declares that the preservation of open-space
land serves a public purpose by promoting the health and welfare of the citizens of the
Commonwealth by curbing urban sprawl and encouraging more desirable and economical
development of natural resources, and authorizes the use of easements in gross to maintain the
character of open-space land; and

WHEREAS, Chapter 18, Title 10.1 of the Code of Virginia (§§ 10.1-1800 to 10.1-
1804, as amended) 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,
historical, scientific, open-space and recreational lands of the Commonwealth; and

WHEREAS, the Grantor is the owner in fee simple of the real property hereinafter
described, (the "Property") and desires the Property preserved as open-space land in the public
interest; and

WHEREAS, the Grantor believes that open space conservation easements serve to
protect scenic, agricultural and open space values of properties in a manner that permits
continued private ownership of land while fulfilling public conservation purposes; and

WHEREAS, the Property consists of open fields and wooded slopes highly visible
from Interstate 81 and adjacent to the proclamation boundary of the Jefferson National Forest;
and

WHEREAS, the preservation of the Property in its undeveloped state will protect the
views to the driving public from Interstate 81; and

WHEREAS, the Property is traversed by Little Pine Run and one of its unnamed tributaries, which flow into the New River, designated as one of ten initial American Heritage Rivers by the U.S. Environmental Protection Agency; and

WHEREAS, the preservation of the Property will contribute to the water quality of the New River, a public water supply for the City of Radford; and

WHEREAS, the Property is located within an area which is designated as proposed agricultural use on the Future Land Use Map of Wythe County; and

WHEREAS, preservation of the Property will further the Wythe County Comprehensive Plan's goal in the "support of agriculture and conservation related activities to ensure a sound environment."

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by the Grantee, the Grantor does hereby grant and convey to the Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of, the real estate consisting of two tracts, the first containing approximately 45 acres, and the second containing 30.37 acres, more or less, as described below, located in Fort Chiswell Magisterial District, Wythe County, fronting on the Interstate 81 service road and State Route 726 (Connor Valley Road), and hereinafter referred to as the "Property:"

TRACT ONE

BEGINNING at the southwest corner of the parcel hereby conveyed, a corner with the former Joseph Kelly land; thence North $14^{\circ} 30'$ West approximately 95 poles to a gate post on the south side of the road leading to Connor's Valley; thence following said south side of said road in an easterly direction and then in a southerly direction to the intersection of said road with the south line of the former James W. Painter 93-acre parcel hereinafter mentioned; thence with the said south line thereof, South $59^{\circ} 45'$ West to the BEGINNING, it being intended hereby to convey all the land formerly belonging to James W. Painter lying to the west and south of the road leading to Connor's Valley, this land comprising about 45-acres of the western end of the said 93-acre tract."

TRACT TWO

BEGINNING at a point in the North line of Lee Highway, U.S. No. 11, and being a corner to property of M.M. Huffman et ux; thence with the Huffman line N $49^{\circ} 52'$ W 500 feet; thence continuing with the Huffman line N $40^{\circ} 8'$ E 500 feet; thence continuing with the Huffman line N $49^{\circ} 52'$ W 777.5 feet to the line of the J.W. Painter Estate land; thence with line of that land and land of N.C. Kelly, S $62^{\circ} 25'$ W 349.3 feet to the line of the J.W. McGavock Estate land; thence with the line of that land S $33^{\circ} 2'$ E 1,294.6 feet to another line of M.M. Huffman, et ux; thence with the Huffman line N $40^{\circ} 8'$ E 884.9 feet;

thence continuing with the Huffman line S 49° 52' E 500 feet to the North line of the said Lee highway; thence with the North line of said Highway N 40° 8' E 40 feet to the BEGINNING, containing 30.37 acres, more or less, but this is a conveyance in gross and not by the acre."

BEING the same tracts or parcels of land conveyed from Mary Lou S. Farris, widow, to Ann Hollis Farris, unmarried, by deed dated August 8, 2003, and recorded on August 19, 2003, in the Wythe County, Virginia Circuit Court Clerk's Office, Instrument Number 030004085. Mary Lou S. Farris reserved a life estate in and to said properties, and, accordingly, joins in this conveyance as a Grantor.

The above-described tracts are shown as parcel 21A on Tax Map 31 and as 1-37 on Tax Map 31A among the land records of Wythe County and total 75.37 acres in the aggregate. The Property shall be considered to be combined into one parcel for the purposes of this easement, and the restrictions and covenants of this easement shall apply to the Property as a whole rather than to any such individual tracts.

AND SUBJECT, HOWEVER, to the restriction that the Grantee may not transfer or convey the open-space easement herein conveyed to the Grantee unless the Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in the conveyance accomplished by this deed are to be continued 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 there under.

