

Tax Map Identification Nos.:
Spotsylvania County: _____
Stafford County: _____
Fauquier County: _____
Culpeper County: _____
Orange County: _____

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

DEED OF EASEMENT

THIS DEED OF EASEMENT, made and entered into this 5th day of June,
2006, by and between the **CITY OF FREDERICKSBURG, VIRGINIA**, a municipal
corporation (hereinafter referred to as "the City" or "the Grantor"); the **VIRGINIA**
OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA
(hereinafter referred to as "VIRGINIA OUTDOORS FOUNDATION"), whose address is 203
Governor Street, Suite 317, Richmond, Virginia 23219; the **VIRGINIA BOARD OF GAME**
AND INLAND FISHERIES, an agency of the COMMONWEALTH OF VIRGINIA, whose
address is 4010 West Broad Street, Richmond, Virginia 23230; and **THE NATURE**
CONSERVANCY, a nonprofit corporation organized under the laws of the District of Columbia
(hereinafter referred to as "The Nature Conservancy"), whose address is 490 Westfield Road,
Charlottesville, Virginia 22903 (hereinafter referred to as collectively as "the Grantees.")

WITNESSETH:

WHEREAS, the Open Space Land Act of 1966 (Chapter 17, Title 10.1, Sections 10.1-1700, *et seq.*, of the Code of Virginia (1950), as amended) declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth, and authorizes the designation of open-space land by public bodies, including municipalities, and the use of easements in gross to maintain the character of open-space land; and

WHEREAS, the Open Space Land Act of 1966 (Chapter 17, Title 10.1, Sections 10.1-1700, *et seq.*, of the Code of Virginia (1950), as amended) also authorizes any public body, including any county or municipality, to acquire by purchase, gift, devise, bequest, grant or otherwise title to or any interest or rights of not less than five years' duration in real property that will provide a means for the preservation or provision of open-space land; and

WHEREAS, Chapter 18, Title 10.1 of the Code of Virginia (§§10.1-1800, *et seq.*), as amended, declares it to be the public policy of the Commonwealth to "promote the preservation of open-space lands" and "to preserve the natural, scenic, historic, scientific, and open-space and recreational areas of the Commonwealth," and authorizes the Virginia Outdoors Foundation "to hold . . . any real property or any estate or interest therein as may be necessary and proper in carrying into effect the purposes of the Foundation"; and

WHEREAS, the Virginia Board of Game and Inland Fisheries is a public body and, the Virginia Department of Game and Inland Fisheries ("Department of Game and Inland Fisheries") is an agency of the Commonwealth of Virginia whose powers and duties include the conservation, protection, preservation and propagation of game birds, game animals, fish and other wildlife;

WHEREAS, the Virginia Department of Game and Inland Fisheries maintains an office in Fredericksburg, and it was the state agency responsible for administering the State Scenic River designation of the mainstem of the Rappahannock River from 1985 until 2003; and

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

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

WHEREAS, The Nature Conservancy has extensive experience working in partnership with landowners to protect the natural resources on their property and currently holds conservation easements on 3,200,000 acres in the United States; and

WHEREAS, the United States Army Corps of Engineers, Norfolk District (“Corps”) administers the Virginia Aquatic Resources Trust Fund (“Trust Fund”), which is one source of the consideration to the City for the conveyance of this easement, which consideration constitutes satisfaction of the requirement for compensatory mitigation pursuant to the Corps’ authority and obligations under the law; and

WHEREAS, the Trust Fund is contributing \$1,584,124 of the total cash compensation of \$1.6 million, which consideration does not include the 42 acres permitted to be developed under the terms of this easement; and

WHEREAS, in 1969, the City acquired property, consisting of 4,800 acres, more or less, and situated primarily along the Rappahannock and Rapidan Rivers and their tributaries (hereinafter referred to as “the Rivers”) in the City of Fredericksburg and in the Virginia Counties of Spotsylvania, Stafford, Fauquier, Culpeper, and Orange from the Virginia Electric & Power Company in order to protect the City’s public water supply (the “River Lands”); and

WHEREAS, the City seeks to protect most of the River Lands through an open space and a conservation easement to be held by the Virginia Outdoors Foundation, the Board of Game and Inland Fisheries and The Nature Conservancy, the encumbered portion of the River Lands being hereinafter referred to as “the Property;” and

WHEREAS, the City has sought for the past 35 years to protect said Rivers and the River Lands from environmental degradation, physical encroachments, waste, and other threats; and

WHEREAS, the mainstem of the Rappahannock River from its headwaters near Chester Gap to the Ferry Farm-Mayfield Bridge has been designated as a component of the Virginia Scenic Rivers System under Virginia Code §10.1-415; and

