

Prepared by: David S. Lionberger, Esquire
Hirschler Fleischer
2100 East Cary Street
Richmond Virginia, 23223

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TAX MAP NO. part of 004A00000000A0
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Exempted from recordation tax
under the Code of Virginia (1950), as amended,
Sections 58.1-811 (A) (3), 58.1-811 (D) and 10.1-1803
and from Circuit Court Clerk's fee under Section 17.1-266

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made as of July 19, 2012, between RAPIDAN HOLDINGS LLC, a Delaware limited liability company, whose address is 35448 Somerset Ridge Road, Locust Grove, Virginia 22508, hereinafter called the "Grantor," and HISTORIC FREDERICKSBURG FOUNDATION, INC., a Virginia 501 (c) (3) organization, with offices at 1200 Caroline Street, Fredericksburg, Virginia 22401, herein called the "Grantee," and FL CAPITAL, LLC, a New York limited liability company, whose address is 225 West 35th Street, 8th Floor, New York, NY 10018, herein called the "First Noteholder," and JOHN F. MCMANUS, ESQ. and DAVID S. LIONBERGER, ESQ., either of whom my act, as Trustee, hereinafter called the "First Fee Trustee."

WITNESSETH:

WHEREAS, Grantor is the sole owner of the fee simple interest of certain real property consisting of approximately 63.5859 acres, more or less, fronting on State Route 711 (Somerville Road), near State Route 3 and the Rapidan River, and located in Gordon Magisterial District, Orange County, Virginia, together with all improvements thereon and appurtenances thereto belonging, and more particularly described on the plat recorded contemporaneously herewith in Plat book ___, page ___ of the Clerk's Office of the Circuit Court of Orange County, Virginia (the "Plat") and made a part hereof (the "Property");

WHEREAS, Grantors and Grantee have the common purpose of conserving in perpetuity the Property's natural habitat (with respect to the riparian buffer area along the Rapidan River), open space land designated by state and local governments, scenic open space, watershed preservation, forestal and agricultural values (the "Conservation and Open Space Values"), in the public interest;

WHEREAS, the Commonwealth of Virginia has authorized the creation of Easements pursuant to the Virginia Easement Act, Virginia Code §10.1-1009 et seq. (the "Easement Act"), and Grantor and Grantee wish to avail themselves of the provisions of that law;

WHEREAS, the Open Space Land Act of 1966, Chapter 461 of the 1966 Acts of the Assembly, (Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as amended) (the "Open Space Land Act") declares that the preservation of open space land serves a public purpose by 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;

Plat Recorded In: _____

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WHEREAS, the Property possesses significant natural habitat, scenic, historic, open space, watershed protection, forestal and agricultural values the preservation of which will benefit the citizens of the Commonwealth;

WHEREAS, the Grantee is a nonstock, not-for-profit corporation formed under the laws of the Commonwealth of Virginia, constituting a public charity not a private foundation, exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (and corresponding provisions of any subsequent tax laws)(IRC), and is a "qualified organization" as defined §170(h)(3) of the Internal Revenue Code (references to the Internal Revenue Code in this Easement shall be to the United States Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent Federal tax laws, and the applicable regulations and rulings issued thereunder) (the "IRC") and Treasury Regulation §1.170A-14(c)(1), and Grantee is a qualified "holder" under Section 10.1-1009, et seq. of the Easement Act; The primary purposes or powers of the Grantee include: (i) retaining or protecting the natural or open-space values of real property; (ii) assuring the availability of real property for agricultural, forestal, recreational, or open-space use; (iii) protecting natural resources; (iv) maintaining or enhancing air or water quality; or (v) preserving the historic, architectural or archaeological aspects of real property, having the power to accept bequests and gifts of real and personal property; The Grantee is willing to accept the Property subject to the perpetual conservation and open-space restrictions imposed as set forth in this Easement, has had a principal office in Virginia for more than five years, and by its signature below Grantee confirms that it has the resources to enforce the restrictions of the Easement and has a commitment to protect the Conservation and Open Space Values of this Property and the conservation purposes of the donation;

WHEREAS, this Easement is intended to constitute (i) a "qualified conservation contribution" as defined in IRC Section 170(h)(1) as more particularly explained below, and (ii) a qualifying "interest in land" under the Virginia Land Conservation Incentives Act of 1999 (Section 58.1-510 et seq. of the Code of Virginia;

WHEREAS, this Easement is intended to constitute "a restriction (granted in perpetuity) on the use which may be made of real property," which is "a qualified real property interest" under § 170(h)(2)(C) of the IRC;

WHEREAS, this Easement is granted "exclusively for conservation purposes" under IRC §170(h)(1)(C) because it effects "the protection of a relatively natural habitat of fish, wildlife or plants, or similar ecosystem" under IRC 170(h)(4)(A)(ii) and Treas. Reg. § 1.170A-14(d)(3) for the area with respect to the riparian buffer area along the Rapidan River;

WHEREAS, the Property is a significant natural area that qualifies as a "relatively natural habitat of fish, wildlife, or plants, or similar ecosystem" as the Property contains existing and recovering wildlife and plant habitat in its forest and riparian areas, including significant frontage (approximately two thousand seven hundred eighty four (2,784) linear feet) on the Rapidan River, and as shown in the Baseline Report contains five distinct wetland and open water habitat types, and five distinct upland habitats, the combination of which (forested, open grassland and aquatic habitats) provides a high level of habitat and species diversity;

WHEREAS, as noted in the Baseline Report, the Easement benefits and enhances the Rapidan River watershed by protecting riparian and forested/vegetated areas along the Rapidan River from disturbance, providing vital protection of stream ecosystems from non-point source pollution, sedimentation, stream bank erosion, and excessive temperatures, and protecting vegetated and undisturbed stream corridors that provide vital food and habitat sources for aquatic organisms and insects,

which form the basis of a healthy river ecosystem supporting numerous species of fish, reptiles, amphibians, birds, and mammals;

WHEREAS, this Easement protects the wildlife and plant habitat on the Property and in the Rapidan River by, among other things, restricting development, construction, and commercial timbering activities on the Property, thus preventing excessive fragmentation and degradation of the habitat, including protecting the habitat for certain aquatic species by (i) requiring riparian buffers along the Rapidan River and its tributaries, which buffers trap sediments, filter run-off, and generally protect and enhance water quality, and (ii) preventing certain development and uses of the Property, such as the creation of excessive impervious surfaces on the Property, that would increase runoff and pollution and materially impair the habitat for certain aquatic species in the Rapidan River and its tributaries;

WHEREAS, this Easement is granted "exclusively for conservation purposes" under IRC § 170(h)(1)(C) in that it effects "the preservation of open space" under IRC § 170(h)(4)(A)(iii) and Treas. Reg. § 1.170A-14(d)(4); specifically the preservation of scenic open space on the Property is pursuant to clearly delineated state and local governmental conservation policies and will yield a significant public benefit;

WHEREAS, the Property fronts on State Route 711 (Somerville Road), and contributes to the scenic views enjoyed by the public there from;

WHEREAS, the Property lies along the Rapidan River, a principal tributary to the Rappahannock River, a public water supply for the City of Fredericksburg, for approximately two thousand seven hundred eighty four (2,784) linear feet;

