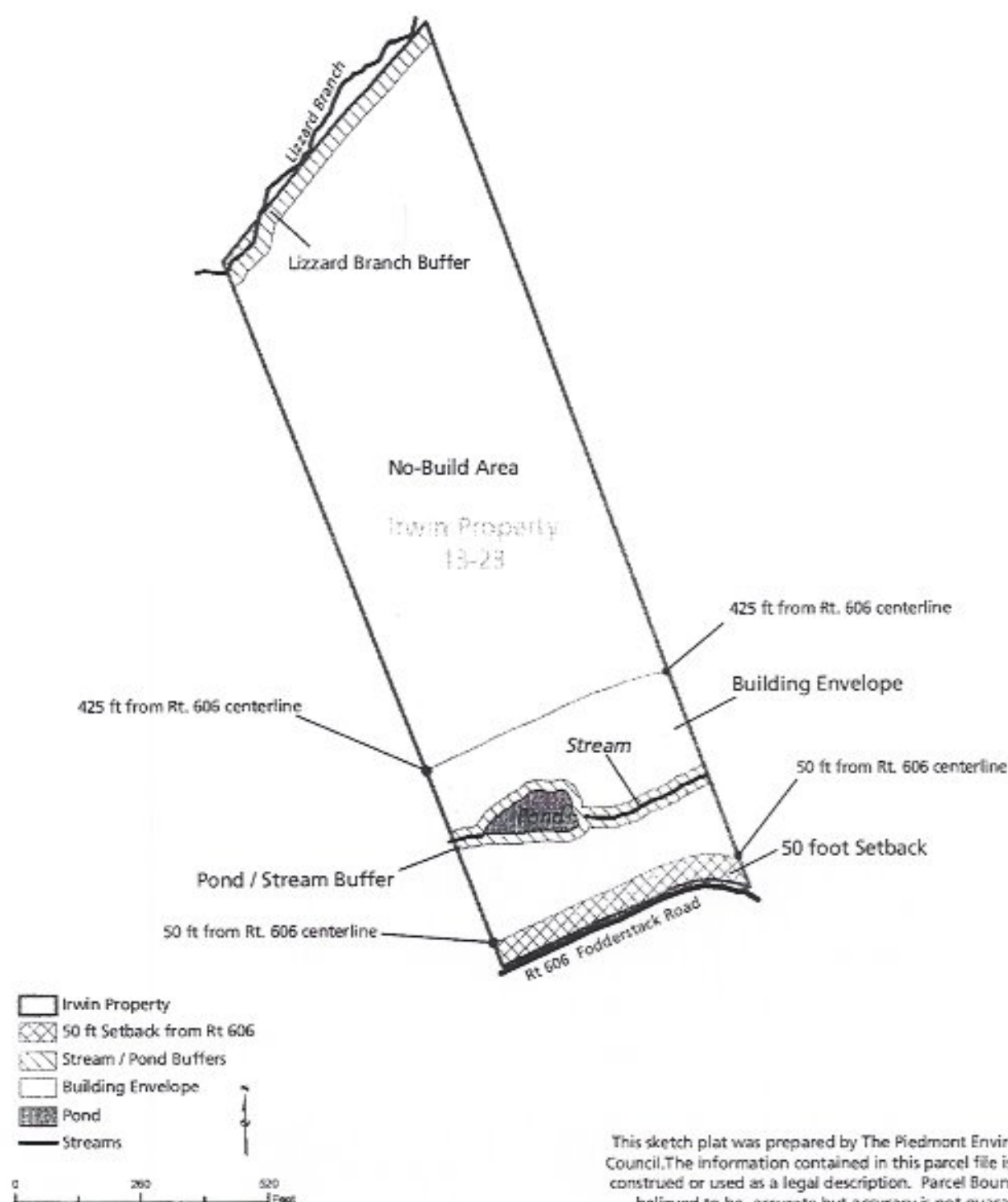


Irwin Conservation Easement Sketch Plat

20 acres more or less, Rappahannock County, VA, PIN: 13-23



This sketch plat was prepared by The Piedmont Environmental Council. The information contained in this parcel file is not to be construed or used as a legal description. Parcel boundaries are believed to be accurate but accuracy is not guaranteed.
December 22, 2008.

