

DEED OF OPEN SPACE EASEMENT

THIS DEED OF OPEN SPACE EASEMENT, made this ^{6th} ~~28th~~ day of ^{June} ~~May~~, 2002, between BEAVER CREEK FARM, L.L.C., a Virginia limited liability company ("Grantor"), and the BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA, a body corporate and politic (the "County"); ARCH A. MOORE, III, TRUSTEE and JOHN F. LANHAM, TRUSTEE, either of whom may act (hereinafter "Trustee"); and THE MIDDLEBURG BANK (hereinafter "Beneficiary");

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of that certain tract of land containing 51.7780 acres located in Blue Ridge Magisterial District, Loudoun County, Virginia, which was conveyed to Grantor by deed from Shirley C. Beavers and W. Norris Beavers, Trustees of the Beavers Family Trust, dated March 10, 2002, recorded in the Clerk's Office of the Circuit Court of Loudoun County, Virginia, in Deed Book 2174, at Page 2394 (the "Property"); and

WHEREAS, Grantor subdivided said 51.7780 acres, more or less, into two (2) lots, as shown on the record plat, LOW DENSITY WAIVER PLAT LCTM 72-3 LAND OF BEAVER CREEK FARM, L.L.C., dated December 7, 2001, and revised June 4, 2002, prepared by Ken W. Erickson, Land Surveyor, which is recorded contemporaneously herewith; and

WHEREAS, the Property is subject to the lien of a certain Deed of Trust dated May 10, 2002 and recorded in Deed Book 2174, at Page 2398, among the aforesaid land records (the "Deed of Trust"), wherein the Property was conveyed to the Trustees, either of whom may act, in trust to secure a certain indebtedness as more specifically described therein; and

WHEREAS, the Property has agricultural, scenic, natural and aesthetic value in its present state as a natural and rural area which has not been subject to development and

RECORDED IN DEED ANNEXED

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LOUDOUN CO. VA. CLERK
 TESTE: *John F. Lanham*

WHEREAS, in furtherance of the purposes of the Open Space Land Act, Title 10.1, Chapter 17 of the Virginia Code, and as required pursuant to Section 5-701 of the Zoning Ordinance and Section 1243.05.2 of the Land Subdivision and Development Ordinance, the Grantor is willing to grant a perpetual Open Space Easement over the Property, thereby restricting and limiting the use of the land and contiguous water areas of the Property, on the terms and conditions and for the purposes hereinafter set forth, and the County is willing to accept such Easement; and

WHEREAS, the Grantor and County recognize the agricultural, scenic, natural and aesthetic value of the property in its present state, and have, by the conveyance of an Open Space Easement to the County, a common purpose of conserving the natural and cultural values of the Property, preserving the dominant agricultural, woodland and wetland character of the Property, and preventing the use or development of the Property for any purpose or in any manner which would conflict with the maintenance of the Property in its scenic, agricultural, woodland and wetland condition or with purposes of the Open Space Land Act.

WHEREAS, the County is authorized by the Open Space Land Act to accept, hold, and administer Open Space Easements, and possesses the authority to accept and is willing to accept this Open Space Easement under the terms and conditions hereinafter described;

NOW, THEREFORE, for good and valuable consideration, receipt of which all parties acknowledge, and in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, the Grantor hereby grant and convey unto the County and its successors and assigns forever and in perpetuity an Open Space Easement of the nature and character and to the extent hereinafter set forth over Lot 1 and Lot 2, as more particularly bounded and described on the Plat, the purposes of which are to preserve the environment of the Property and to maintain permanently the natural and cultural values and the dominant scenic and agricultural character of the Property.

To achieve these objectives, the terms, conditions, and restrictions of this Open Space Easement are hereinafter set forth.