WHEREAS, Virginia Code §10.1-415 states that the designation of the Rappahannock as a State Scenic River shall not preclude the Commonwealth, the City of Fredericksburg, or the Counties of Stafford, Spotsylvania, or Culpeper from constructing or reconstructing any road or bridge or from constructing any new raw water intake structures or devices, including pipes and reservoirs but not dams, or laying water or sewer lines below water level; and

WHEREAS, it is the intent of the parties that this easement shall not preclude the construction, maintenance, repair or reconstruction of roads or bridges, or the construction of new raw water intake structures or devices, including pipes but not reservoirs or dams, and laying utility lines below water level, in accordance with the terms and conditions hereof; and

WHEREAS, the protection of the Property will provide riparian buffer preservation along approximately 115,389 linear feet (21.9 miles) of the Rappahannock River, 61,354 linear feet (11.6 miles) of the Rapidan River, and 169,922 linear feet (32.2 miles) of tributaries to these rivers (total of 65.7 miles), which lands are of national ecological and historic significance; and

WHEREAS, the Property provides excellent habitat for the bald eagle (*Haliaeetus leucocephalus*), as documented by the Virginia Division of Natural Heritage; and

WHEREAS, the permanent protection of the Property will also protect the habitat and spawning grounds for migratory fish species such as the American shad, which habitat was recently made accessible by the Corps of Engineers' upon removal of the Embrey Dam; and

WHEREAS, the Virginia Division of Natural Heritage has located element occurrences of the federally endangered dwarf wedgemussel (*Alasmidonta heterodon*) in reaches of the Rappahannock River that would be protected by this easement; and

WHEREAS, the City has taken various steps to manage and protect the River Lands through the adoption of ordinances and policies, including its Watershed Property Management Policy, to ensure that environmentally sensitive City-owned lands are protected for the use and enjoyment of future generations; and

WHEREAS, the comprehensive plans of the City and of the counties in which the River Lands lie, in effect as of the date of this easement, seek to protect the natural resources located within their jurisdictions and to preserve open space; and

WHEREAS, the Grantor and the Grantees wish to provide for the perpetual conservation of the Property, with due recognition that the City is a unit of local government, responsible to its citizens for services and infrastructure such as clean drinking water and roads, working under planning horizons of approximately twenty years; and

WHEREAS, the protection of water quality within the Chesapeake Bay watershed, and specifically along riparian corridors of significant waterways within the Bay watershed, such as the Rappahannock River and its tributaries, has been recognized by the Commonwealth of Virginia as requiring immediate governmental and private cooperative efforts to safeguard the water quality within these watersheds. This has included: (1) the General Assembly's enactment of the Chesapeake Bay Preservation Act, (2) the Chesapeake Bay Local Assistance Board's adoption of regulations concerning the use and development of certain lands within Tidewater Virginia called Chesapeake Bay Preservation Areas, which if improperly developed, may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries, (3) the Virginia Water Quality Improvement Fund, (4) the Commonwealth's participation in the Chesapeake Bay Agreement (§10.1-2124 of the Code of Virginia, 1950, as amended) and (5) the Commonwealth's participation in the Chesapeake 2000 Agreement; and

WHEREAS, the 2002-2003 Biennial Report of the Virginia Land Conservation Foundation, dated January 2004, states that meeting Virginia's land preservation goals under the Chesapeake 2000 Agreement "requires the conservation of 432,535 acres by 2010 or 61,791

acres per year,” and protection of a substantial portion of the River Lands will make an immediate, substantial contribution toward Virginia’s goal; and

WHEREAS, the City seeks to cooperate with the Grantees in order to promote the following goals: (1) to protect the natural environment and habitats of the Property, including the viewscape to and from the Rappahannock and Rapidan Rivers; (2) to protect the water quality of the Rivers and to provide adequate public water supplies; (3) to protect the historic and archeological resources located on the Property; (4) to prevent residential and commercial development of the Property; and (5) to allow reasonable use and enjoyment of the Property and the Rivers by the City and the general public in a manner consistent with the other easement goals; These goals are also referred to as “conservation values” throughout this document.

NOW, THEREFORE, in recognition of the foregoing and in consideration of the sum of One Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000.00) cash in hand paid by The Nature Conservancy to the City, the receipt and sufficiency of which are hereby acknowledged, and the additional consideration and support set forth below, it is hereby agreed as follows:

1. **Recitals Incorporated.** The parties acknowledge and agree that the foregoing recitals are hereby incorporated into this Deed of Easement and made a part hereof to the same extent as if fully set forth herein.

