

Instrument Control Number

13657

# Commonwealth of Virginia

## Land Record Instruments

### Cover Sheet - Form A

[ILS VLR Cover Sheet Agent 1.0.66]



Doc ID: 004968480023 Type: DEE  
 Recorded: 10/29/2008 at 09:51:32 AM  
 Fee Amt: \$0.00 Page 1 of 23  
 Albemarle County, VA  
 Debra M. Shipp Clerk  
 File# 2008-00013657

BK 3658 PG 8-30

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Date of Instrument: [8/15/2008 ]

Instrument Type: [DE ]

Number of Parcels [ 1 ]

Number of Pages [ 21 ]

City ☐ County ☒ [Albemarle County ] (Box for Deed Stamp Only)**First and Second Grantors**

Last Name	First Name	Middle Name or Initial	Suffix
[Dowell ]	[Michael ]	[Allen ]	[ ]
[Coleman ]	[H. ]	[Edmunds ]	[III ]

**First and Second Grantees**

☒ ☐

☒ ☐

Last Name	First Name	Middle Name or Initial	Suffix
[Virginia Outdoors Found ]	[ ]	[ ]	[ ]
[County of Albemarle, VA ]	[ ]	[ ]	[ ]

Grantee Address (Name) [VOF & County of Albemarle, VA ]  
 (Address 1) [401 McIntire Road ]  
 (Address 2) [ ]  
 (City, State, Zip) [Charlottesville ] [VA ] [22902 ]  
 Consideration [1,130,290.00 ] Existing Debt [0.00 ] Assumption Balance [0.00 ]

Prior Instr. Recorded at: City ☐ County ☒ [Albemarle County ] Percent. in this Juris. [ 100]

Book [662 ] Page [111 ] Instr. No [ ]

Parcel Identification No (PIN) [05000-00-00-04500 ]

Tax Map Num. (if different than PIN) [ ]

Short Property Description [329.92 acres, more or less, Rt 231, Albemarle County, VA ]

Current Property Address (Address 1) [2425 Strawberry Hill Farm ]

(Address 2) [ ]

(City, State, Zip) [Gordonsville ] [VA ] [22942-1707]

Instrument Prepared by [Frank A. Thomas, III, Esq ]

Recording Paid for by [Albemarle County ]

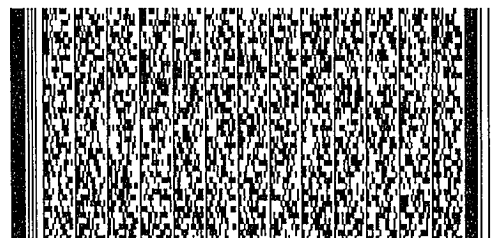
Return Recording to (Name) [Albemarle County Attorney's Office ]

(Address 1) [401 McIntire Rd, Suite 325 ]

(Address 2) [ ]

(City, State, Zip) [Charlottesville ] [VA ] [22902 ]

Customer Case ID [ ] [ ] [ ]



[illegible]

# Commonwealth of Virginia

## Land Record Instruments

### Continuation Cover Sheet

#### Form B

[illegible]

TAX EXEMPT

GRANTOR

GRANTEE

CORP

**Grantors/Grantees/Parcel Continuation Form B**[illegible]

Prior Instr. Recorded at: City	<input type="text"/>	County	<input type="text"/>	[	]	Percent. in this Juris.	[	]
Book	[	]	Page	[	]	Instr. No	[	]
Parcel Identification No (PIN)	[							
Tax Map Num. (if different than PIN)	[							
Short Property Description	[							
	[							
Current Property Address (Address 1)	[							
(Address 2)	[							
(City, State, Zip)	[							



August 15, 2008

Prepared by: Frank A. Thomas, III

TAX MAP NO. OR PIN: 05000-00-00-04500

**Exempted from recordation tax  
under the Code of Virginia (1950), as amended,  
Sections 58.1-811 (A) (3), 58.1-811 (D) and 10.1-1803  
and from Circuit Court Clerk's fee under Section 17.1-266**

**THIS DEED OF EASEMENT** (this "Easement"), made this 15<sup>th</sup> day of August, 2008, among **MICHAEL ALLEN DOWELL, H. EDMUNDS COLEMAN, III, and JOHN GORDON COLEMAN, JR.** (collectively "Grantor"); the **VIRGINIA OUTDOORS FOUNDATION**, an agency of the Commonwealth of Virginia, ("Grantee VOF") and the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "County") as Grantees (the designations "Grantor" and "Grantee" refer to the Grantor and the Grantees and their respective successors and assigns).

**WITNESSETH:**

**WHEREAS**, Grantor is the owner in fee simple of real property situated on State Route 231 in Albemarle County, Virginia, containing in the aggregate 329.92 acres, more or less, as further described below (the "Property"), and desires to convey to the Grantees a perpetual conservation and open-space easement over the Property as herein set forth; and

**WHEREAS**, Grantee VOF is a governmental agency of the Commonwealth of Virginia and a "qualified organization" and "eligible donee" under Section 170(h)(3) of the Internal Revenue Code of 1986, as amended (and corresponding provisions of any subsequent tax laws)(IRC) and Treasury Regulation §1.170A-14(c)(1), and is willing to accept a perpetual conservation and open-space easement over the Property as herein set forth; and