08-1640-1

Prepared by: Franklin B. Reynolds, Jr., P.C.

P.O. Box 355

Washington, Virginia 22747

12/31

TAX MAP NO. OR PIN: 13-23

DEED OF EASEMENT

Exempted from recordation tax under the Code of Virginia (1950), as amended, Section 58.1-811 (D)

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made this 30th day of December, 2008, between R. PHILIP IRWIN JR., widowed, whose address is 47 Dearing Rd, Flint Hill, Virginia, 22627 (Grantor); THE PIEDMONT ENVIRONMENTAL COUNCIL, a private nonprofit conservation organization which is a Virginia non-stock corporation, whose address is 45 Horner Street, Warrenton, Virginia 20186, (Grantee) (the designations "Grantor" and "Grantee" refer to Grantor and Grantee and their respective successors and assigns); and WILLIAM EDWARD FOSTER, JR., (Lender) and KYRA F. HOWELL, Trustee (Trustee).

WITNESSETH:

WHEREAS, the Virginia Conservation Easement Act, §10.1-1009, *et seq.* of the Code of Virginia authorizes certain charitable corporations, associations or trusts exempt from taxation pursuant to 26 U.S.C.A. 501(c)(3) to hold a nonpossessory interest in real property for purposes of retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property;

WHEREAS, The Piedmont Environmental Council meets the statutory requirements of Virginia Code §10.1-1009 for a holder of a perpetual easement under the Virginia Conservation Easement Act and has had its principal office in Virginia for more than five (5) years, as required by Virginia Code §10.1-1010 (C);

WHEREAS, Grantor is the owner in fee simple of real property situated on State Route 606, Fodderstack Road between Washington and Flint Hill in Rappahannock County, Virginia containing in the aggregate 20 acres as further described below (the Property), and desires to grant and convey to Grantee a perpetual conservation and open-space easement over the Property as herein set forth;

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

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

- a. Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth's policy to protect its atmosphere, lands and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth
- b. The Virginia Conservation Easement Act cited above;
- c. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, §§58.1-510 through 58.1-513 of the Code of Virginia, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth's unique natural resources, wildlife habitats, open spaces and forest resources;
- d. The Agricultural and Forestal Districts Act, Chapter 43 of Title 15.2, §§15.2-4300 through 15.2-4314 of the Code of Virginia, which encourages the conservation, protection, development and improvement of agricultural and forestal lands for the production of food and other agricultural and forestal products and as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes and as an economic and environmental resource of major importance. Rappahannock County's Agricultural and Forestal Ordinance, enacted pursuant to the Agricultural and Forestal Districts Act, provides certain tax benefits and other protections for the agricultural and forestal use of land to landowners who voluntarily agree to limit development of their property under the terms of the applicable District. The Property is located within the Mulky Mountain Agricultural and Forestal District, and thus has been specifically identified by Rappahannock County as worthy of protection for conservation purposes.

(ii) Land use policies of the County of Rappahannock as delineated in:

- a. The Rappahannock County Comprehensive Plan, adopted November 1, 2004, to which plan the restrictions set forth in this deed conform and which policies are to: (1) encourage and facilitate the donation of open-space

easements on land that is identified as having important scenic, historic, open-space, conservation, agricultural, and wildlife-habitat qualities; and (2) promote the placement of scenic easements on land adjoining (but not limited to) roads designated as Scenic Highways or Virginia Byways and (3) seek to protect the scenic and recreational value of those lands when land use decisions and plans are made; and

b. The Rappahannock County Comprehensive Plan goals to: 1) preserve the overall viewshed of the county in its unspoiled, natural setting which gives it special character and identity; 2) preserve and enhance rural and open spaces; 3) protect the natural, scenic and historic resources, thus ensuring a high quality of life for citizens; 4) encourage and maintain a viable rural agricultural and tourism-based economy compatible with the county's size and character;