1. This Easement shall be perpetual. It is an easement in gross and as such is inheritable and assignable and runs with the lands as an incorporeal interest in the Property enforceable with respect to the Property by the County, against the Grantor and their successors and assigns.
2. No industrial or commercial activities, with the exception of farming, forestry, and activities that can be conducted from residential or farm buildings without significant alteration of the external appearance of the buildings, as initially constructed, shall be conducted on the Property. Sales by the owner of farm products to the public shall be permitted.
3. Except as related to farming, and as otherwise provided herein, no billboard or advertising material shall be erected on the Property.
4. Except as may be necessary for and accessory to the agricultural and forestry uses of the Property, there shall be no dumping of soil, trash, ashes, garbage, waste, or offensive material. There shall be no dumping or filling in of any pond, wetland or waterway except as may be permitted by applicable laws for the purpose of combating erosion. Accumulation of trash, refuse, junk, sludge or other unsightly material is not permitted on the Property. Notwithstanding the foregoing provisions, there shall be no dumping, storage or placement on the Property of any stumps, brush, grass or other land clearing debris from off-site.
5. Excavation, dredging, mining and removal of loam, gravel, soil, rock, sand, coal and other materials are prohibited, except as necessary for:
 - (a) Application of good farming and forestry practices;
 - (b) Maintenance of existing accesses; and
 - (c) Construction and maintenance of farm accesses and accesses to structures permitted within the provisions of this Deed of Easement; accesses shall be designed and constructed to cause a minimum of interference with the existing topography, drainage, vegetation, wildlife, and conservation purposes of the Property.
6. Removal, destruction and cutting of trees, shrubs, or other vegetation is prohibited except for:

- (a) Reasonable maintenance of existing accesses or construction and maintenance of accesses permitted within the provisions of this Deed of Easement; or
- (b) Application of good husbandry practices including the prevention or treatment of disease; or
- (c) Periodic selective harvest of marketable timber under the supervision of a registered forester; or
- (d) Furtherance and perpetuation of the agricultural, horticultural, silvicultural and naturalistic uses of the Property; or
- (e) Removal of only such vegetation as is reasonably necessary for construction and improvement of such homesites as are permitted under this Deed of Easement.

All forestal management activities shall be in accordance with the sound forestry management guidelines promulgated by the Society of American Foresters for natural forests and plantations. All forestry practices shall serve the dual purpose of:

- (i) Protecting the soils, drainage and water quality of the Property; and
- (ii) Enhancing the sustainable growth, and quality of the tree species suited to the

site.

7. There shall be no activities or uses detrimental or adverse to water conservation, erosion control, soil conservation and, subject to the primary uses of farming and forestry, the preservation of wildlife habitat.

8. No building, facility or other structure shall be erected or constructed on the Property unless:

- (a) such structure is a new structure which is designed, constructed and utilized in connection with and accessory to the continued agricultural, horticultural, silvicultural and naturalistic uses of the Property; or
- (b) Such structure is a new residential dwelling or structure designed, constructed and utilized for the principal purpose of serving as a residence or serving an existing residence subject to the provisions and terms of Paragraph 9 below.

9. Development of the Property shall not be permitted except as provided in this easement. One principal residential dwelling, together with accessory dwelling units such as guest or tenant houses, and accessory agricultural structures, may be constructed upon each Lot or Parcel.
10. The property subject to this Easement shall not be further subdivided.
11. Notwithstanding any of the foregoing provisions, the Grantor expressly reserves to itself, its successors and assigns the right to:
- (a) Continue the agricultural, forestry and naturalistic uses of the Property.
 - (b) Continue to hunt, fish or trap on the Property subject to relevant laws.
 - (c) Improve, repair, restore, alter, remodel or replace the existing and the permitted structures with structures of similar size and purpose provided that the changes are compatible with the conservation purposes of the Property and all other provisions of this Easement.
 - (d) Continue the use of the Property for all purposes not inconsistent with this Easement.
12. The parties agree that monetary damages would not be an adequate remedy for the breach of any of the terms, conditions and restrictions herein contained, and therefore, in the event that the Grantor, their successors or assigns, violate or breach any of such terms, conditions and restrictions herein contained, the County, its successors, or assigns, may institute a suit, and shall be entitled, to enjoin by ex parte temporary and/or permanent injunction such violation and to require the restoration of the Property to its prior condition. The County, its successors and assigns, by any prior failure to act shall not waive or forfeit, and shall not be deemed to have waived or forfeited, the right to take any action as may be necessary to insure compliance with the terms, conditions and purposes of this Easement.
13. The County, its successors and assigns, shall have the right, with reasonable notice, to enter the Property one time per annum for the purpose of inspecting the Property to determine whether the Grantor, or their successors, or assigns, are complying with the terms, conditions and restrictions of this Easement. This right of inspection does not include the interior of the dwellings.
14. It is the intention of the parties hereto that this Easement, which is by nature and character negative in that the Grantor has restricted and limited their right to use the subject Property

rather than granted any affirmative rights to the County except as otherwise set forth herein, be construed at all times and by all parties to effectuate its terms, conditions and purposes. The County may assign its rights under this easement to any state or federal agency charged with the responsibility of conservation of natural or farm areas, or to any non-profit, tax-exempt organization engaged in promoting conservation of farm or natural areas; and if such assignee shall be dissolved or shall abandon this easement or the rights and duties of enforcement herein set forth, or if proceedings are instituted for condemnation of this easement, the easement and rights of enforcement shall revert to the County; and if the County shall be dissolved and if the terms of the dissolution fail to provide a successor, then the Court shall appoint an appropriate successor.