WHEREAS, the combined linear frontage along the Rapidan River of the Adjacent Open Space Property and the Property is five thousand four hundred seventy-four (5,474) linear feet;

WHEREAS, members of the general public regularly view and take scenic enjoyment of a substantial portion of the Property from State Route 711 (Somerville Road) and the Rapidan River, therefore the Property satisfies the requirements for "visual public access" as defined in Treasury Regulation Section 1.170A-14(d)(4)(ii)(B), and preservation of the natural and open space character of the Property will protect a scenic view for the public using the Rapidan River as well as State Route 711 (Somerville Road);

WHEREAS, protection of the Property by this Easement will protect approximately 24.4 acres of United States Department of Agriculture-designated prime farmland soils and approximately 9.6 acres of Soils of Statewide Importance;

WHEREAS, the Property lies adjacent to approximately 51.82 acres of land which is subject to an open-space Deed of Gift Easement to the Virginia Outdoors Foundation (the "Adjacent Open Space Property") recorded at Deed Book 519, page 287 in the Clerk's Office of the Circuit Court of Orange County (the "County") and protection of the Property pursuant to this Easement contributes to the natural and open-space values of the Adjacent Open Space Property;

WHEREAS, the City of Fredericksburg and The Nature Conservancy are the grantees and stewards of approximately 6,000 acres of riparian easements along the Rapidan and Rappahannock Rivers, including all of the land located directly across the Rapidan River from the Property (the "Rapidan Riparian Property"), and protection of the Property pursuant to this Easement also contributes to the natural and open-space values of the Rapidan Riparian Property;

WHEREAS, the Property is an important green infrastructure connection because the Property is located adjacent to the Adjacent Open Space Property and directly across the Rapidan River from the Rapidan Riparian Property, and preservation of the natural and open space character of the Property will protect a scenic view and landscape for members of the public visiting and enjoying the Rapidan River. The protection of the Property will protect the continuity of natural habitats in the area of the Property, the Adjacent Open Space Property, the Rapidan Riparian Property and the Rapidan River, as well as the continuity of the scenic and natural property landscape and viewshed along the Rapidan River and State Route 711 (Somerville Road);

WHEREAS, the 2007 Virginia Outdoors Plan “(VOP)” for the Rappahannock-Rapidan region, which includes all of Orange County, lists the segment of the Rapidan River along which the Property is located as potentially eligible for designation as a Virginia Scenic River (see VOP, Ch. X, page 425);

WHEREAS, the Easement is consistent with and will further the goals, objectives and strategies of the 2006 Orange County Comprehensive Plan entitled *Orange County at the Crossroads – a Roadmap to the Future 2025*, adopted by the Orange County Board of Supervisors May 9, 2006, as amended January 9, 2007, September 11, 2007, and January 27, 2009, because, among other things, the Easement will shield and protect the rural character of the County and protect historic and scenic resources from the undesirable effects of uncontrolled growth.

WHEREAS, the Orange County Future Land Use Map, identifies the Property and areas adjacent to the Rapidan River for conservation, classifying such areas as Agricultural Conservation areas. See Comprehensive Plan, Ch. IV, Part B, page 77;

WHEREAS, the Easement is consistent with the land use policies of Orange County as evidenced by the County-approved rezoning of the Property in 1994 that requires preservation of approximately 50 acres of open space, a golf course providing recreational amenities, and a Master Plan that clusters homes to preserve the county character;

WHEREAS, the Grantee has determined that the restrictions hereinafter set forth (the “Restrictions”) will preserve and protect in perpetuity the Conservation and Open Space Values (as defined herein) of the Property;

WHEREAS, Grantee has determined that the Restrictions provided for herein and the activities permitted by this Easement will limit the uses of the Property to those uses consistent with, and not adversely affecting the Conservation and Open Space Values of the Property and the governmental conservation policies furthered by this Easement, and the rights, uses or improvements permitted or retained by the Grantor hereunder do not materially impair or destroy the Property’s Conservation and Open Space Values;

WHEREAS, this Easement is consistent with and furthers the clearly delineated governmental conservation policies described below:

The Chesapeake Bay Preservation Act, §§10.1-2100 to 10.1-2116 of the Code of Virginia Conservation Reserve Enhancement Program administered by the United States Department of Agriculture (“USDA”) in cooperation with the Virginia Department of Conservation: 16 U.S.C.A. §3830a, Et seq.;

The Environmental Quality Incentive Program administered by the Natural Resources Conservation Service (“NRCS”): 16 U.S.C.A. §3839aa, Et seq;

The Forest Legacy Program administered by the USDA in cooperation with the states: 16 U.S.C.A. §2103(c), Et seq.

The Wildlife Habitat Incentive Program administered by NRCS: 16 U.S.C.A. §3839bb-1, Et seq;

The Agricultural Best Management Practices program administered by the Virginia Department of Conservation and Recreation: §10.1-546.1 of the Code of Virginia, Et seq;

Chapter 18, Title 10.1 of the Code of Virginia (§§ 10.1-1800 through 10.1-1804, as amended), which declares it to be the public policy of the Commonwealth to encourage preservation of open space land and authorizes Grantee to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open space and recreational lands of the Commonwealth;

The Open Space Land Act;

Section 10.1-104.5 of the Code of Virginia, which requires all golf courses in Virginia to develop and implement nutrient management plans;

The Orange County Comprehensive Plan, as discussed above;

WHEREAS, the Property lies adjacent to and in sight of the historic Skinker House and Skinker Ford; and the Property was the site of substantial activity during the Civil War, including activity related to the Battle of Chancellorsville and the Battle of the Wilderness. The Property, in its current condition, contributes significantly to the historic rural setting of the historic resources described above;

WHEREAS, preservation of the open space characteristics of the Property as provided in this Easement will yield the following significant public benefits, taking into consideration factors suggested in Treas. Reg. Treas. Reg. §1.170A-14(d)(4)(iv)(A):

- 1) The Property is important to the protection of water quality in the Rapidan and Rappahannock Rivers, which is a main source of drinking water for City of Fredericksburg, and ensuring the protection of the Property's watershed values as provided in this Easement will yield significant public benefit by helping to protect the quality of such public drinking water;
- 2) Existing and foreseeable development trends in the vicinity of the Property indicate that development pressure exists and can be expected to increase in the future. The North Orange County, Spotsylvania County and the Fredericksburg area has a history of steady economic and population growth, which should continue into the foreseeable future. The Property is particularly susceptible to development because of its waterfront location and its open, rolling topography, scenic views, and existing interior road infrastructure. This Easement protects the Property from intensive residential and commercial development, specifically subdivision into as many as twenty-six (26) residential lots, an approved and permitted hotel/conference center, and the construction of roads, homes, and other structures on those lots. Such intensive development would (i) impair the general open space character of the Property; (ii) degrade the forest that provides a buffer for the Rapidan River, (iii) cause excessive erosion, runoff, and pollution, degrading the Rapidan River's water quality, (iv) impair the scenic character of the open landscape, and (v) cause excessive fragmentation of the plant and wildlife habitat on the Property;

