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Fauquier County, VA
Gail H Barb Clerk of Circuit Court
File# 2004-00007879

*This Deed is Exempt from Taxation under Virginia
Code §§58.1-811(A)(3) and 58.1-811(C)(4)
[retention of dwelling unit rights]*

BK 1095 PG 2066-2082

DEED OF EASEMENT

THIS DEED OF EASEMENT made this 30th day of April, 2004, by and between WILLIAM D. PETERS, Grantor and party of the first part (hereinafter "Grantor"); JANET L. PETERS, party of the second part (hereinafter party of the second part); and the COUNTY OF FAUQUIER, a political subdivision of the Commonwealth of Virginia (hereinafter the "County" and sometimes "Grantee"), whose address is 40 Culpeper Street, Warrenton, Virginia 20186.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of the property located in Fauquier County, Virginia, that is described in "Exhibit A" attached and hereinafter referred to as the "Property"; and

WHEREAS, under the County's Purchase of Development Rights ("PDR") Program, the County is authorized to acquire conservation easements over qualifying properties in order to accomplish the purposes of the PDR Program and the Open-Space Land Act (Virginia Code §10.1-1700 *et seq.*); and

WHEREAS, the Grantor has voluntarily agreed to have the Property be subject to the terms of this conservation easement; and

WHEREAS, the County's acquisition of the conservation easement identified herein furthers the purposes of the PDR Program in that such acquisition, among other things, assures that Fauquier County's resources are protected and efficiently used, establishes and preserves open-space, and furthers the goals of Fauquier County's Comprehensive Plan to protect Fauquier County's natural, scenic and historic resources, promotes the continuation of a viable agricultural

Examined and Returned to: Fauquier County Attorney

such as outbuildings, swimming pools, gazebos, garages, and tool sheds; and (c) farm buildings and structures. Notwithstanding the foregoing, the parcels subject to this easement may be subdivided up to the maximum number of lots specified below if permitted under the Zoning and Subdivision Ordinance provisions at the time the lots are subdivided:

<u>PARCEL PIN NUMBER</u>	<u>DIVISION RIGHTS RETAINED</u>
7829-66-4059	1
7829-77-7303	1
7829-84-3182	2
7829-62-7883	1
7839-02-4230	2

3. Size of structures. Total farm buildings and structures shall not exceed ten (10%) percent of the surface area of the property, unless prior written permission for a greater footprint or surface area is obtained from the Grantee.
4. Improvements. The following may be constructed, installed, located or placed, provided they are otherwise consistent with this Deed of Easement and the PDR Program, with prior approval by the Grantee: (a) driveways and other improvements and facilities customary and related to the use of an existing dwelling or a new permitted dwelling; and (b) improvements and facilities related to a land division, as required by the County.

C. Commercial and industrial uses prohibited; description of uses not deemed to be commercial and industrial uses. There shall be no industrial or commercial uses or activities conducted on the Property, provided, however, the following uses are not deemed to be commercial or industrial uses for the purposes of this Deed of Easement:

1. Single family residential uses;
2. Agricultural uses, consisting of establishing, re-establishing, maintaining or using cultivated fields, orchards or pastures in accordance with generally accepted agricultural practices for the purpose of producing or maintaining crops, including horticultural specialties; livestock, including all domestic and domesticated animals; and livestock products;
3. The on-site processing and retailing of agricultural product;
4. Forestal uses, consisting of reforestation, timber harvesting and forest management activities undertaken to produce wood products and/or improve the health and productivity of the woodland. The processing of wood products is not a forestal use, except as an accessory use with prior approval by the Grantee;

wetlands mitigation bank on the Property and may use the streams running along or through the Property to provide third-party stream mitigation; provided, however, that the size, scope and design of such wetlands bank and stream mitigation comply substantially with the provisions set forth in the following paragraphs. In furtherance thereof, the Grantor or his agent may construct access ways, perform grading, install water level monitoring equipment and water management facilities, perform plantings, and erect signs as may be required for such purposes. Grantor may place restrictive covenants on the wetlands bank area and the stream mitigation area as required by applicable regulatory agencies, and the Grantee agrees that the easement created by this Deed of Easement shall be subordinate to any such restrictive covenants placed upon the Property.