WHEREAS, the Property has frontage on Lizzard Branch, a tributary of the Jordan River which is located within the Rappahannock River Watershed, an area designated as worthy of special environmental protection in the Rappahannock County Comprehensive Plan, the Rappahannock River being a public drinking water supply source for the City of Fredericksburg and having been designated in 1990 as a State Scenic River by Act of the General Assembly of the Commonwealth of Virginia;

WHEREAS, the Property fronts on State Route 606, Fodderstack Road, which is a designated Virginia Scenic Byway, and lies within the view shed of the Shenandoah National Park and Skyline Drive a National Scenic Byway recognized by the United States Department of Transportation and Federal Highway Administration and by Act of the General Assembly of the Commonwealth of Virginia pursuant to Title 23 Section 162 of the United States Code and contributes to the scenic views enjoyed by the public therefrom;

WHEREAS, the Property is visible from the United States Park Service's Shenandoah National Park and the Skyline Drive Bearwallow overlook;

WHEREAS, the Property sits within the view shed of an 1812 Federal home, Caledonia, which is on the Virginia Landmarks Register of the Department of Historic Resources and the United States National Park Service's National Registry of Historic Places and which stands on Caledonia Farm, an approximately fifty-two (52) acre property subject to an open-space easement held by the Virginia Outdoors Foundation (VOF);

WHEREAS, the Property is bordered on the east and west by lands protected by open-space conservation easements held by VOF, lies proximate to three additional properties (including Caledonia Farm) under easement to VOF, and contributes to the open-space values of these five neighboring easement-protected properties which cumulatively total approximately two hundred seventeen (217) acres of protected land;

WHEREAS, the Property is visible from the first stop on the Front Royal loop of the Virginia Wildlife and Birding Trail as designated by the Virginia Department of Game and Inland Fisheries;

WHEREAS, approximately fifty percent (50%) of the property consists of prime agricultural soils and soils of statewide significance as designated by the National Resources Conservation Service of the U.S. Department of Agriculture;

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

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

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

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

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

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein and the acceptance hereof by Grantee, Grantor does hereby give, grant and convey to Grantee a conservation and open-space easement in gross (Easement) over, and the right in perpetuity to restrict the use of, the Property, which is described below, and consists of 20 acres located in Wakefield Magisterial District, Rappahannock County, Virginia, between the town of Flint Hill, Virginia and Washington, Virginia,

fronting on State Route 606 to-wit:

All the following described tract or parcel of land, together with buildings and improvements thereon and privileges and appurtenances therewith connected, lying and being in Wakefield Magisterial District, Rappahannock County, Virginia, and bounded and described, according to a plat and survey of Walter Duncan, Surveyor, dated April 17, 1948 and recorded in the aforesaid Chancery Cause #2034, as follows, to-wit:

"Beginning at a stake in the middle of Route 606, a corner to H.S. Barksdale about 2 miles northwest of Flint Hill, Virginia, thence N 73 10' E 521.1 feet to a stake near twin locust trees, corner Lots #1 and #2, thence N 10 37' W 1785.6 feet to a fence post and Lizzard Run, a corner Lots #1 and #2, thence with Crowder line S 46 25' W 645 feet to stake 4' west of bend in stone fence, thence with Barksdale S 12 05' E 1437.5 feet to point of beginning, containing 20 acres, more or less."