2. **Permanent Easement Granted.**

A. The City does hereby grant and convey to the Virginia Outdoors Foundation, the Virginia Board of Game and Inland Fisheries, and The Nature Conservancy a perpetual non-exclusive open-space and conservation easement in gross over, and the right in perpetuity to restrict the use of, the Property, consisting of four thousand two hundred thirty-two (4,232)

acres, more or less, in 129 separate lots or parcels of record and more particularly described in “SCHEDULE “A” attached hereto, as adjusted through the boundary line survey to be performed under paragraph 5B(1) and through any boundary line adjustments to be performed under paragraph 4B (hereinafter referred to as “the Property”). The easement is being conveyed in gross and not by the acre.

B The easement herein conveyed shall be more fully described in a survey completed at the direction and sole cost and expense of The Nature Conservancy within twenty-four months of the execution of this Deed (hereinafter referred to as “the Plat”). The Property shall be considered as a single parcel for the purpose of this easement, and, except as otherwise provided herein, the restrictions and covenants of this easement shall apply to the Property as a whole rather than as individual parcels.

3. **Restrictions on Use and Development of the Property.** The parties acknowledge and agree that the following restrictions are hereby imposed on the use and development of the Property pursuant to the public policies set forth above. The acts which the City covenants to do and not to do upon the Property, and the restrictions which the Grantees are hereby entitled to enforce, are and shall be as follows:

A. **New Buildings, Structures, Facilities, and Equipment Permitted.** No new buildings, structures, equipment, improvements (including roads and utilities) or other permanent facilities shall be built, constructed, or installed on the Property other than those permitted in this paragraph 3, including without limitation the following:

- (1) the development of up to five new public river access points, including non-motorized boat landings, gravel roads, primitive campsites, trails, historic interpretation facilities, public parking areas, and related facilities;

- (2) the relocation or improvement of the existing access points or primitive campgrounds at Ely's Ford, Mott's Run Reservoir, Blankenbaker and Hole in the Wall, the Confluence, Prettyman's Camp, Snake Castle, and Deep Run ;
- (3) those erected and used by the City or other governmental entities (with the permission of the City) for the benefit of the public health, safety, or welfare, including for non-motorized recreational, environmental, interpretive, or historic purposes; and
- (4) those whose development and use are consistent with the stated goals of this easement.

The City shall have the option, but not the obligation, to develop, relocate or improve any of the facilities discussed herein.

B. Same; General Building Restrictions. Except as provided in Paragraph 3.D. below, all new buildings, structures, equipment, improvements and facilities permitted under Paragraph 3.A. above shall be subject to the following restrictions:

- (1) Except as provided in paragraph 7.F. below, the development footprint of all such new development, in the aggregate, shall not disturb more than 42 acres of the Property, which is approximately one percent of the Property. The City shall have the right to allocate this acreage in its sole discretion. The development of this acreage or any portion thereof, pursuant to the terms of this easement, shall not be considered the conversion or diversion of land from open-space land use;
- (2) The term "development footprint" shall mean the total area disturbed by any one or more of the following activities: the cutting of trees, the grading,

landscaping or other permanent altering of land, and the erection, construction, or installation of any building, structure, equipment, improvement, or facility. Acres disturbed for the construction of trails and primitive campsites, and new public drinking water facilities permitted in paragraph 3.D. shall not be counted in the development footprint total area. The City may choose in its sole discretion whether acres disturbed for roads involving a river crossing permitted under paragraph 3.J. or utilities involving a river crossing permitted under paragraph 3.M. shall be counted in the development footprint total area;

(3) No single developed recreational site shall have a development footprint of more than three (3) acres;

(4) Hiking trails shall be unpaved trails constructed of permeable materials, with a maximum treadway width of three feet and a maximum two-foot wide additional shoulder on either side of the treadway;

(5) No building, structure, equipment, improvement or facility shall be visible at any time of year from the Rivers (except for road crossings as permitted below and except for structures and facilities permitted in 3.C.(1) and 3.C.(2) below).

C. Riparian Buffer Restrictions. The parties acknowledge and agree that a 100-foot-wide buffer area shall be established (“the Riparian Buffer”). The Riparian Buffer shall consist of all land within one hundred (100) feet of the mean high water mark of the Rivers or any tributary stream. The purpose of the Riparian Buffer shall be to prohibit development along the Rivers and tributaries to the greatest extent practicable, to preserve the natural environment, and to protect the water quality of the Rivers. Except as otherwise provided under Paragraphs 3(D), (J) and (M) below, the following restrictions shall apply within the Riparian Buffer:

- (1) No building, structure, equipment, improvement or facility, including any road, boat ramp, or parking area of any kind, shall be built within the Riparian Buffer except as expressly permitted herein. Erosion and sediment control shall be given primary consideration in the design, location, construction and maintenance of any permitted building, structure, equipment, improvement or facility.
- (2) The following facilities and structures shall be permitted within the Riparian Buffer:
 - a. New or relocated non-motorized boat landings designed to minimize their impact on the Rivers. No such boat landing shall exceed a structure size of 500 square feet;
 - b. Pedestrian hiking trails;
 - c. Primitive hike-in or canoe-in campsites designed to minimize erosion and destruction of natural vegetation. No campsite shall involve significant surface alteration or other disturbance of land;
 - d. Wetlands and stream restoration activities and structures approved in writing by the City; restoration of wildlife habitat, including control or removal of invasive species;
 - e. Temporary structures, equipment, and facilities required for the maintenance, repair, widening and reconstruction of existing bridges, located adjacent to the right of way leading to the bridge; and

f. Signs not greater than 9 square feet in size to identify the location of non-motorized boat landings.