WHEREAS, the characteristics and condition of the Property as of the date of this Easement, the Property's current uses, and the current state of improvements on the Property are described in a report prepared by ECS Mid Atlantic, LLC entitled "Updated Baseline Report, Somerset Farm, Orange County, Virginia" dated July 11, 2011, as updated by that certain letter from ECS Mid Atlantic, LLC dated May 7, 2012 (the "Baseline Report"). Grantor and Grantee hereby acknowledge that the Baseline Report is a complete and accurate representation of the Property as of the date of this Easement. The Baseline Report contains a statement signed by Grantor and a representative of Grantee as required under Treas. Reg. §1.170A-14(g)(5)(i). The Baseline Report will be used by Grantor and Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Easement. However, the Baseline Report is not intended to preclude the use of other evidence to establish the present condition of the Property;

WHEREAS, the conservation values of the Property, which are more particularly described above and in the Baseline Report, include the following: (i) the wildlife and plant habitat, including existing and recovering habitat for native animals, plants, and plant communities in the upland meadows, forest, and riparian areas as well as the aquatic habitat in the Rapidan River and its tributaries, (ii) the watershed resources, including the substantially undeveloped, vegetated or forested riparian areas, which contribute to the protection of clean water for human consumption and for the benefit of downstream aquatic and riparian habitat of great ecological and economic importance, (iii) the value of the Property for its scenic open space and its value as open space land designated for protection by state and local governments, and (iv) the agricultural and forestal values inherent in the Property as a substantially undeveloped parcel of land.

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 give, grant and convey to the Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of the Property, further described as:

The tracts described in the Plat and shown as parcel 4E, PC-F Slot 119-125 Plat J-11, on Tax Map 004A000000000A0 among the land records of Orange County, Virginia and total 63.5859 acres, more or less, in the aggregate; and

All that certain tract or parcel of land with all improvements thereon and appurtenances thereunto belonging situate, lying and being in Gordon Magisterial District, Orange County, Virginia, off of State Route 3, designated as Section IV-A, 59,304 sq. ft. on the plat of survey by Cheryl Stockton, L.S., dated December 13, 2005, containing 59,304 square feet, and entitled Subdivision Plat of Somerset Farm, Section IV-A & Section IV-C, recorded in the Office of the Clerk of the Circuit Court of Orange County herewith and made a part hereto. (Portion of TM Parcel 004000040004A).

Being the real property lying and being in Gordon Magisterial District, Orange County, Virginia, consisting of 63.5859 acres, more or less, and more particularly shown and described as "Conservation Easement Hereby Granted 63.5859 acres" on that certain plat entitled "Plat Showing Conservation Easement on Parcel E Somerset Golf Club and Section IV-A Somerset Farm", dated July 18, 2011, and made by Allison Baird & Sehl, P.C., a copy of which is recorded in plat book ____, page ____, in the Clerk's Office for the Circuit Court of the County of Orange, Virginia.

The 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 Property as a whole.

ARTICLE I

PURPOSES. The purposes of this Easement include retaining and protecting the Property's watershed preservation values to protect the watershed for and the water quality of the Rapidan River, the Rappahannock River and the downstream Chesapeake Bay, to retain and preserve the Property's natural habitat to protect significant natural habitat for native plants, animals, or plant communities on the Property with respect to the riparian buffer area along the Rapidan River, to retain and preserve the Property's scenic and open-space values of the Property, including its value as open space land designated for protection by state and local governments, and to retain and preserve the Property's value for rural uses such as agriculture (including livestock production) and forestry. Pursuant to the Virginia Land Conservation Foundation's (VLCF's) Conservation Value Review Criteria the further purpose of the Deed is preservation of land for, protection of watershed, protection of natural habitat (with respect to the riparian buffer area along the Rapidan River), and protection of scenic open space and open space land designated by state and local governments, all as more particularly provided in this Easement.

ARTICLE II

PROPERTY USES. This Easement is intended to protect and preserve the Conservation and Open Space Values of the Property while allowing the uses of the Property that are provided for herein and are compatible with, and not destructive of, the Conservation and Open Space Values of the Property. Any activity on or use of the Property inconsistent with the purposes of this Easement is prohibited, and Grantor shall not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the purposes of this Easement.

The following 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, junk, or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of 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.
2. **SIGNS.** Display of billboards, signs, or other advertisements is not permitted on or over the Property except to state the name and/or address of the owners or Property, to advertise the sale or lease of the Property, to advertise the sale of goods or services produced or provided incidentally to a permitted use of the Property, to provide notice necessary for the protection of the Property or to give directions to visitors, or to recognize historic status or participation in a conservation program. No sign visible from outside the Property shall exceed nine square feet in size.
3. **DIVISION.** The Property shall not be divided or subdivided into, or separately conveyed as more than one parcel. Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered separate conveyances of portions of the Property or divisions or subdivisions of the Property, provided that Grantee approves such adjustments, is made party to any deed creating a boundary line adjustment, and at least one of the following conditions is met:

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

Further, the Grantor acknowledges and agrees, for itself and its successors and assigns, that this Easement also permanently relinquishes the owner's right to create, subdivide or construct twenty-six (26) lots on any part of the Property.

4. **RIPARIAN BUFFER.** As indicated on Exhibit A attached hereto, a grass or forested buffer shall be maintained covering or extending the lesser of: (i) the area of the Property lying between the Rapidan River and the golf cart paths existing on the Property as of the date of this Easement and lying within one hundred (100) feet of the Rapidan River, or (ii) one hundred (100) feet from the Rapidan River (the "Riparian Buffers"), each as measured from the top of the bank of the Rapidan River. If a current area of Riparian Buffers adjacent to the Rapidan River extends more than 100 feet from the Rapidan River and is currently undeveloped and in a natural state, then it shall be maintained in such natural state as a Riparian Buffer. A grass or forested buffer also shall be maintained covering or extending the lesser of: (i) thirty-five (35) feet from the edge of any wetlands on the Property as currently shown on the U.S. Fish & Wildlife Service National Wetlands Inventory, or (ii) the area of the Property lying between the wetland and the golf cart paths existing on the Property as of the date of this Easement and lying within thirty-five (35) feet of the wetland. A grass or forested buffer also shall be maintained extending one hundred (100) feet from the top of the bank of any stream with perennial outflow on the Property as currently shown on a United States Geological Survey topographic map of the Property. The existing impermeable surface golf cart paths located within 100 feet of the top of the bank of the Rapidan River may be maintained, but shall not be widened or extended.

(i) Only the cart paths and improvements existing as of the date of this Easement, new water permeable cart paths, up to nine (9) outdoor exercise structures (each not to exceed a footprint of twenty-five (25) square feet or nine (9) feet in height), and two (2) docks on the Rapidan River (each not to exceed fifty (50) square feet) for scenic enjoyment and for the Permitted Uses (as defined below) (the "Improvements") are specifically permitted within the Riparian Buffers with thirty (30) days advance written notice to Grantee and Grantee's prior written approval, which approval shall take into consideration the impact of the proposed structure on the Conservation and Open Space Values of the Property. The docks permitted on the Rapidan River shall be located where indicated on Exhibit A attached hereto. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, §10.1-560 et seq. of the Code of Virginia (or subsequent law) ("E&S Best Management Practices") shall be used to control erosion and protect water quality in the course of any ground disturbance related to such Improvements.