And being the same property conveyed to William Edward Foster, Jr. By Deed dated August 27, 1974 from Herbert Ashton Foster and Minnie K. Foster, his wife; Robert Stanley Foster, divorced; Robert Edward Welch and Cornelia Williams Welch, his wife; William Roland Welch and Arland Fincham Welch, his wife; Elwood Junior Welch and Bernice Atkins Welch, his wife; Larry Leslie Welch and Shelby Pullen Welch, his wife, recorded in Deed Book 113 at page 119 among the land records of Rappahannock County, Virginia.

And being the same property conveyed to William Edward Foster, Jr. By Deed dated December 31, 1971 from Daniel Foster and Thelma Pauline Young Foster, his wife, recorded in Deed Book 104 at Page 74 among the land records of Rappahannock County, Virginia.

And being the same property conveyed to William Edward Foster, Jr. By Deed dated August 21, 1971 from Frances Foster Short and Carroll W. Short, her husband, recorded in Deed Book 101 at Page 144 among the land records of Rappahannock County, Virginia.

And being the same property conveyed to William Edward Foster, Jr. By Deed dated July 13, 1972 from John B. Miles, Widower, recorded in Deed Book 104 at Page 71 among the land records of Rappahannock County, Virginia.

AND BEING the same property conveyed to R. Philip Irwin, Jr., by Deed dated August 2, 2007 from William E. Foster, Jr., married, recorded as Instrument #070001298 among the land records of Rappahannock County, Virginia.

Even if the Property consists of more than one parcel for real estate tax or any other purpose, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

SECTION I – PURPOSE

The purpose of this Easement is to preserve and protect the conservation values of the Property in perpetuity by imposing the restrictions on the use of the Property set forth in Section II and providing for their enforcement in Section III. The conservation values of the Property are its values as open-space land preserved for open-space and rural uses including agriculture, livestock production and forestry. Further the easement shall protect the scenic qualities of State Designated Scenic Byway 606, Fodderstack Road, as well as the viewshed of Shenandoah National Park and Skyline Drive. In addition, the easement shall aid the protection of water quality in the Rappahannock River and Chesapeake Bay watersheds. Pursuant to the Virginia Land Conservation Foundation's (VLCF's) Conservation Value Review Criteria the further purpose of this Easement is preservation of land for agricultural use, forestal use, preservation of scenic open space, and preservation of open space designated by local government policies.)

SECTION II – RESTRICTIONS

Restrictions are hereby imposed on the use of the Property pursuant to the public policies set forth above. Grantor covenants that no acts or uses that are inconsistent with the purpose of this Easement shall be conducted or undertaken on the Property. The acts that Grantor covenants to do and not to do upon the Property, and the restrictions that Grantee is hereby entitled to enforce, are and shall be as follows:

1. DIVISION. Division of the Property is prohibited. The Property shall not be sold or conveyed except as a whole. Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered a division of the Property, provided that Grantee is made party to the deed creating the boundary line adjustment and at least one of the following conditions is met:

A. The entire adjacent parcel is subject to a recorded open-space easement held by Grantee or other qualified organization; or

B. The proposed boundary line adjustment shall have been reviewed and approved in advance by the Board of Directors of Grantee.

BUILDINGS AND STRUCTURES. No buildings or structures other than the following are permitted on the Property:

A. Permitted Buildings and Structures:

(i) One single-family dwelling, of which one (1) exists on the date of this Easement. Such dwelling shall not exceed 4500 square feet of above-ground enclosed living area without Grantee's prior review and written approval, which approval shall take into consideration the impact of the size, height and siting of the proposed dwelling on the scenic and other conservation values of the Property. Grantor shall give Grantee thirty (30) days' written notice before beginning construction or enlargement of the dwelling on the Property; and

(ii) Non-residential outbuildings and structures commonly and appropriately incidental to the single family dwelling permitted in subsection (i) of this paragraph, and sized appropriately to serve as an amenity to single-family residential use, and located near such dwellings. For the purpose of this paragraph (ii), "near" means within 200 feet of such dwelling, unless prior written approval shall have been obtained from Grantee that a greater distance is permitted considering the purpose of this Easement and the scale of the proposed outbuilding or structure in relation to the surrounding area; and

(iii) Farm buildings or structures, except that a farm building or farm structure exceeding 2000 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 consider the impact of the size, height and siting of the proposed structure on the conservation values of the Property. For purposes of this subparagraph, a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in paragraph 3(A).