1. Components of Wetlands Bank: Based on studies conducted to date, the Property will produce approximately 30-35 wetland credits within the floodplain of Elk Run. Wetland credits will be established through the creation, restoration and enhancement of wetlands, as well as the preservation and enhancement of adjacent forested wetlands and upland buffers. A total of approximately 40 to 45 acres within the flood plain will be used to produce those wetland credits. The credits will be achieved by creating/restoring wetland hydrology through modifications such as minor grading to control surface runoff, in-ground hydrologic barriers to control surface and sub-surface drainage, filling of ditches, and/or soil modification to reduce soil permeability and increase water storage capacity. The site will be designed to replace the chemical, physical and biological functions of wetlands that are characteristic of the types that are impacted by Clean Water Act (CWA) Section 404 permitting in the region.

The conceptual design will involve two primary improvements to promote wetland hydrology. First, small earthen berms, six to twelve inches in height, composed of the same clayey soil found on the site will be created to hold water in constructed wetland cells. Second, a level surface will be graded, with micro-topographic features to reduce runoff, to maximize the amount of water available to infiltrate the wetland cells. In addition, the upper six to twelve inches of the soil profile will be disked to promote capture and retention of water. The combination of berms and grading will impound water following significant rainfall events and slow down the lateral migration of groundwater offsite.

2. Components of Stream Mitigation: Stream mitigation will be conducted on a project-by-project basis. It will impact only the streams on the property and the area encompassing fifty feet on each side of the streams. The primary component of stream mitigation will be the creation of buffering through the planting of trees and other plants within the mitigation area. It's also possible that stream mitigation will consist of the repair of degraded aspects of the stream bank and stream bed in certain locations.

foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy.

3. Action at law inadequate remedy. The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and restrictions herein contained and, therefore, in the event that the Grantor, his successors or assigns, violate or breach any of the terms, conditions and restrictions herein contained, the Grantee, 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.
4. Restoration. Upon any breach of the terms of this Deed of Easement by Grantor, Grantee may require by written demand to the Grantor that the Property be restored promptly to the condition required by this Deed of Easement. Upon Grantor's receipt of a written demand by the Grantee to restore the property to the condition required by the Deed of Easement, Grantor will have thirty (30) days to either restore the property or file with the Circuit Court of Fauquier County an action to determine whether or not a breach has occurred. Grantee's right to enter onto the property and restore the property shall be tolled during the pendency of any suit filed under the terms of this section. Upon the expiration of the 30 day period or the entry of a final judgment by the Circuit Court of Fauquier County, the Grantee may, but is not required, to restore the Property to a condition consistent with the terms of this Deed of Easement and assess the cost of such restoration against the owner of the parcel as a lien against the Property, provided, however, that no such lien shall affect the rights of a subsequent bona fide purchaser unless a memorandum of such lien was recorded among the land records prior to such purchase. Such lien shall be subordinate to any deed of trust recorded prior to the recordation of a memorandum of such lien.
5. Failure to enforce does not waive right to enforce. The failure of Grantee to enforce any term of this Deed of Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantor from thereby complying with any such term. Furthermore, the Grantor hereby waives any defense of laches, estoppel, or prescription.
6. Costs of Enforcement. Any costs incurred by the Grantee in any Court action or in any restoration project instituted under Section 3.C.4, including, without limitation, costs of suits and reasonable attorney's fees shall be borne by the Grantor.
7. No right of enforcement by the public. This Deed of Easement does not create, and shall not be construed to create, any right of the public to maintain a suit for any damages against the Grantor for any violation of this Deed of Easement.

performed by an appraiser mutually agreed to by the Grantor and by the County. Any other proceeds not attributable to the easement shall be the property of the landowner.