(ii) Within the Riparian Buffers there shall be (a) no buildings, substantial structures or other improvements with impervious surfaces constructed or placed other than those permitted by this Article II Paragraph 4, (b) no storage or dumping of compost, manure, fertilizers, chemicals, machinery or equipment, (c) no removal of trees except removal of invasive species or removal of dead, diseased or dying trees, or trees posing a threat to human or livestock health or safety, (d) no plowing, cultivation, filling, or other earth-disturbing activity, except as may be reasonably necessary for the activities set forth in Article II Paragraph 4(iv) below, and (e) limited mowing not more than three times per calendar year to control non-native or invasive species or protect trees and other plants planted in the Riparian Buffers is permitted. Native trees and plants may be planted in the buffers.

(iii) Livestock shall be excluded from the Riparian Buffers except for stream crossings as set forth in (iv) below.

(iv) Notwithstanding the foregoing, permitted within the Riparian Buffers are (a) wetland or stream bank restoration, or erosion control, pursuant to a government permit, (b) fencing along or within the Riparian Buffers, (c) construction and maintenance of stream crossings and related improved paths or roadways that are 35 feet or less in width for pedestrians, livestock and vehicles that minimize obstruction of water flow (provided (I) that not more than nine such crossings and related roadways shall be permitted without prior written approval of Grantee, whose approval shall take into consideration the impact of the crossings and related roadways on water quality and obstruction of water flow, while permitting reasonable access to permitted buildings, structures and improvements, (II) any such roadways should pass through the Riparian Buffers at as close to a ninety degree angle as possible to minimize such roadways intersection with the Riparian Buffers, and (III) the construction of any such roadways should minimize erosion and sedimentation during and after roadway construction), (d) creation and maintenance of trails and associated crossings with unimproved surfaces, (e) planting of non-invasive species, (f) dam construction to create ponds, and (g) soil disturbances or excavations in connection with investigations of cultural and/or archeological finds undertaken in consultation with the Virginia Department of Historic Resources.

(v) Should the Rapidan River or any perennial streams on the Property meander or change course naturally, the Riparian Buffers shall remain the same width, but move relative to the movement of the river or stream. In such event, any buildings or structures that were outside of the original Riparian Buffers and are determined to be within the new Riparian Buffers shall not be considered in violation of these restrictions and may be maintained at such locations.

5. **GRADING, BLASTING, MINING.** Grading, blasting, filling or earth removal shall not materially alter the topography of the Property except for (i) dam construction to create or enlarge private ponds or lakes, (ii) facilitating carbon sinks, wetland and stream mitigation and restoration, carbon sequestration and biodiversity mitigation on the Property as permitted and limited under Article II Paragraph 9 and pursuant to a government permit as required, (iii) erosion and sediment control pursuant to an erosion and sediment control plan, or (iv) as required in the construction of permitted buildings, structures, roads, and utilities for the maintenance, including periodic upgrades, to the golf course existing on the Property as of the date of this Easement, including fairways, tees and greens, as described in Article II Paragraph 6 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 course of any permitted grading, blasting, filling or earth removal. Grading, blasting, filling, or earth removal in excess of one acre (in each instance as aggregated with any prior grading, blasting, filling or earth removal on the Property) for the purposes set forth in subparagraphs (i) through (iv) above shall require 30 days' prior written notice to Grantee. Surface mining, subsurface mining, mining by any other method, dredging on or from the Property, and drilling for oil or gas on the Property is prohibited.

6. **BUILDINGS, STRUCTURES AND USES.** No permanent or temporary building, structure, road or utility may be built or maintained on the Property other than the following:

6.1 Farm or equestrian buildings or structures, except that a farm building or farm structure exceeding 4,500 square feet in ground area may not be constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the

proposed structure on the Conservation and Open Space Values of the Property. For purposes of this subparagraph, a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in Article II Paragraph 9(i or ii); and

6.2 Private roads to serve permitted buildings or structures, and roads with permeable surfaces for permitted uses of the Property; and

6.3 Public or private utilities to serve permitted buildings or structures. Public or private utilities to be constructed in whole or in part to serve other properties shall not cross the Property unless Grantee determines that the construction and maintenance of such utilities will not impair the conservation values of the Property and gives its prior written approval for such construction and maintenance, which approval shall take into consideration the visibility and other impact of such utilities on the Conservation and Open Space Values of the Property. Grantor reserves its separate rights to approve such public or private utilities.

6.4 The Grantor shall have the right to continue to operate and upgrade the golf course existing on the Property as of the date of this Easement and to construct, repair and maintain new water permeable golf cart paths, golf course greens, fairways, tees, up to four (4) restrooms (each not to exceed a footprint of two hundred (200) square feet or nine (9) feet in height), up to five (5) storage facilities (each not to exceed a footprint of two hundred (200) square feet or nine (9) feet in height), two (2) rain shelters (each not to exceed a footprint of two hundred (200) square feet or nine (9) feet in height), and associated benches, golf ball washers, and water fountains; and

6.5 The Grantor shall have the right to construct, repair and maintain hiking or bridle paths or trails with dirt or other permeable surfaces on the Property, and up to nine (9) outdoor exercise structures (each not to exceed a footprint of twenty-five (25) square feet or nine (9) feet in height) such as pull up bars and similar items; and

6.6 The Grantor shall have the right to lease portions of the Property to others engaging in a permitted agricultural use on the Property.

6.7 Subject to Section 9 of this Easement, Grantor shall have the right to engage in agricultural and equestrian uses on the Property, provided Grantee has determined that such uses do not impair the conservation values of the Property.

The permitted uses of the Property listed in Article II Paragraph 6, Sections 6.1 through 6.7 and in Article II Paragraph 9 of this Easement are the "Permitted Uses." Within the limitations set forth in this Easement, Grantor shall have the right to construct, repair, maintain, renovate and replace all new and existing buildings, structures, roads, paths, and utilities on the Property permitted in Article II Paragraph 6, Sections 6.1 through 6.7 above.

The items permitted under Article II Paragraph 6, Sections 6.1 through 6.7 will not be allowed if the Grantee determines that any such items would interfere with the essential scenic quality and Conservation and Open Space Values of the Property. All activities permitted on the Property must comply with current best practices related to protection of the environmental and ecological habitats on the Property. Grantor shall obtain Grantee's approval prior to engaging in any permitted alterations, demolition, and/or ground-disturbing activity on the Property that may impact historic, cultural, or natural heritage resources on the Property.

To further protect the scenic values of the Property, no building or structure of any kind exceeding 500 square feet in ground area, or any structure that would substantially obstruct the

scenic view from the road, shall be constructed within 500 feet of State Route 711 (Somerville Road), as measured from the centerline for such road. Entrance gates are permitted. Trees or other natural growth along any such roads from which the public may view the Property shall not be considered an obstruction of the scenic view. To further protect the scenic values of the Property, no building or structure of any kind exceeding 500 square feet in ground area, or any structure that would substantially obstruct the scenic view from the river, shall be constructed on the Property within 500 feet of the Rapidan River as measured from the top of the bank.