(3) No motorized vehicles shall be permitted within the Riparian Buffer except those related to safety, maintenance, emergency, law enforcement, or as otherwise expressly permitted by the City.

D. New Public Drinking Water Supply Facilities The construction, operation, and maintenance of new buildings, structures, equipment, or other permanent facilities owned and operated by the City or other governmental entity on the Property and related to the production, transmission, or treatment of public drinking water supplies including without limitation outlet works and raw water intake structures and devices, shall not be subject to the restrictions and limitations set forth in this Paragraph 3. But no dams, reservoirs, or impoundments or other facilities for the storage of water shall be permitted on the Property. To the extent operationally or economically feasible, new public drinking water supply facilities shall be located outside the Riparian Buffer.

E. Maintenance, Repair and Alteration of Existing Buildings, Structures, Equipment, and Facilities. Nothing contained in this easement shall prevent the Grantor from repairing, replacing, maintaining, altering, or improving any existing buildings, structures, equipment, improvements, or facilities located on the Property as of the date of this easement.

F. Farming. Farming shall not be permitted within one hundred (100) feet of the Rivers or any tributary stream, as depicted on the most recent U. S. Geological Survey topographical quadrangle map.

G. Trash and Dumping. The accumulation, burial, burning, or dumping of trash, garbage, refuse, or junk shall not be permitted on the Property. This restriction shall not prevent

the City from providing for trash receptacles or other means of encouraging clean and safe use of the Property and the Rivers, nor 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 portions of the Property that are farmed as of the date of the execution of this deed of easement.

H. Grading, Blasting and Other Land-disturbing Activities. No grading, blasting, or other land-disturbing activities shall be permitted on the Property, except as needed to carry out permitted uses under the terms of this easement, to restore wetlands and stream banks, or to prevent erosion and sedimentation on the Property. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in the construction of permitted buildings, structures, equipment, and facilities. Mining and hydrocarbon extraction on the Property shall be prohibited.

I. Historic and Archeological Resources. No disturbance of historic or archeological resources shall be permitted except as authorized by the City in consultation with the Virginia Department of Historic Resources or other historic expert.

J. Paved Streets, Roads, Highways, Bridges, and Other Transportation Projects. No new paved streets, roads, highways, bridges, or other transportation projects shall be constructed on the Property except for:

(1) roads to access public water supply facilities permitted under subparagraph D of this paragraph 3 or as may be required for public safety to access those facilities permitted under subparagraph A(3) of this paragraph 3; and

(2) those transportation projects involving a river crossing, endorsed by a recorded vote of the governing bodies of the Grantor and each county within which the affected portion of

the Property lies. Such endorsement must be made by a resolution approved by a simple majority vote of each governing body. The Grantor and the Virginia Outdoors Foundation shall review the project's preliminary plans and shall be actively involved in the planning and design of any mitigation measures needed to minimize harm to the scenic, environmental, historic, habitat, and water quality values of the Property. The right to approve the location of and allow the construction of river crossings pursuant to the terms of this section shall be considered an expressly reserved right of Grantor and the land on which the facilities may be located shall not be deemed to be lands converted or diverted from open-space land use under § 10.1-1704 of the Code of Virginia. Roads within the Property associated with river crossings, including the bridge, must be oriented perpendicular to rivers and tributaries and must be elevated above the river valley. ("Perpendicular" shall include an angle within 30 degrees of perpendicular.)

K. Signage. The display of billboards, signs, or other advertisements which are visible from outside the Property shall not be permitted on or over the Property except to state the name and address of the City or other property owner, to give directions, to regulate activities on the Property, or to provide notice necessary for the protection of the Property. No such sign shall exceed nine (9) square feet in size, except for informational kiosks.