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

1. **TRASH.** Accumulation or dumping of trash, refuse, or junk 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, as long as such practices are conducted in accordance with applicable laws and regulations. The Grantor and Grantee hereby acknowledge the existence of a farm dump on the Property at the time of this deed, which is documented in the permanent files of the Grantee. The dump contains miscellaneous farm refuse including metal siding and roofing from an old barn and metal farm equipment. No additional trash dumps or accumulation of trash shall be permitted on the Property.

2. **SIGNS.** Display of billboards, signs, or other advertisements which are visible from outside the Property is not permitted on or over the Property except to state the name and/or address of the owners, to advertise the sale or lease of the Property, to advertise the sale of goods or services produced incidentally to a permitted use of the Property or to provide notice

necessary for the protection of the Property and for giving directions to visitors. No such sign shall exceed nine square feet in size.

3. DIVISION. Division or subdivision of the Property in any manner is prohibited: the Property may not be sold or conveyed except as a whole.

4. MANAGEMENT OF FOREST. No timbering shall be permitted on the Property other than for the Grantors or their successors' domestic consumption except for the cutting of trees which have died naturally, or which are removed for the permitted uses hereunder, or which, were they not removed, would jeopardize the character of the forest on the Property or adjacent properties, or which would present an imminent hazard to human health or safety. It is the intent of the Grantor that the existing woodlands be maintained in their natural state.

5. RIPARIAN BUFFER

There shall be no ploughing, cultivation, or similar earth disturbing activity within thirty-five (35) feet of each bank of Little Pine Run and the unnamed tributary of Little Pine Run.

6. GRADING, BLASTING, MINING. Grading, blasting or earth removal shall not materially alter the topography of the Property except:

- a) For dam construction to create private ponds or lakes, or as required in the construction of permitted buildings, connecting private roads, and utilities as described in Paragraph 7 below. Generally accepted agricultural activities shall not constitute any such material alteration. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in the construction of permitted private roads.
- b) As permitted with respect to the retained qualified mineral interest described in this paragraph 6. The Grantors retain a qualified mineral interest in subsurface oil and gas only and the right of access to such minerals; provided that, any exploration or production facilities shall be concealed or compatible with existing topography (any surface alteration to be restored to its original state at the completion of the economic life of such facilities) and that storage facilities shall not be permitted on the Property. Any surface alteration of the Property shall be limited to a plan submitted to and approved by the Grantee; provided that no surface mining on the Property is permitted nor is any other method permitted which will interfere with the overall conservation purpose of the easement hereby given.

Notwithstanding the foregoing, no grading, blasting, or earth removal is permitted on the Property if it will materially diminish or impair the conservation values protected by this Easement.

7. BUILDINGS AND STRUCTURES. No permanent or temporary building or structure shall be built or maintained on the Property other than:

- a) one (1) single family dwelling and non-residential outbuildings or structures commonly and appropriately incidental thereto;
- b) one (1) secondary dwelling not to exceed 2,500 square feet of livable space and non-residential outbuildings or structures commonly and appropriately incidental thereto;
- c) farm buildings or structures, provided that farm buildings or structures exceeding 4,500 square feet in ground area may not be constructed on the Property unless prior written approval for said building or structure is obtained in writing 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 the purposes of this subparagraph a farm building or structure shall refer to a building or structure originally constructed and used for the activities specified in paragraph 8(a);

- d) private roads and utilities that serve permitted buildings or structures may be constructed.

8. INDUSTRIAL AND COMMERCIAL ACTIVITIES. Industrial or commercial activities other than the following are prohibited:

- a) agriculture, viticulture, aquaculture, silviculture, horticulture, and equine activities;
- b) temporary or seasonal outdoor activities which do not permanently alter the physical appearance of the Property, and which are consistent with the conservation values herein protected. Temporary outdoor activities involving 100 or more people shall not exceed seven days in duration unless approved by the Grantee in advance in writing;
- c) activities which can be and in fact are conducted within permitted buildings without material alteration to the external appearance thereof;
- d) limited oil and gas mining only as permitted in paragraph 6 above.

Notwithstanding the foregoing, any commercial recreational use of the Property is permitted only to the extent such use would otherwise be permitted under Section 2031(c)(8)(B) of the Internal Revenue Code of 1986 as amended.

9. ENFORCEMENT. Representatives of the Grantee may enter the Property from time to time for purposes of inspection and enforcement of the terms of this easement after permission from or reasonable notice to the owner or the owner's representative. The Grantor hereby grants to the Grantee the right to bring an action at law or in equity to enforce the conservation restrictions contained herein, specifically including the right to require restoration of the Property to a condition of compliance with the terms of this easement, 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 the Grantor failed to comply with this easement, the Grantor shall reimburse the Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys fees, in addition to any other payments ordered by such court. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this easement by any prior failure to act and the Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by the Grantee.