The collective footprint of all buildings and structures on the Property, excluding roads, shall not exceed 1% of the total area of the Property, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values of the Property, Grantee may approve such increase. For the purpose of this paragraph the collective footprint is the ground area measured in square feet of the buildings and structures set forth in Article II Paragraph 6, Sections 6.1 through 6.7 above and all other impervious surfaces, excluding roads.

Further, the Grantor acknowledges and agrees, for itself and its successors and assigns, that this Easement also permanently relinquishes the owner's right to create, subdivide or construct twenty-six (26) lots on any part of the Property.

7. **HYDROLOGY.** Except as permitted by Article II of this Easement, and other than the construction of wells to serve structures, improvements and uses permitted hereunder, there shall be no alteration, depletion, or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water, or any other water bodies on the Property.
8. **TIMBER MANAGEMENT.** On the Property, Grantor shall not commercially harvest timber, but shall seek to manage the existing forested areas on the Property (the "Forested Areas") for the purpose of maintaining the Conservation and Open Space Values of the Property. Such forest management shall (i) comply with a forest management plan drafted by the Virginia Department of Forestry, or drafted by a professional forester and approved by the Virginia Department of Forestry, as provided herein (the "Forest Management Plan") and (ii) be conducted under the supervision of the Virginia Department of Forestry. The following activities shall be permitted without a Forest Management Plan, a pre-harvest plan or further permission or approval from Grantee: (A) non-commercial, de minimis harvest of trees for trail clearing, firewood, or Grantor's domestic use, or removal of individual dead, diseased, or dying trees; removal of trees that pose an imminent hazard to human health or safety; (B) removal of invasive species; (C) removal of trees as is necessary to facilitate wetland and stream mitigation and restoration on the Property as permitted and limited under Article II, Paragraph 9; and (D) de minimis cutting of trees for the construction, maintenance and repair of permitted roads, paths, trails, utilities, buildings and structures.

The specific provisions governing forest management activities within the Forested Area are set forth in detail below:

8.1 Definitions. For purposes of this Easement, the following definitions shall apply:

8.1.1 The term "professional forester" means an individual who possesses a bachelor of science or master's degree in forestry from an educational institution with a forestry curriculum accredited by the Society of American Foresters or other comparable educational standards that may be agreed to by Grantee and Grantor. Such individual must be mutually agreed to by Grantee and Grantor.

8.1.2 The term "forest management" shall mean the management of the forest within the Forested Areas, including any of the following uses or activities: planting of trees in non-forested areas; reforestation, planting, growing, and other vegetation within the Forested Area; clearing or restoring forest cover damaged or destroyed by fire, water, or natural disaster; selectively pruning or trimming trees, foliage, and other vegetation within the Forested Areas; and clearing areas necessary for the construction of permitted structures.

8.2 Forest Management Objectives. All forest management activities undertaken within the Forested Area, as well as the drafting and revision of the provisions of the Forest Management Plan, shall be consistent with the following objectives provided, however, that nothing herein shall be construed to impose upon Grantor any positive obligation to undertake any activity or incur any costs to implement such objectives except as expressly required as mitigation for other activities on the Property;

8.2.1 Promote the recruitment and retention of a forest canopy of native tree species and species composition (i.e., forest community type) that is likely to occur on the site under natural biological and physiological processes.

8.2.2 Promote the recruitment and persistence of an intact, native herbaceous and woody understory that is characteristic of the given forest community type in terms of its composition and abundance.

8.2.3 Maintain soil productivity and prevent erosion.

8.2.4 Enhance and protect water quality.

8.2.5 Maintain biological diversity, native plant and animal species, and the ecological processes that support them.

8.2.6 Prevent and/or control the infestation of non-native, invasive species, pests, and pathogens that threaten the health of the forest.

8.3 Forest Management Plan. The Forest Management Plan shall be written to cover a period of at least ten (10) years and shall include, as a minimum:

8.3.1 A statement of Grantor's forest management goals and objectives.

8.3.2 A detailed description of management actions to be employed to accomplish each of the management objectives stated herein.

8.3.3 Forest stand descriptions and locations at a forest stand level feasible for operations pursuant to this Easement, including species composition, stocking levels, site classes, age classes or age class structure, volumes, and, where available, soil types.

8.3.4 A forest type map showing predominant topographic and hydrographic features, forest stands, existing roads, the approximate location of proposed future roads such as they might be anticipated at the time the Forest Management Plan is written, other improvements, scale, and north arrow.

8.3.5 An outline of a pre-harvest planning process.

8.3.6 Strategies to identify and conserve threatened or endangered species, unique habitats, cultural and archaeological sites, and forested wetland and streamside buffers, including a description and map of such feature.

8.4 Forest Management Plan Preparation and Updates. The Forest Management Plan shall be first prepared or updated within one year of the date of this Easement. The Forest Management Plan may remain valid for ten (10) years from the date of approval by Grantee. The Forest Management Plan shall be updated, with each updated plan also

covering a period of at least ten (10) years. The Forest Management Plan may be updated at any time, and shall be updated within six (6) months after either (1) a significant change in forest conditions as determined by Grantee or (2) the transfer of all or any part of the Property to a new owner.

- 8.5 Forest Management Plan Approval.** Grantor shall submit the Forest Management Plan to the Virginia Department of Forestry for review and approval as to compliance with the terms of this Easement, which approval shall be limited to consideration of whether (1) the Forest Management Plan accurately and adequately describes the forest conditions of the Property and (2) the recommendations in the Forest Management Plan comply with sound silvicultural practices and are consistent with the purpose of this Easement. Prior to the development of such plan, Grantor and Grantee shall meet to share information relevant to the planning process. Forest management activities are prohibited unless conducted in accordance with a valid Forest Management Plan.
- 8.6 Water Quality.** Best Management Practices, as defined by the Virginia Department of Forestry ("BMP Guidelines"), shall be used to control erosion and protect water quality when any forestry management activity is undertaken.
- 8.7 Forest Protection.** The Plan shall include reasonable recommendations to prevent wildfires. The Plan shall likewise address and recommend appropriate measures to prevent or treat damage to the forest caused by disease and insects.
- 8.8 Invasive Species.** No plant species that is listed as a "Highly Invasive Alien Plant Species" by the Virginia Department of Conservation and Recreation, Division of Natural Heritage (or as a highly invasive alien plant species on any successor list promulgated by the Commonwealth of Virginia) shall be purposely introduced onto the Property. The Plan shall include reasonable recommendations for removing or preventing the establishment of such invasive species.

- 9. INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Subject to Article II Paragraphs 4 and 6, industrial or commercial activities are prohibited. During any period that at least five acres of the Property are used in agricultural or equestrian production, a written conservation plan shall be developed or be in place that stipulates the use of best management practices for water quality protection (such as proper nutrient management, utilization of cover crops and stabilization of highly erodible lands) on such lands in agricultural or equestrian use. The plan shall be developed in consultation with a representative of the Culpeper Soil and Water Conservation District or Natural Resources Conservation Service representative, or their successor organizations, and shall be periodically updated and implemented by Grantor. Grantee shall periodically ascertain from the Culpeper Soil and Water Conservation District or the Natural Resources Conservation Service that Grantor is in compliance with the plan.