L. Communications Towers. No cellular telephone or other telecommunications towers shall be permitted on the Property.

M. Utility Easements.

(1) The City shall not grant any new easements for electric, gas, telephone, water, sewer, or any other public or private utilities across the Property, except for: (a) utilities serving facilities located on the Property, or (b) those utility projects involving a river crossing that have been approved by the Virginia State Corporation Commission and endorsed by a resolution

approved by a recorded simple majority vote of the governing bodies of the Grantor and any county within whose jurisdiction the affected portion of the Property lies. The Grantor and the Virginia Outdoors Foundation shall review the project's preliminary plans and shall be actively involved in the planning and design of any mitigation measures needed to minimize harm to the scenic, environmental, historic, habitat, and water quality values of the Property. The right to approve the location of and allow the construction of utility projects involving river crossings pursuant to the terms of this section shall be considered an expressly reserved right of Grantor and the land on which the facilities are located shall not be deemed to be converted or diverted from open-space land use under § 10.1-1704 of the Code of Virginia .

(2) The City may either grant new utility easements or modify or renew existing ones for the replacement, alteration, upgrading, or relocation of existing facilities, or for the co-location of new facilities within an existing easement, or new right of way approved under paragraph (3)(J). Any new or amended utility easement shall contain conditions designed to minimize the easement's impact upon the conservation values of the Property.

(3) Utility crossings shall be co-located with existing road or utility crossings, or directionally drilled or placed underground and under the Rivers.

N. Access Easements. No new access easements or rights-of-way shall be granted by the City across the Property if they diminish or impair the conservation values of the Property.

O. Removal of Trees. There shall be no removal, destruction, cutting or clearing of trees except: (1) to prevent the imminent loss of life or to remove a significant threat to life or property; (2) to create emergency firebreaks; (3) to control disease; (4) to remove or control non-native species; or (5) to conduct activities expressly permitted under Paragraph (3) of this

easement; provided, however, that no trees shall be cut to create additional farmland or pastureland.

4. Transfer and Subdivision of the Property.

A. The parties acknowledge and agree, as noted above, that for purposes of this easement the Property consists of a single parcel of approximately four thousand two hundred thirty-two (4232) acres. It is the desire of the parties that the Property be maintained under public ownership to the greatest extent practicable. Therefore, the parties agree that the City shall not subdivide and transfer more than five (5) new parcels to a non-public entity or individual.

B. Boundary line adjustments with adjoining parcels of land shall be permitted in addition to any other permitted subdivisions of the Property. The City shall notify the Grantees in writing prior to the completion of any such boundary line adjustment. A boundary line adjustment is permitted and shall be approved by the Virginia Outdoors Foundation, which approval shall not be unreasonably withheld or delayed, if the adjustment is necessary to resolve a boundary dispute between the City and an adjacent landowner, it includes only the land needed for the settlement of the boundary and the Virginia Outdoors Foundation is made a party to the deed of boundary line adjustment.

The City shall also have the right to make boundary line adjustments that meet one of the following requirements: (i) the boundary line adjustment is the result of a judicial order, decree or other judicial ruling; (ii) the aggregate net loss of acreage through boundary adjustment deeds does not exceed 25 acres; (iii) the City includes the lost acreage within the lands permitted for development under paragraph 3B(1); (iv) the City reimburses the Virginia Aquatic Trust Fund for the lost mitigation value; or (v) the City replaces the lost land with new land to be

placed under this easement (with the approval of the Grantees).

C. Prior to or at the closing of any fee simple sale, transfer, boundary line adjustment, or subdivision of the Property or any portion thereof, the City shall provide written notification thereof to the Grantees, along with a copy of the recorded deed and the survey, if any. Such deed shall contain a reference to this easement by deed book and page number or other appropriate instrument number.

5. **Inspection, Support, and Enforcement.**

A. Inspection. Representatives of the Grantees and associated natural resources professionals may enter the Property from time to time for purposes of inspection and enforcement of the terms of this easement after permission from or reasonable notice to the City Manager or his designee and any other affected owner of the Property.

B. Support.

(1) The Nature Conservancy shall complete at its sole cost and expense a boundary line survey of the Property within two years of the execution of this easement. The final product shall be an AutoCad drawing of the exterior boundary, derived from deeds of record, compiled and coordinated, and geo-referenced with field located and GIS digitized boundary control unless otherwise agreed in writing by the City and The Nature Conservancy. The survey will be endorsed by a licensed surveyor. The plats will be suitable for recordation in the land records of each jurisdiction. The digital orthophoto will be set in the background. The surveyor selected by The Nature Conservancy shall be subject to approval by the City, which approval shall not be unreasonably withheld or delayed. The Nature Conservancy shall deliver two copies of the Plat to the City within five days of its completion. The City shall have 60 days to review the Plat and submit any comments to The Nature Conservancy. If no comments are submitted within 60

days, then the Plat shall be deemed approved. If the City does submit comments and the parties cannot agree on the final form of the Plat within 60 days of receipt of the City's comments, then the parties shall use the mediation procedure set forth in Section 5.C. The Nature Conservancy shall provide each party 2 copies of the Plat once it is approved by the City

(2) The Virginia Outdoors Foundation, Virginia Department of Game and Inland Fisheries, and The Nature Conservancy agree to cooperate to create the Baseline Report documenting the conservation values of the Property, consulting with the City in its preparation. The Report shall be completed at the time of closing on this easement and may be supplemented by additional information. Within two years of closing, The Nature Conservancy shall provide supplemental information which shall include aerial photography of the Property documenting existing conditions. The Virginia Outdoors Foundation, Department of Game and Inland Fisheries, and The Nature Conservancy agree to provide each of the easement holders ten copies of the Baseline Report at no charge. .