10. NOTIFICATION OF TRANSFER. The Grantor shall notify the Grantee in writing within 60 days following any transfer or sale of the Property or any part thereof. In any deed conveying all or any part of the Property, this easement shall be referenced by Deed Book and Page Number or other appropriate reference.

11. EXTINGUISHMENT. The Grantor agrees that the donation of the perpetual conservation restriction in this easement gives rise to a property right, immediately vested in the 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 gift bears to the value of the Property as a whole at that time. 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, the restrictions set forth in the easement can be extinguished only by judicial proceeding and only if such extinguishment also complies with the requirements of section 10.1-1704 of the Virginia Code. In any sale or exchange of the Property subsequent to such extinguishment, the Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of the perpetual conservation restriction computed as set out above, but not to be less than the proportionate value that the perpetual conservation restriction at the time of the extinguishment bears to the then value of the Property as a whole. The Grantee shall use all its share of the proceeds from the sale of such property in a manner consistent with the conservation purposes of this easement and of the Open-Space Land Act.

12. PARTIES TO EASEMENT: The covenants, terms, conditions and restrictions contained in this easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee" used herein shall include, respectively, the above-named Grantor and his/her personal representatives, heirs, successors and assigns, and the above-named Grantee and its successors and assigns.

If any provision of this easement or the application thereof to any person or circumstance is found to be invalid, the remaining provisions of this easement shall not be affected thereby.

Although this easement in gross will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to or, use with respect to the Property. The Grantor hereby retains the exclusive right to such access and use, subject to the terms hereof.

The parties hereto agree and understand that any value of this donation claimed for tax purposes 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, audit and challenge by all appropriate tax authorities. The Virginia Outdoors Foundation makes no express or implied warranties regarding whether any tax benefits will be available to Grantor from donation of this easement, nor whether any such tax benefits might be transferable, nor whether there will be any market for any tax benefits which might be transferable.

Acceptance of this conveyance by the Grantee is authorized by section 10.1-1801 of the Code of Virginia and is evidenced by the signature of its Executive Director hereto.

WITNESS the following signatures and seals.

Ann Hollis Farris
ANN HOLLIS FARRIS

Mary Lou S. Farris
MARY LOU S. FARRIS

Accepted:
VIRGINIA OUTDOORS FOUNDATION,

By: Tamara A. Vance
Tamara A. Vance, Executive Director

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

I, Janet G Wolford, a Notary Public for the Commonwealth aforesaid, hereby certify that Ann Hollis Farris, Grantor, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 1st day of December, 2004.

Janet G Wolford
Notary Public
My commission expires: 7/31/2006 (SEAL)

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

I, Janet G Wolford, a Notary Public for the Commonwealth aforesaid, hereby certify that Mary Lou S. Farris, Grantor, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 1st day of December, 2004.

Janet G Wolford
Notary Public
My commission expires: 7/31/2006 (SEAL)

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

I, Anna G. Chishelm, a Notary Public for the
Commonwealth aforesaid, hereby certify that Tamara A. Vance, Executive Director of the
Virginia Outdoors Foundation, personally appeared before me this day and acknowledged
the foregoing instrument on behalf of the Virginia Outdoors Foundation.

WITNESS my hand and official seal this 17th day of December, 2004.



Notary Public

My commission expires: 31 OCT 2007 (SEAL)

INSTRUMENT #040005440
RECORDED IN THE CLERK'S OFFICE OF
WYTHE ON
DECEMBER 17, 2004 AT 04:17PM
HAYDEN H. HORNEY, CLERK
Janet R. Horne
RECORDED BY: JPH

COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT
WYTHE DISTRICT COURT
DEED RECEIPT

(114)3-005 3/04

DATE: 12/17/04 TIME: 16:17:31 ACCOUNT: 18016040009440 RECEIPT#: 0400001254E
CASHIER: JRH REG: WF14 TYPE: D6 PAYMENT: FULL PAYMENT
INSTRUMENT : 040005440 BOOK# PAGE# RECORDED: 12/17/04 AT 16:17
GRANTOR: FARRIS, ANN HOLLIS EX: N 100: 00
GRANTEE: VIRGINIA OUTDOOR FOUNDATION EX: N PCT: 100%
LAND ADDRESS : 803 GOVERNOR ST., STE. 817 RICHMOND, VA 23261
RECEIVED OF : VIRGINIA OUTDOOR FOUNDATION DATE OF DEED: 12/17/04

DESCRIPTION 1: TRACTS - F D DIST PAGES: 0
CONSIDERATION: .00 RESUME VAL: .00 NAMES: 0
MAP: PAID
TENDERED : .00
AMOUNT PAID: .00
CHANGE AMT : .00

CLERK OF COURT: HAYDEN H. HORNEY

BUSINESS FORMS SPECIALTY, INC (757) 927-9575

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