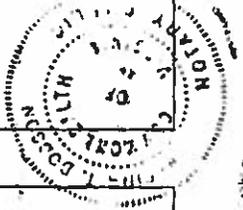
- M. Transfer of easement by Grantee. Except as qualified by Paragraph T herein, neither Grantee nor its successors and assigns may convey or lease the conservation easement established and conveyed hereby unless the Grantee conditions the conveyance or lease on the requirements that: (1) the conveyance or lease is subject to contractual arrangements that will assure that the Property is subject to the restrictions and conservation purposes set forth in this Deed of Easement, in perpetuity; and (2) the transferee is an organization then qualifying as an eligible donee as defined by Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder, or is a public body within the meaning of Virginia Code §10.1-1700.
- N. Construction. This Deed of Easement shall be construed to promote the purposes of this Deed of Easement and the PDR Program.
- O. Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its employees, agents, successors and assigns from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments including, without limitation, reasonable attorney's fees arising from, or in any way connected with, the result of a violation or alleged violation on the Property of any State or Federal environmental statute or regulation.
- P. Controlling Law. The interpretation and performance of this Deed of Easement shall be governed by the laws of the Commonwealth of Virginia.
- Q. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Deed of Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Deed of Easement, all of which are merged herein. Any amendments to this Deed of Easement shall be in writing, signed by each of the parties.
- R. Forms and Tax Credits or Deductions. The parties hereto agree and understand that any value of this donation claimed for tax purposes must be fully and accurately substantiated under the requirement of State and Federal tax codes applicable to donations of conservation easements and by an appraisal from a qualified appraiser as defined in IRS regulations (see section 1.170A-13(c)(5)), and that the appraisal is subject to review and audit by the appropriate tax authorities. **THE COUNTY OF FAUQUIER AND ANY CO-HOLDER MAKE NO EXPRESS OR IMPLIED WARRANTIES REGARDING WHETHER ANY TAX BENEFITS WILL BE AVAILABLE TO GRANTOR FROM THE DONATION OF THIS EASEMENT, NOR WHETHER ANY SUCH TAX BENEFITS MIGHT BE TRANSFERABLE, NOR WHETHER THERE WILL BE ANY MARKET FOR ANY TAX BENEFITS WHICH MIGHT BE TRANSFERABLE, NOR WHETHER**

COMMONWEALTH OF VIRGINIA
 COUNTY OF Fauquier to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this 30th day of April, 2004, by William D. Peters, Grantor and party of the first part.

Regina T. Dodson
 Notary Public

My commission expires:
Jan. 31, 2008

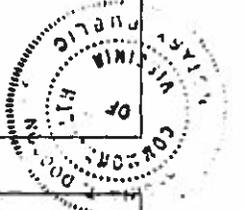


COMMONWEALTH OF VIRGINIA
 COUNTY OF Fauquier to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this 30th day of April, 2004, by Janet L. Peters, party of the second part.

Regina T. Dodson
 Notary Public

My commission expires:
Jan. 31, 2008



COMMONWEALTH OF VIRGINIA
 COUNTY OF Fauquier to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this 30th day of April, 2004, by G. Robert Lee, County Administrator, on behalf of Fauquier County.

Regina T. Dodson
 Notary Public

My commission expires:
Jan. 31, 2008



EXHIBIT A

PARCEL ONE: PIN #7829-62-7883:

ALL that certain tract or parcel of land lying and being situate in Cedar Run Magisterial District, Fauquier County, Virginia, located on the southeast side of Route 806, containing 100 acres, more or less, as the same is shown and described on plat of survey by Wm. A. Cowne, dated August 24, 1912, and recorded among the Fauquier County, Virginia land records in Deed Book 111 at page 15.

LESS AND EXCEPT therefrom the following off-conveyances:

- (1) 0.50 acres conveyed to Botts in Deed Book 121, page 86;
- (2) 10.000 acres conveyed to R. E. Faylor Construction Co. in Deed Book 673 at page 1745;
- (3) 10.000 acres conveyed to Robert G. Oxenrider in Deed Book 550 at page 376;
- (4) 0.651 acres conveyed to Robert G. Oxenrider in Deed of Exchange recorded in Deed Book 725 at page 1247; and TOGETHER WITH 0.651 acres acquired in the aforesaid Deed of Exchange recorded in Deed Book 725 at page 1247.

ALSO LESS AND EXCEPT therefrom:

- (5) 6.3692 acres shown on Boundary Adjustment Plat by Huntley, Nyce & Associates, Ltd. dated December 1, 2003.

LEAVING, by calculation only, 72.1908 acres, more or less.

AND BEING, generally, the residue of that certain real estate containing 100 acres, more or less, as to which a one half undivided interest was conveyed to William D. Peters by Deed from Hunter B. Chapman, Trustee, dated February 15, 1983, and found of record in Deed Book 441, page 360, and as to which the remaining one-half undivided interest was devised to William D. Peters under the Will of Lacy W. Peters who died May 20, 1983, and whose Will was admitted to probate in Will Book 132 at page 451 in the Office of the Clerk of the aforesaid Circuit Court.