Nothing in this Article II Paragraph 9 shall prevent Grantor from developing ecosystem functions on the Property including, but not limited to, carbon sinks, stream bank restoration, biodiversity mitigation, carbon sequestration and wetland and stream mitigation (other than creation of wetlands from historically upland property, such as hillsides or sites with no more than one of the following: current or historical evidence of hydric soils, hydrophytic vegetation, or wetland hydrology), provided that such developments are not in conflict or inconsistent with the conservation purpose of or the restrictions set forth in this Easement and that prior written approval for same shall have been obtained from Grantee. Grantee is not responsible for

monitoring any such activities for compliance with permit(s), easement(s) or restrictions therefor, and Grantee has no obligation to enforce said permit(s), easement(s) or restrictions.

ARTICLE III

10. ENFORCEMENT.

10.1 Notice of Violation; Corrective Action. If Grantee becomes aware of a violation of the terms of this Easement, Grantee shall give written notice to Grantor of such violation by personal delivery, or via overnight courier service or certified mail, return receipt requested, at Grantor's last known post office address. Grantee's notice shall request corrective action sufficient to abate such violation and, where the violation involves injury to the conservation values of the Property, to restore the Property to its condition at the time of the donation of this Easement or, in Grantee's reasonable discretion, to require restoration of the Property to its condition prior to the injury, provided that such prior condition was in compliance with the terms of this Easement.

10.2 Injunctive Relief; Damages. Grantee has the right to bring an action at law or in equity to enforce the Restrictions contained herein. This right specifically includes the right (i) to require restoration of the Property to its condition at the time of the donation or to its condition prior to the violation, provided that such prior condition was in compliance with the Restrictions set forth herein; (ii) to recover any damages arising from non-compliance; and (iii) to enjoin non-compliance by ex parte temporary or permanent injunction. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and attorney's fees, in addition to any other payments ordered by the court.

10.3 Emergency Enforcement. If Grantee, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period for cure to expire.

10.4 Failure to Act or Delay. 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 Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act or delay by Grantee in acting to enforce any restriction or exercise any rights under this Easement.

10.5 Standing. By virtue of Grantee's acquisition of rights under this Easement, it shall be entitled, at its option, to standing before appropriate courts of law to pursue remedies or other matters that are necessary or incidental to the protection of the property subject to this Easement.

11. GRANTEE'S RIGHTS. To accomplish the purposes of this Easement, the following rights are granted to Grantee by this Easement:

11.1 Right to Enforce. The right to preserve and protect the conservation values of the Property and enforce the terms of this Easement as provided in Article III Paragraph 10.

11.2 Right of Entry. The right of Grantee's staff, contractors, and associated natural resource management professionals to enter the Property from time to time after prior written notice to Grantor, for the purposes of: (a) inspecting the Property to determine if Grantor is complying with the covenants and purposes of this Easement (including photographic documentation of the condition of the Property), and (b) enforcing the terms of this Easement as provided in Article III Paragraph 10; provided, however, that in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with notice to Grantor or Grantor's representative being given at the earliest practicable time. Such right of entry shall include the permanent right to cross other lands of Grantor if necessary to gain access to the Property.

11.3 Monitoring and Research. The right, but not the obligation, to monitor the plant and wildlife populations, plant communities and natural habitats on the Property. Grantor agrees that any monitoring activity, natural resource inventory and assessment work, or other natural resource research conducted by Grantor or others shall be reported to Grantee, provided, however, that nothing herein shall be construed to impose upon Grantor any positive obligation to undertake any activity or incur any costs in connection with monitoring or research on the Property. Grantee agrees to consult with Grantor prior to engaging in any monitoring and research activities on the Property, and shall use its best efforts to comply with any reasonable requests made by Grantor regarding the conduct of such activities.

11.4 Management of Exotic and Invasive Species. The right, but not the obligation, to control, manage, or destroy exotic non-native species (unrelated to the permitted activities herein) or invasive species of plants and animals that threaten the conservation values of the Property. Grantee agrees to consult with Grantor prior to engaging in any such activities, and shall use its best efforts to comply with any reasonable requests made by Grantor regarding the conduct of such activities.

11.5 Notice and Approval; Discretionary Consent.

11.5.1 Notice of Intention to Undertake Certain Permitted Actions. Grantor agrees to give notice to Grantee no less than thirty (30) days before exercising any reserved right related to the Property that may impair the Conservation and Open Space Values of the Property. The purpose of requiring such notice is to afford Grantee an adequate opportunity to object to such activities if Grantee believes that such activities may have an adverse impact on the Conservation and Open Space Values of the Property, and, if Grantee does not object to such activities, to monitor such activities to ensure that they are carried out in a manner not inconsistent with the purposes of this Easement. Such notice shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purposes of this Easement.

11.5.2 Activities Requiring Consent. Whenever Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefore; provided, that any failure of the Grantee to respond within thirty (30) days shall not prevent Grantee from objecting to any activity that the Grantee determines may impair the conservation values or features of the Property.

ARTICLE IV

12. **DOCUMENTATION:** The Baseline Report describes the condition and character of the Property at the time of the gift of this Easement. The Documentation may be used to determine compliance with and enforcement of the terms of this Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. The Grantee acknowledges that the Grantor has made available to the Grantee, prior to donating this Easement, documentation sufficient to establish the condition of the Property at the time of the gift. Such documentation is designed to protect the conservation interests associated with the Property, which, although protected in perpetuity by this Easement, could be adversely affected by the exercise of the reserved rights. The parties hereby acknowledge that the Baseline Report contained in the files of Grantee is an accurate representation of the Property as of the date of this Easement.

ARTICLE V

13. **NOTICES TO GRANTEE; REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** The Grantor shall notify the Grantee in writing at or prior to closing of any *inter vivos* transfer or sale of all or any part of the Property, other than a deed of trust or mortgage. This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property. Failure of Grantor to comply with this requirement shall not impair the validity of the Easement or limit its enforceability in any way.
14. **RIGHTS RESERVED BY GRANTOR.** Grantor, as owner of the Property, reserves and retains all rights with respect to the Property other than those specifically prohibited or limited by this Easement, including, but not limited to, the following: (i) the right to undertake or continue any activity or use of the Property not expressly prohibited by this Easement, provided such activity is not inconsistent with the purpose and intent of this Easement, and (ii) the right to sell, give, mortgage, lease, or otherwise convey all or any portion of the Property to anyone Grantor chooses, provided such conveyance is not prohibited by this Easement. Unless otherwise provided in this Easement, the rights reserved and retained by Grantor under this Easement may be exercised without notice to Grantee or Grantee's prior approval.
15. **EXTINGUISHMENT; GRANTEE'S PROPERTY RIGHT.** Notwithstanding the provisions of Section 10.1-1704 of the Open-Space Land Act, should a change in conditions give rise to the extinguishment of this Easement, such extinguishment can be carried out only by judicial proceedings and only if in compliance with Section 10.1-1704 and IRC Section 170 (h) and applicable Treasury Regulations. In a sale or exchange of the Property subsequent to an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement not to be less than the proportion that the value of this Easement at the time of the gift of this Easement bears to the then value of the Property as a whole. This proportionate value of the Grantee's Property rights under this Easement shall remain constant. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this Easement and the Open-Space Land Act. The Grantor agrees that the donation of 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. Grantor and Grantee intend that this Easement be perpetual.