(3) The Nature Conservancy agrees to prepare and submit a monitoring plan to City Council for review within two years of the execution of this easement. The plan will include measures to annually document the condition of the Property and the Conservation Values. The City may be actively involved in the development of the plan. The purpose of the plan shall be to document the condition of the Property and to identify potential adverse impacts to the conservation values. The plan shall set forth the means of implementing the monitoring of the Property and shall include the preparation of a report containing the findings. The plan shall include overflights as needed for monitoring purposes. The Nature Conservancy agrees to submit a copy of the completed report to the City annually

(4) The Virginia Outdoors Foundation, the Virginia Department of Game and Inland Fisheries, and The Nature Conservancy agree to provide reasonable assistance to the City with respect to the long-term stewardship of the Property. Such assistance shall include providing advice on matters within areas of their expertise, such as wildlife habitat, water quality, wetlands, or similar issues. The Virginia Outdoors Foundation agrees to request the Attorney General to consult with the City's legal counsel, in the event the City undertakes civil litigation in furtherance of the Conservation Values. The assistance may also consist of directing the City to additional resources, such as funding sources, training sources, conservation groups, and scientific resources and this assistance may include actively seeking additional funds for projects and support personnel from within their respective budgets. In addition, the Virginia Board of Game and Inland Fisheries through the Virginia Department of Game and Inland Fisheries shall provide law enforcement assistance.

(5) The parties agree that the relative responsibilities of the Virginia Outdoors Foundation, the Virginia Department of Game and Inland Fisheries, The Nature Conservancy will be more fully developed from time to time through the use of mutually satisfactory bi-lateral or multi-lateral agreements.

C. Enforcement.

(1) The Grantor and Grantees shall endeavor to resolve all disputes by negotiation. In the event the Grantor and Grantees do not resolve any dispute within 90 days following written notice of the dispute from one party to all the others, the parties shall engage in non-binding mediation in the City of Fredericksburg (or as the parties may otherwise agree) with a mediator jointly selected.

(2) Should the dispute remain unresolved more than 30 days after the conclusion of non-binding mediation, or for more than 150 days after the written notice of the dispute, then the City or the Virginia Outdoors Foundation may bring an action against any other party seeking compliance with the terms of this easement, including without limitation the restoration of the Property to its status prior to the violation. Nothing herein shall be construed as a waiver of the sovereign immunity of the Commonwealth of Virginia, to the extent that it applies. The easement holders agree that, notwithstanding any law to the contrary, only the Virginia Outdoors Foundation shall have the right to commence litigation to enforce the terms of this easement against the City (except in the limited circumstances provided below in paragraph 5C(3)).

(3) In case of a dispute involving a significant or substantial violation of the terms of this easement, where the dispute has not been resolved by negotiation and mediation, and where the Virginia Outdoors Foundation refuses or fails to bring an action against the City under paragraph 5C(2) above, then the Corps may bring an action against the City for an injunction seeking compliance with the terms of this easement, including the restoration of the Property to its status prior to the violation.

(4) Nothing herein shall be construed to entitle any Grantee or the U.S. Army Corps of Engineers to institute any enforcement proceedings against the Grantor for any changes to the Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons, and the City shall have no obligation to restore the Property if it has been damaged due to fire, flood, storm, earthquake or the unauthorized acts of third persons.

D Enforcement Against Trespass or Encroachment.

The City and the Grantees and the U.S. Army Corps of Engineers shall have the right jointly and severally to bring any action at law or in equity to enforce against trespass or encroachment, specifically including the right to require restoration of the Property to a condition of compliance with the terms hereof upon prior written notice to the City. The enforcing party or parties shall have the right to seek reimbursement from such party or parties for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorney's fees, in addition to any other payments ordered by such court. In the event that a court of competent jurisdiction finds that The Nature Conservancy is not a valid holder of this easement, such organization shall nevertheless enjoy rights as a third-party beneficiary to bring enforcement actions against third parties hereunder, provided that the City, its successors and assigns, have agreed in writing to the bringing of such action(s).