B. Roads. Private roads to serve permitted buildings or structures only and roads with permeable surfaces for other permitted uses, such as farming or forestry, may be constructed and maintained; and

C. Utilities. Public or private utilities to serve permitted buildings or structures only may be constructed and maintained. Public or private utilities that do not serve the Property 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 values of the Property. Grantor reserves its separate rights to approve such public or private utilities.

D. Location Restrictions. To protect the scenic quality of the Property, no dwelling or other building shall be constructed within fifty (50) feet of the centerline of Rt. 606, Fodderstack Road. Nor shall any building be built further than four hundred twenty-five (425) feet from the centerline of Rt. 606, Fodderstack Road as shown on the sketch plat attached hereto and by this reference incorporated herein as Exhibit A, the Irwin Conservation Easement Sketch Plat, hereinafter the "Sketch Plat".

E. Impervious Coverage. The collective footprint of all buildings and structures on the Property, excluding roads, shall not exceed eight thousand (8,000) square feet, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values protected herein, Grantee may approve such increase. For the purpose of this paragraph the collective footprint is the ground area measured in square feet of the structures set forth in subsections (A) (i) through (A) (iii) above and all other impervious surfaces, excluding roads.

3. **INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Industrial or commercial activities are prohibited with the exception of the following:

- A. Agriculture (including livestock production), horticulture, viticulture, equine activities and forestry;
- B. Small-scale incidental commercial or industrial operations related to activities set forth in (A) above that Grantee approves in writing as being consistent with the conservation purpose of this Easement;
- C. Processing and sale of products produced on the Property as long as no additional buildings are required;
- D. Temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property and that do not diminish the conservation values of the Property herein protected; and
- E. Activities that can be and in fact are conducted within permitted buildings without material alteration to their external appearance.

Temporary outdoor activities involving 100 or more people shall not exceed 7 consecutive days in any 90-day period without prior written approval of Grantee.

Notwithstanding any other provision of this easement, no commercial

recreational use except for *de minimis* commercial recreational uses shall be allowed on the Property.

4. MANAGEMENT OF FOREST. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any timber harvest or land-clearing activity is undertaken. All material timber harvest activities on the Property shall be guided by a Forest Stewardship Management Plan approved by Grantee. A pre-harvest plan consistent with the Forest Stewardship Management Plan shall be submitted to Grantee for approval 30 days before beginning any material timber harvest, which approval shall be limited to determination of whether or not the pre-harvest plan is in compliance with the Forest Stewardship Management Plan and is consistent with the purpose of this Easement. The objectives of the Forest Stewardship Management Plan shall include, but are not limited to, forest health, timber management, scenic forest, aesthetics, water and air quality, or any combination thereof. Without limiting the foregoing requirement regarding submission of pre-harvest plans, Grantee shall be notified 30 days prior to the clearing of over two (2) acres of forestland for conversion into grassland, crop land, or in association with the construction of permitted buildings.

Neither a Forest Stewardship Management Plan nor a pre-harvest plan shall be required for the following permitted non-commercial activities: (i) cutting of trees for the construction of permitted roads, utilities, buildings and structures, (ii) cutting of trees for trail clearing, (iii) cutting of trees for firewood, or for other domestic uses of Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

5. GRADING, BLASTING, MINING. Grading, blasting or earth removal shall not materially alter the topography of the Property except for: (i) dam construction to create ponds, (ii) wetlands or stream bank restoration pursuant to a government permit issued to the Grantee(s), (iii) erosion and sediment control pursuant to a government-required and approved erosion and sediment control plan, or (iv) as required in the construction of permitted buildings, structures, roads, and utilities. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in such construction. Grading, blasting or earth removal in excess of one acre for the purposes set forth in subparagraphs (i) through (iv) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities shall not constitute a material alteration. Surface mining, subsurface mining, dredging on or from the Property, or drilling for oil or gas on the Property is prohibited.