16. **TRANSFER OF EASEMENT.** The parties recognize and agree that this Easement is assignable, provided, however, that Grantee shall not assign or transfer this Easement unless Grantee conditions such transfer or conveyance on the requirements that (i) the transferee is an organization then qualifying as an eligible donee as defined in §170(h)(3) of the IRC and (ii) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity. If Grantee ever ceases to exist or no longer qualifies under §170(h) or applicable state law, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibility of ensuring that the purposes of this Easement continue to be carried out in perpetuity.
17. **TRANSFER OF PROPERTY.** Any time the Property, or any interest therein, is transferred by Grantor to any third party, Grantor shall notify Grantee in writing at least thirty (30) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Easement. The failure of Grantor to perform any act required by this paragraph shall not (i) impair the validity of this Easement or limit its enforceability in any way or (ii) impair the validity of the transfer.
18. **AMENDMENT OF EASEMENT.** This Easement may be amended to enhance the Property's conservation values or add to the restricted property only by written agreement signed by Grantor and Grantee and recorded in Circuit Court for the County of Orange, Virginia. Any such amendment shall be consistent with the purposes of this Easement and shall not affect the qualification of this Easement or the status of Grantee under applicable laws, including the Easement Act and §170(h) of the IRC as a "qualified conservation contribution" or "interest in land." Grantor and Grantee have no right or power under this paragraph to agree to any amendment that would (i) affect the enforceability or perpetual duration of this Easement, (ii) result in the termination or extinguishment of this Easement, (iii) permit any residential, commercial, or industrial structures or uses on the Property that are prohibited under the original terms of this Easement, (iv) impair, conflict with or be contrary to or inconsistent with the conservation purposes of this Easement, (v) reduce the protection of the Conservation and Open Space Values, (iv) affect the qualification of this Easement or (v) affect the status of Grantee as a "qualified organization" or "eligible donee."
19. **INTERPRETATION.** This Easement shall be interpreted under the laws of Virginia, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses consistent with the purpose of and not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a "qualified conservation contribution" as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations Section 1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution. This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, has been or shall be dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; dedicated as open space in, or as part of, any real estate development plan; or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits. No development rights that have

been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.

20. **NOTICES.** Unless otherwise provided herein, any notices required by this Easement and any request by Grantor for consent or approval pursuant to the terms of this Easement shall be in writing and shall be personally delivered or sent by overnight courier or first class mail, to Grantor and Grantee, respectively, at the following addresses, unless a party has been given written notification by the other party of a change of address.

To Grantor:

Rapidan Holdings LLC
35448 Somerset Ridge Road
Locust Grove, Virginia 22508

To Grantee:

Historic Fredericksburg Foundation, Inc.
1200 Caroline Street
Fredericksburg, VA 22401
Attn: G. Scott Walker, President
Facsimile: 540-371-4505

With a copy to:

David S. Lionberger, Esq.
Hirschler Fleischer
2100 East Cary Street
Richmond, VA 23223
Facsimile: 804-644-0957

21. **ESTOPPEL CERTIFICATES.** Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, that certifies, to the best of Grantee's knowledge, the status of this Easement and Grantor's compliance with any obligation of Grantor contained in this Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of its receipt of Grantor's request.
22. **RECORDING.** This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of Orange, Virginia, and Grantee is authorized to re-record this instrument or any other appropriate notice or instrument.
23. **SUBSEQUENT LIENS ON PROPERTY.** No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that nothing herein shall be interpreted to require Grantee to subordinate this Easement to any mortgage or lien arising from such a borrowing, and in no event shall any such mortgage or lien impair the enforceability or perpetual duration of this Easement.
24. **ACCEPTANCE & EFFECTIVE DATE.** As attested by the Seal of Grantee and the signature of its authorized representative affixed hereto, Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Easement and warrants that Grantee is duly authorized to execute, accept and perform this Easement.
25. **SEVERABILITY; ENTIRE AGREEMENT.** If any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby. This instrument

sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement.

26. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions and restrictions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
27. **PARTIES.** Every provision of this Easement that applies to Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear. Whenever used herein, "Grantor" shall include Grantor and its successors and assigns, and "Grantee" shall include Grantee and its successors and assigns. A party's rights and obligations under this Easement as to any given portion of the Property (a "Portion") terminate upon transfer of the party's interest in the Easement applicable to any such Portion or upon the party's transfer of its interest in the portion of the Property making up such Portion, each as applicable, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
28. **PUBLIC ACCESS.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. The Grantor retains the exclusive right to such access and use, subject to the terms hereof.
29. **NO MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.
30. **COUNTERPARTS.** This Easement may be executed in one or more counterpart copies, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto shall not affect the validity of the Easement.
31. **TAX MATTERS.** The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations (see section 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. Grantee makes no express or implied warranties regarding whether any tax benefits will be available from donation of this Easement, whether any such tax benefits might be transferable, or whether there will be any market for any tax benefits that might be transferable. The parties hereto intend that the Easement conveyed herein shall be a qualified conservation contribution within the meaning of Section 170(h) of the IRC, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution. By its execution hereof, the Grantee acknowledges and confirms receipt of the Easement and further acknowledges that the Grantee has not provided any goods or services to the Grantor in consideration of the grant of the Easement.
32. **SUBORDINATION.** FL Capital, LLC, a New York limited liability company, is the Noteholder under a certain Credit Line Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated January 16, 2009 and recorded as Instrument No. 090000542, as

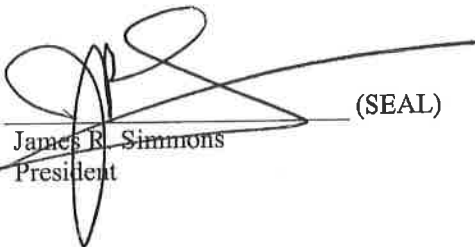
transferred to Lender by that certain Certificate of Transfer of Credit Line Deed of Trust recorded as Instrument Number 100002820 in the Clerk's Office of the Circuit Court of Orange County, Virginia ("Clerk's Office"), as amended by that certain Amendment to Credit Line Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents, Appointment of Substitute Trustees and Partial Release of Collateral dated June 10, 2012 and recorded in the Clerk's Office as Instrument No. 120005033 (collectively, the "Deed of Trust"), which subjects the Property to the Bank's lien. The Noteholder hereby consents to the terms and intent of this Easement, and agrees that the lien represented by said Deed of Trust shall be held subject to this Easement and joins in this Deed to reflect its direction to the Trustees to execute this Easement to give effect to the subordination of such Deed of Trust to this Easement. Noteholder subordinates its rights in the Property to the right of the Grantee to enforce the conservation purposes of this Easement in perpetuity.

WITNESS the following signatures and seals.