6. **Amendment.** This easement may be amended by the written consent of the City and Virginia Outdoors Foundation, provided however that no amendment may be made that adversely affects the Conservation Values or the rights of an easement holder or imposes any additional obligation on any other easement holder without the consent of such easement holder. Any such amendment shall be consistent with the purposes of the Virginia Conservation Easement Act, or the Open Space Land Act or any regulations promulgated pursuant to those laws. The City and Virginia Outdoors Foundation have no right or power to agree to any amendment that would affect the enforceability of this easement.

7. **Miscellaneous.**

A. Vested Rights. Nothing in this easement shall restrict or infringe upon any existing lease, license, easement, or other legal right or privilege in the Property granted by the

City, either express or implied, to any third party. In addition, this easement shall be subject to all covenants, easements, encumbrances or other restrictions of record.

B. Successors and Assigns. The covenants, terms, conditions and restrictions contained in this easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns and shall continue as a servitude running in perpetuity with the Property; provided, however, that The Nature Conservancy shall not have the right to transfer or assign its interest in this easement (including any assignments or other transfers of the rights herein pursuant to any mergers of The Nature Conservancy) to any entity other than the Commonwealth of Virginia. Assignment of this easement by Virginia Outdoors Foundation, without the City's consent, shall be limited to the assignment to the Commonwealth of Virginia pursuant to §10.1-1801(1) of the Code of Virginia (1950), as amended. The Board of Game and Inland Fisheries shall not assign this easement without the City's consent.

C. Severability. If any provision of this easement or the application thereof to any person, party or circumstance is found to be invalid, the remaining provisions of this easement and the remaining parties shall not be affected thereby. If any party is found to be an invalid holder pursuant to applicable law, then the easement shall be deemed terminated only with respect to such a party, but that party shall be considered a third party beneficiary of the easement to the extent allowed by applicable law.

D. No Right of Public Access. Although this easement in gross will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to or, use of, the Property. The City hereby retains the exclusive right to control such access and use of the Property, subject to the terms hereof.

E. Additional Protective Measures. Nothing in this easement shall prohibit the City from granting additional preservation easements, not in conflict with the terms of this easement.

F. Reimbursement. In the event roads or utilities involving a river crossing as allowed under this easement are constructed in an area not designated by the City as within the development area permitted under paragraph 3B(1), the entity seeking such river crossing shall reimburse the Virginia Aquatic Resources Trust Fund for the mitigation value attributable to the development footprint of that construction.

G. Entire Agreement. This deed of easement 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. This easement does not replace, abrogate, or otherwise supersede any federal, state, or local laws applicable to the Property.

H. Notices. Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantees, respectively, at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor:	To the Grantees:
City Manager 715 Princess Anne Street Fredericksburg, VA 22404	Legal Department The Nature Conservancy 490 Westfield Road Charlottesville, VA 22901 Fax: 434-817-9381
With a copy to:	With a copy to:
City Attorney 710 Princess Anne Street, Suite 2 Fredericksburg, VA 22404	The Nature Conservancy Virginia Field Office 490 Westfield Road Charlottesville, VA 22901 Fax: 434-979-0370
	Virginia Outdoors Foundation Executive Director

	101 N. 14 th Street, 17 th Floor Richmond, VA 23219
	Virginia Department of Game and Inland Fisheries 4010 West Broad Street Richmond, VA 23230
	Attorney General of Virginia 900 East Main Street Richmond, VA 23219

I. Authority. The easement herein conveyed is granted pursuant to Ordinance No. 06-08, duly adopted by the City Council of the City of Fredericksburg, Virginia, by a recorded vote of at least three-fourths of its members on April 11, 2006, and April 25, 2006 and which directed the City Manager to affix his signature hereto.

Acceptance of this conveyance by Virginia Outdoors Foundation is authorized by Virginia Code §10.1-1801, and by a recorded vote of its Board on June 21, 2006, as evidenced by the signature of its Executive Director hereto.

Acceptance of this conveyance by The Nature Conservancy is authorized by Virginia Code Title 10.1 Chapter 10.1, as evidenced by the signature of Michael L. Lipford, its Vice-President and Executive, hereto.

Acceptance of this conveyance by the Virginia Board of Game and Inland Fisheries is authorized by Virginia Code Title 29.1, Chapter 1, "Administration of Game and Inland Fisheries," and by a recorded vote of its Board on June 20, 2006.

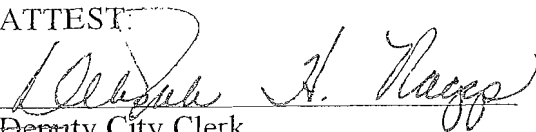
[Intentionally left blank]

WITNESS the following signatures and seals.