6. ACCUMULATION OF TRASH. Accumulation or dumping of trash, refuse, junk or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of

brush piles, composting, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the Property.

7. **SIGNS.** Display of billboards, signs, or other advertisements is not permitted on or over the Property except to: (i) state the name and/or address of the owners of the Property, (ii) advertise the sale or lease of the Property, (iii) advertise the sale of goods or services produced incidentally to a permitted use of the Property, (iv) provide notice necessary for the protection of the Property, (v) give directions to visitors, or (vi) recognize historic status or participation in a conservation program. Temporary political signs are allowed. No signs visible from outside the Property shall exceed nine square feet in size.

8. **RIPARIAN BUFFER.** To protect water quality within the Rappahannock River watershed, two (2) riparian buffer areas as shown on the Sketch Plat shall be maintained according to the following terms:

A. Lizzard Branch Buffer.

On the date of this Easement, Lizzard Branch meanders across the northwest boundary of the Property as shown on the Sketch Plat. In recognition of the perpetual nature of the Easement and the possibility that Lizzard Branch may change its course over time, the parties agree that a forested or vegetated buffer as described below (the "Lizzard Branch Buffer") will be maintained on the Property to protect water quality in Lizzard Branch. In areas where Lizzard Branch flows through the Property, this Lizzard Branch Buffer will be thirty-five (35) feet in width, measured horizontally from the top of the stream bank. Where Lizzard Branch does not flow through the Property, the Lizzard Branch Buffer on the Property shall be thirty-five feet in width, measured from the northwest boundary of the Property as it exists on the date of this Easement.

B. Pond/ Stream Buffer.

A twenty (20) foot wide forested or vegetated buffer area shall be maintained around the pond and along each bank of the inlet and outfall streams flowing into and from the pond as shown on the Sketch Plat. This "Pond/Stream Buffer" shall be measured horizontally from the top of the banks of the pond and of the streams flowing into and from the pond.

In each buffer area referred to above there shall be: (a) no buildings or other structures constructed after the date of this easement, (b) no storage of compost, manure, fertilizers, chemicals, machinery or equipment, and (c) no other earth disturbing activity, except as may be reasonably necessary for (i) wetland or stream bank restoration, or erosion control, pursuant to a government permit; (ii) fencing along or within the buffer area; (iii) construction and maintenance of one

permitted stream crossing that does not obstruct water flow; and (iv) planting of trees, shrubs, and grasses and (d) no removal of trees except removal of invasive species, removal of dead, diseased or dying trees or trees posing an imminent human health or safety hazard. Livestock shall be fenced out of the buffer areas.

SECTION III – ENFORCEMENT

1. **RIGHT OF INSPECTION.** Representatives of Grantee may enter the Property from time to time for purposes of inspection, documentation (including photographing) and enforcement of the terms of this Easement after permission from or reasonable notice to the Grantor or the Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with notice to the Grantor or Grantor's representative being given at the earliest practicable time.

2. **ENFORCEMENT.** Grantee has the right to bring an action at law or in equity to enforce the Restrictions contained herein. This right specifically includes the right to require restoration of the Property to a condition of compliance with the terms of this Easement as existed on the date of the grant of the Easement, except to the extent such condition thereafter changed in a manner consistent with the Restrictions; to recover any damages arising from non-compliance, and to enjoin non-compliance by *ex parte* temporary or permanent injunction. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration of the property to bring it into compliance with this Easement, court costs and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay shall not waive or forfeit its right to take such action as may be necessary to insure compliance with this Easement, and Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by Grantee. Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage or change to the condition of the Property caused by fire, flood, storm, Act of God, governmental act or other cause outside of Grantor's control or any prudent action taken by Grantor to avoid, abate, prevent or mitigate damage or changes to the Property from such causes.