15. The Grantor agrees for itself, its successors and assigns to send in writing to the County the names and addresses of any parties to whom any portion of the property subject to this Easement is to be transferred at the time said transfer is executed.

16. The County agrees to hold this Easement exclusively for conservation purposes, i.e., it will not transfer the Easement in exchange for money, other property, or services, except as provided in and permitted by the Open Space Land Act.

17. This Easement shall be construed to promote the purposes of the Virginia Open Space Land Act, to promote the Comprehensive Plan of Loudoun County, and to promote the conservation purposes of this Easement.

18. Although this Easement in gross will benefit the public in ways recited above by encouraging and requiring elements of good land management, nothing herein shall be construed to convey a right to the public of access or use of the Property, and the Grantor, their successors, and assigns shall retain exclusive right to access and use.

19. Notwithstanding any other provision of this Deed of Open Space Easement, the Loudoun County Zoning Ordinance shall apply to the Property and shall take precedence over this Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Easement.

The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall not only be binding upon the Grantor, but also their agents, personal representatives, heirs, assigns, and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the above described land.

THIS DEED FURTHER WITNESSETH, that in consideration of the premises and the sum of One Dollar (\$1.00), cash in hand paid, receipt of which is herby acknowledged, the Trustee, as authorized to act by Beneficiary, as shown by its execution hereto, does hereby subordinate the lien of the Deed of Trust to the easements herein conveyed.

The undersigned warrants that this Agreement is made and executed pursuant to authority properly granted by the Articles of Organization, operating agreement and the majority vote of the Members of the Grantor.

IN WITNESS WHEREOF, the Grantor and County have hereunto set their hands and seals in the day and year above written.

BEAVER CREEK FARM, L.L.C.,

a Virginia limited liability company

R. Koenig (SEAL)
By: Its Manager

Accepted pursuant to Virginia Code
Section 15.2-1803

THE BOARD OF SUPERVISORS OF
LOUDOUN COUNTY, VIRGINIA

APPROVED AS TO FORM:

APPROVED AS TO FORM:

[Signature]
ASSISTANT COUNTY ATTORNEY
Assistant County Attorney

[Signature] (SEAL)
Name: *[Signature]*
Title: CHAIRMAN

Arch A. Moore III Trustee (SEAL)
ARCH A. MOORE, III, TRUSTEE

THE MIDDLEBURG BANK

By: [Signature]
Its: Sr. Vice President

COMMONWEALTH OF VIRGINIA
COUNTY OF LOUDOUN, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Robin W. Koenig, as Manager of Beaver Creek Farm, L.L.C., a Virginia limited liability company, whose name is signed to the foregoing Deed of Open Space Easement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 6th day of June, 2002.

My Commission Expires:

11-30-04

[Signature]
Notary Public

COMMONWEALTH OF VIRGINIA
COUNTY OF LOUDOUN, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that
SCOTT K YARR as CHAIRMAN of
LOUDOUN COUNTY, on behalf of the Board of Supervisors of Loudoun County, Virginia, whose name is signed to the foregoing Deed of Open Space Easement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 24 day of JUNE, 2002.

SANDRA A. TRUSLOW
NOTARY PUBLIC, STATE OF VIRGINIA
COMMISSION EXPIRES APRIL 30, 2005
My Commission Expires:

4-30-2005



Notary Public

COMMONWEALTH OF VIRGINIA
COUNTY OF LOUDOUN, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Arch A. Moore, III, Trustee, whose names is signed to the foregoing Deed of Open Space Easement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 10th day of June, 2002.

My commission expires:

11-30-04



Notary Public

COMMONWEALTH OF VIRGINIA


COUNTY OF LOUDOUN, to wit:

I, a Notary Public, in and for the jurisdiction aforesaid, do hereby certify that George Bramhall, as Sr. Vice President of The Middleburg Bank, whose name is signed to the foregoing Deed of Open Space Easement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 10th day of June, 2002.

My commission expires:

11-30-04


Notary Public