PARCEL TWO: PIN #7829-84-3182:

ALL that certain tract or parcel of land lying and being situate in Cedar Run Magisterial District, Fauquier County, Virginia, containing 167 acres, more or less, and being shown as Lot 2 on plat of survey attached to Deed of Partition dated June 12, 1928, and recorded in Deed Book 132 at page 193 among the aforesaid County land records.

LESS AND EXCEPT from the aforesaid tract of 167 acres, 2.1475 acres, more or less, and TOGETHER WITH 5.2975 acres and 0.1421 acres, more or less, as the same are shown on Boundary Line Adjustment plat recorded in Deed Book 821 at page 1386 among the aforesaid land records, leaving, by calculation only, 169.9024 acres, more or less.

ALSO TOGETHER WITH 6.3792 acres and 0.4659 acres, more or less, as the same are shown on Boundary Adjustment Plat by Huntley, Nyce & Associates, Ltd., dated December 1, 2003.

CONTAINING, by calculation only, 177.0317 acres, more or less.

June 20, 1918, and recorded in Deed Book 117 at page 177 among the Fauquier County, Virginia land records.

PARCEL SIX: PIN #7829-76-7054:

ALL THAT certain tract or parcel of land lying and being situate in Cedar Run Magisterial District, Fauquier County, Virginia, described as Lot 1, containing 17 acres, 3 roods and 24 poles, and being shown on plat of survey prepared by Wm. A. Cowne, S.F.C., attached to Deed dated June 20, 1918, and recorded in Deed Book 117 at page 177 among the Fauquier County, Virginia land records.

PARCEL SEVEN: PIN #7829-77-7303:

ALL THAT certain tract or parcel of land lying and being situate in Cedar Run Magisterial District, Fauquier County, Virginia, containing 30 acres, more or less, and is composed of those two certain fields, lying to the North of a former purchase of E. G. Lomax of S. M. Lomax being Lot No. 1 described in Deed Book 117 at page 177. The property hereby conveyed is bounded on the East by the lands of Eddie Peters and Elmer Peters (formerly Steve Boteler), thence is a straight line along the present fence line to the property of E. G. Lomax and corner of E. G. Lomax and S. M. Lomax; thence along the line of E. G. Lomax land allotted him in the division between himself and S. M. Lomax recorded in Deed Book 117 at page 175, to the point of beginning.

PARCEL EIGHT: PIN #7829-78-2081:

ALL THAT certain tract or parcel of land containing 49.1027 acres, more or less, according to survey of Rush W. Boyer made November 19, 1946, which said survey and plat thereof are recorded in Deed Book 160 at page 469 among the Fauquier County, Virginia land records.

LESS AND EXCEPT therefrom 33.77 acres conveyed to F. Scott Scegers by Deed recorded in Deed Book 548 at page 870 among the aforesaid land records.

PARCEL NINE: PIN #7829-98-4688:

ALL THOSE certain tracts or parcels of land lying and being situate in Cedar Run Magisterial District, Fauquier County, Virginia, containing 51 acres and 2 acres, 35 poles, and being described in a Deed of Partition dated June 12, 1928, and recorded in Deed Book 132 at page 193 among the aforesaid County land records.

AND BEING, as to parcels four through nine above, a portion of the property acquired by William D. Peters under the Last Will and Testament of Lacy W. Peters who died May 20, 1983, and whose Will dated February 25, 1980, is probated among the aforesaid County land records in Will Book 132 at page 481.

CERTIFICATE OF PURCHASE OF TITLE INSURANCE

I hereby certify that the Board of Supervisors of Fauquier County, Virginia, a body politic, has purchased a policy of title insurance in the amount of \$620,000.00 covering the property described in the Deed of Easement from William D. Peters and Janet L. Peters, husband and wife, to which this Certificate is attached and made a part thereof. The policy of title insurance is on file with the Clerk of the County.

RESPECTFULLY CERTIFIED this 30th day of April, 2004.



Paul S. McCulla, County Attorney

RECORDED IN CLERKS OFFICE OF
FAUQUIER ON
April 30, 2004 AT 10:01 20 AM
\$0.00 GRANTOR TAX PD
AS REQUIRED BY VA CODE § 58.1-802
STATE: \$0.00 LOCAL: \$0.00
FAUQUIER COUNTY, VA