SECTION IV – DOCUMENTATION

Documentation retained in the office of Grantee including, but not limited to the baseline documentation report, describes the condition and character of the Property at the time of the grant of this Easement. The documentation may be used to determine compliance with and enforcement of the terms of the Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. Grantor has made available to Grantee, prior to the grant of this

Easement, documentation sufficient to establish the condition of the Property at the time of the gift. The parties hereby acknowledge that the documentation supplied and contained in the files of Grantee is an accurate representation of the Property.

SECTION V – GENERAL PROVISIONS

1. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the property. The covenants, terms, conditions and restrictions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property.
2. **NO PUBLIC ACCESS.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Grantor retains the exclusive right to such access and use, subject to the terms hereof.
3. **TITLE.** Grantor covenants and warrants that Grantor has good title to the Property, that Grantor has all right and authority to grant and convey this Easement and that the Property is free and clear of all encumbrances, including but not limited to, any mortgages not subordinated to this Easement.
4. **ACCEPTANCE.** Acceptance of this conveyance by Grantee is authorized by The Virginia Conservation Easement Act, Virginia Code §§ 10.1-1009 *et seq.* and is evidenced by the signature of the President of PEC, by authority granted by PEC's Board of Directors meeting of September 12, 2008, held in Rappahannock County, Virginia.
5. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property which is otherwise prohibited by federal, state, or local law or regulation. Neither the property, nor any portion of it, shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage or open-space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Easement or transferred hereby to Grantee as a restricted charitable gift shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.
6. **CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purposes of

this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a "qualified conservation contribution" as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations §1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.

7. **REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property.

8. **NOTICE TO GRANTEE.** Grantor agrees to notify Grantee in writing (i) before exercising any reserved right that Grantor believes may have an adverse effect on the conservation or open-space values or interests associated with the Property (the purpose of requiring such notice is to afford Grantee an adequate opportunity to monitor such activities to ensure that they are carried out in a manner consistent with the purpose of this Easement; such notice shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement); and (ii) at or prior to closing on any *inter vivos* transfer, other than a deed of trust or mortgage, of all or any part of the Property.

All notices to Grantee required by this Easement shall be sent to the PEC Stewardship Coordinator c/o PEC Director of Land Conservation at the address shown in the first paragraph of this Easement or to the registered agent for PEC on file with the Virginia State Corporation Commission or to such other addresses as the Grantee may hereafter direct in writing.

9. **TAX MATTERS.** The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in applicable IRS regulations (see Section 1.170A-13(c)(5)), and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from donation of this Easement, or that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.

10. **MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.

11. **ASSIGNMENT BY GRANTEE.** Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity and (2) the transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the IRC as amended and the applicable Treasury Regulations and meets the statutory requirements of The Virginia Conservation Easement Act Virginia Code § 10.1-1009 *et seq.* (as amended) for a holder of a perpetual conservation easement

12. **GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the donation of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is 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.

13. **EXTINGUISHMENT, CONVERSION, DIVERSION.** The Grantor and the Grantee intend that this easement be perpetual and not be extinguished, and no part of the Property may be converted or diverted from its open space use (the "Diversion or Conversion"), nor shall this Easement be terminated or amended to release any portion of the Property from its terms (the "Extinguishment"), unless all of the following conditions are met:

(i) the Board of Directors of the Grantee makes a positive finding that the uses allowed on the Property are not possible under the circumstances existing at the time of the proposed Conversion, Diversion or Extinguishment and are in conflict with the duly adopted comprehensive plan for the local governing body in which the Property is located at the time of the proposed Diversion, Conversion or Extinguishment;

(ii) substitute property of at least equivalent usefulness as open space, acreage and fair market value and which would better comply with the local governing body's comprehensive plan at the time of the proposed Diversion, Conversion or Extinguishment is placed under a conservation easement to the Grantee or to the Virginia Outdoors Foundation; and

(iii) the Diversion, Conversion or Extinguishment is approved by the Circuit Court for the jurisdiction in which the Property is located at the time of the proposed Diversion, Conversion or Extinguishment.