CITY OF FREDERICKSBURG, VIRGINIA,
A municipal corporation

BY:  (SEAL)
Phillip L. Rodenberg, City Manager

ATTEST:


Deputy City Clerk

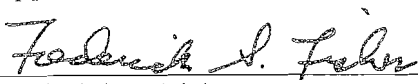
Approved as to form:


Kathleen Dooley, City Attorney

VIRGINIA OUTDOORS FOUNDATION,
An agency of the Commonwealth of Virginia

BY:  (SEAL)
G. Robert Lee, Executive Director

Approved as to form:


Frederick S. Fisher,
Special Assistant Attorney General

THE NATURE CONSERVANCY,
A District of Columbia nonprofit corporation

BY Michael L. Lipford (SEAL)
Michael L. Lipford, Vice-President
and Executive Director

**VIRGINIA BOARD OF GAME AND INLAND
FISHERIES**

An agency of the Commonwealth of Virginia

Gerald Massengill (SEAL)
Colonel Gerald Massengill, Interim Director

Approved as to form:

Roger Chaffe
Roger Chaffe,
Senior Assistant Attorney General

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Fredericksburg, to wit:

I, Tonya B. Lacey, a Notary Public for the Commonwealth aforesaid, hereby
certify that Phillip L. Rodenberg, City Manager of the City of Fredericksburg, Virginia,
Grantor, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 5 day of July, 2006.

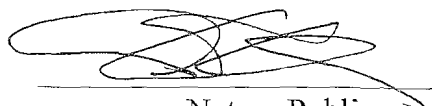
Tonya B. Lacey
Notary Public

My commission expires: January 31, 2008

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Charlottesville, to wit:

I, Anna G. Chisholm, a Notary Public for the Commonwealth aforesaid, hereby certify that G. Robert Lee, Executive Director, Virginia Outdoors Foundation, Grantee, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 21st day of June, 2006.



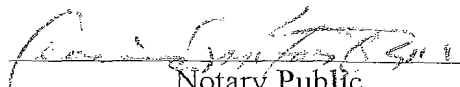
Notary Public

My commission expires: 31 OCT 2007

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Harrisonburg, to wit:

I, David M. Foster, Sr., a Notary Public for the Commonwealth aforesaid, hereby certify that Michael L. Lipford, Vice-President and Executive Director of The Nature Conservancy, a District of Columbia non-profit corporation, Grantee, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 22nd day of June, 2006.

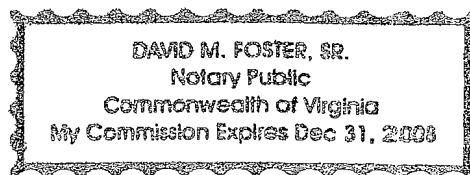


Notary Public

My commission expires: 12 - 31 - 2008

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Richmond, to wit:

I, Henry M. Haeckel, a Notary Public for the Commonwealth aforesaid, hereby certify that Colonel Gerald Massengill, Interim Director for the Virginia Board of Game and Inland Fisheries, Grantee, personally appeared before me this day and acknowledged the foregoing instrument.

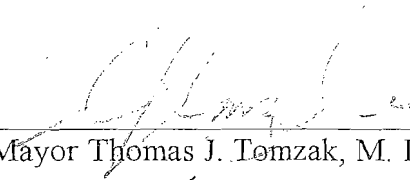


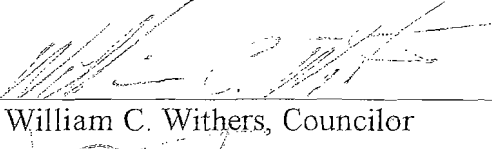
WITNESS my hand and official seal this 20 day of June, 2006.

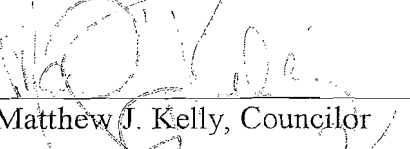
Harmon M. Hedden
Notary Public

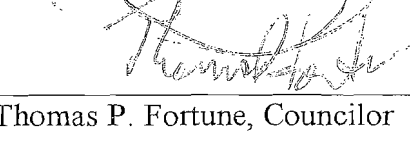
My commission expires July 31, 2007

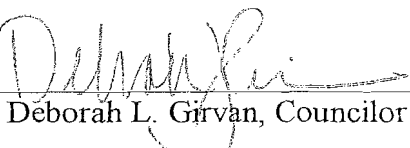
CITY OF FREDERICKSBURG, VIRGINIA
A municipal corporation

BY:  (SEAL)
Mayor Thomas J. Tomzak, M. D.

BY:  (SEAL)
William C. Withers, Councilor

BY:  (SEAL)
Matthew J. Kelly, Councilor

BY:  (SEAL)
Thomas P. Fortune, Councilor

BY:  (SEAL)
Deborah L. Girvan, Councilor

BY:  (SEAL)
Kerry Devine, Councilor