GRANTOR:

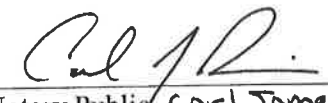
RAPIDAN HOLDINGS LLC

By: Downcity Capital Partners, Ltd.
Its: Managing Member

By:  (SEAL)
James R. Simmons
Its: President

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, in said County, on the 17th day of July, 2012, before me personally appeared the above-named James R. Simmons, as President of Downcity Capital Partners, Ltd, the Managing Member of Rapidan Holdings, LLC to me known and known by me to be the party executing the foregoing instrument on behalf of said limited liability company and acknowledged said instrument so executed to be his free act and deed in said capacity and the free act and deed of said limited liability company.


Notary Public CARL JAMES RICCI
My Commission Expires: 7-17-12



FIRST NOTEHOLDER:

FL CAPITAL, LLC

By: Mel Weiss (SEAL)

Its: Managing Member, duly authorized

STATE OF NEW YORK
CITY/COUNTY OF QUEENS, to-wit:

The foregoing instrument was acknowledged before me this 19th day of July, 2012, by Mel Weiss as Managing Member of FL Capital, LLC.


Ana Ceruga
Notary Public

My Commission Expires: 2/22/2014 (SEAL)

ANA CERUGA
Notary Public, State of New York
01CE6037435
Qualified in Queens County
My Commission Expires February 22, 2014



FIRST FEE TRUSTEE:

By:  (SEAL)
John F. McManus, Esq.

COMMONWEALTH OF VIRGINIA,
CITY OF FREDERICKSBURG, to-wit:

The foregoing instrument was acknowledged before me this 19th day of July, 2012,
by John F. McManus, Esq., Trustee.




Notary Public

My Commission Expires: 10/31/2015 (SEAL)

Accepted:

HISTORIC FREDERICKSBURG FOUNDATION, INC.,

By: G. Scott Walker (SEAL)
G. Scott Walker
Its: President

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

I, Ruth Ann Brooks, a Notary Public for the Commonwealth aforesaid,
hereby certify that G. Scott Walker, President of the Historic Fredericksburg Foundation,
Inc., personally appeared before me this day and acknowledged the foregoing instrument on behalf of the
Historic Fredericksburg Foundation, Inc.

WITNESS my hand and official seal this 19th day of July, 2012.

Ruth Ann Brooks
NOTARY PUBLIC
Commonwealth of Virginia
Reg. # 7069301
My Commission Expires 10/31/2014

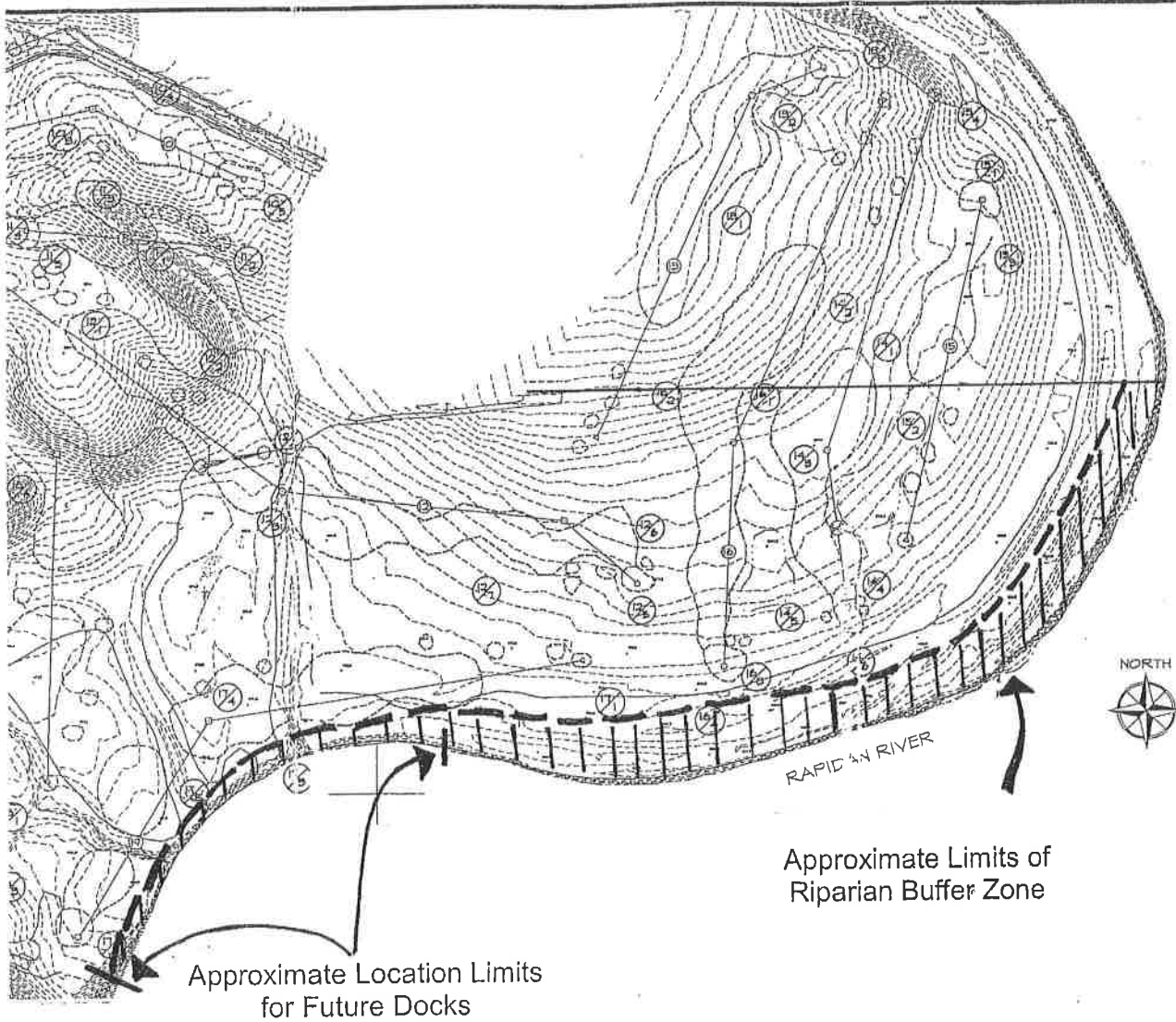
Ruth Ann Brooks
Notary Public

My Commission Expires: 10-31-14 (SEAL)

EXHIBIT A

Permitted Location of Permitted Docks on Rapidan River

EXHIBIT A
Somerset Farm Conservation Easement
Riparian Buffer & Future Dock Locations



ROBBINS & ASSOCIATES
 CIVIL ENGINEERS
 1000 N. 10th St., Suite 100
 Arlington, VA 22201
 Phone: (703) 241-1111
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Project Name:
SOMERSET GOLF CLUB
 ORANGE COUNTY, VIRGINIA

Sheet Title:
G.C. EVALUATION
 HOLES # 10 - 19
 & PRACTICE RANGE

REVISIONS	
Date	Comments

Date:
 SEPT. 20, 2001

Scale:
 1" = 100'

Sheet Number:

EV3

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