In any sale or exchange of the Property subsequent to such Diversion, Conversion

or 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 forth below, but not to be less than the proportionate value that the perpetual conservation restriction at the time of the Diversion, Conversion or Extinguishment bears to the then value of the Property as a whole. 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. The Grantee shall use all of its share of the proceeds from the sale or exchange of the Property in a manner consistent with the conservation purposes of this Easement and of the Virginia Conservation Easement Act.

14. AMENDMENT. Grantee and the owner of the Property may amend or modify the Easement to enhance protection of the Property's conservation values and natural resources, or add to the restricted property, provided that no amendment shall be allowed which affects the Easement's perpetual duration or reduces the protection of the conservation values of the Property. No amendment or modification shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded among the land records of Rappahannock County, Virginia.

15. SEVERABILITY. If any provision of this deed or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.

16. ENTIRE AGREEMENT. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement.

17. CONTROLLING LAW. The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.

18. RECORDING. This Easement shall be recorded in the land records office of the County of Rappahannock, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.

William Edward Foster, Jr. is the Lender under a certain Deed of Trust dated August 2, 2007 and recorded in the Clerk's Office of the Circuit Court of Rappahannock County, Virginia, as Instrument No. 07-1229-1, which subjects the Property to the Lender's lien. The Lender hereby consents to the terms and intent of this Easement and joins in this Deed to reflect his direction to the Trustee to execute this Easement to give effect to the subordination of such Deed of Trust to this Easement.

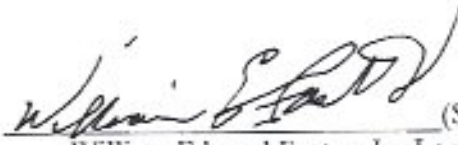
WITNESS the following signatures and seals:


R. Philip Irwin, Jr., Grantor

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


The foregoing instrument was acknowledged before me this 30th day of
December, 2008, by R. Philip Irwin, Jr.

Kimberly Narak (SEAL)
Notary Public
Reg. No.: 164708
My commission expires: June 30, 2012.


William Edward Foster, Jr., Lender

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

The foregoing instrument was acknowledged before me this 31st day of
December, 2008, by William Edward Foster, Jr.

 (SEAL)
Notary Public
Reg. No.: 164728
My commission expires: 8/31/2010


Kyra F. Howell, Trustee

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

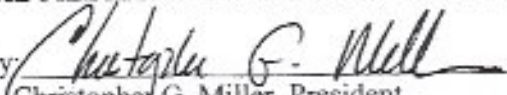
The foregoing instrument was acknowledged before me this 31st day of
December, 2008, by Kyra F. Howell.

 (SEAL)
Notary Public

Reg. No.: 164728

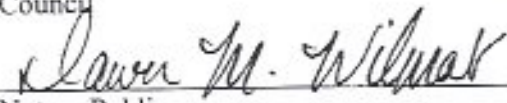
My commission expires: 8/31/2010

Accepted:
THE PIEDMONT ENVIRONMENTAL COUNCIL,

By: 
Christopher G. Miller, President

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

The foregoing instrument was acknowledged before me this 31 day of
December, 2008, by Christopher G. Miller, President of The Piedmont Environmental
Council

 (SEAL)
Notary Public

Reg. No. 70916154

My commission expires: Aug. 31, 2011

DAWN M. WILMOT
NOTARY PUBLIC
Commonwealth of Virginia
My Commission Expires August 31, 2011