**WHEREAS**, Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the "Open-Space Land Act"), declares that the preservation of open-space land serves a public purpose by curbing urban sprawl, preventing the spread of urban blight and deterioration and encouraging more economic and desirable urban development, helping provide or preserve necessary park, recreational, historic and scenic areas, and conserving land and other natural resources, and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land; and

**WHEREAS**, pursuant to Sections 10.1-1700 and 10.1-1703 of the Open-Space Land Act, the purposes of this Easement include retaining and protecting open-space and natural resource values of the Property, and the limitation on division, residential construction and commercial and industrial uses contained in Section II ensures that the Property will remain perpetually available for agriculture, livestock production, forest or open-space use, all as more particularly set forth below; and

**WHEREAS**, Chapter 525 of the Acts of 1966, Chapter 18, Title 10.1, §§10.1-1800 through 10.1-1804 of the Code of Virginia, declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Virginia Outdoors Foundation to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space and recreational lands of the Commonwealth; and

**WHEREAS**, under the County's Acquisition of Conservation Easements ("ACE") Program, codified in Appendix A.1 of the Albemarle County Code, the County is authorized to acquire conservation easements over qualifying properties in order to accomplish the purposes of the ACE 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 (hereinafter, the "Easement"); and

**WHEREAS**, the Grantees' acquisition of this easement furthers the purpose of the ACE Program in that such acquisition, among other things, assures that Albemarle County's resources are protected and efficiently used, establishes and preserves open space, preserves the rural character of Albemarle County, and furthers the goals of the Albemarle County Comprehensive Plan to protect Albemarle County's natural, scenic, and historic resources, promotes the continuation of a viable agricultural and forestal industry and resource base, and protects Albemarle County's surface water and ground water supplies; and

**WHEREAS**, this Easement is granted "exclusively for conservation purposes" under IRC §170(h)(1)(C) because it effects "the preservation of open space (including farmland and forest land)" under IRC 170(h)(4)(A)(iii). Specifically, the preservation of open space on the Property is pursuant to clearly delineated state and local governmental conservation policies and will yield a significant public benefit; and

**WHEREAS**, this open-space easement in gross 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 Open-Space Land Act cited above;

c. Chapter 18, of Title 10.1, §§10.1-1800 through 10.1-1804 of the Code of Virginia cited above;

d. 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;

e. Chapter 32, of Title 58.1, §§58.1-3230 through 58.1-3244 of the Code of Virginia, which authorizes special use-value tax assessments for real estate devoted to agricultural, forestal, horticultural and open-space use;

**WHEREAS**, the Rural Areas Plan of the Albemarle County Comprehensive Plan adopted on March 2, 2005, states in its Introduction that: "Agricultural and forestal resources have been identified as the most critical County resources and the desired primary land use in the Rural Areas. Such uses play an important and long-standing role in the environment, heritage, and economy of the County. Loss of these resources to development is irreversible and irreplaceable. Stewardship of these resources also provides an opportunity to conserve and efficiently use other resources such as: (1) water resources (with use of property conservation techniques); (2) natural, scenic, and historic resources with the maintenance of pasture land, farmland, and forested areas; and (3) fiscal resources by limiting development and lessening the need to provide public services to wide areas of the County."; and

**WHEREAS**, this Rural Areas Plan in its section titled "Guiding Principles For The Rural Areas" states the following "defining principles":

- (i) Agriculture - Protect Albemarle County's agricultural lands as a resource base for its agricultural industries and for related benefits they contribute towards the County's rural character, scenic quality, natural environment, and fiscal health.
- ii) Forestry resources - Protect Albemarle County's forests as a resource base for its forestry industries and watershed protection.
- iii) Land Preservation - Permanently preserve and protect Albemarle County's rural land as an essential and finite resource through public ownership or through conservation easements.

- iv) Land Conservation - Protect Albemarle County's rural land through planned management of open spaces to prevent exploitation, destruction, or neglect.
- v) Water supply resources - Protect the quality and supply of surface water and groundwater resources.
- vi) Natural resources - Preserve and manage the Rural Areas' natural resources in order to protect the environment and conserve resources for future use.
- vii) Scenic resources - Preserve the County's rural scenic resources as being essential to the County's character, economic vitality, and quality of life.
- viii) Historical, archeological and cultural resources - Protect the Rural Areas' historic, archeological and cultural resources."; and

**WHEREAS**, this Rural Areas Plan further notes in its section titled "Land Preservation Or Voluntary Land Conservation" that: "Some landowners are willing to donate easements that protect important resources by eliminating development potential. The Virginia Outdoors Foundation and other organizations hold such easements."; and

**WHEREAS**, the conveyance of this easement on the Property will further these principles and goals of the Albemarle County Comprehensive Plan and that Plan's strategies to: (i) "Encourage the protection of prime agricultural soils and working farms from non-agricultural development through ... conservation easements, ...", (ii) "Encourage protection of prime forestal soils from non-forestal development through ... conservation easements, ..." and (iii) "Continue to actively promote conservation easements."; and

**WHEREAS**, the Property has a total of twenty (20) division rights, as that term is defined in Appendix A.1 of the Albemarle County Code which, if fully exercised, could result in the creation of twenty (20) parcels and a total of twenty (20) dwelling units (one on each parcel created); this Easement will protect the Property by providing that it will not be divided into more than two (2) parcels, and allowing up to two (2) principal dwellings, one of which is existing at the time of the granting of this Easement and two (2) accessory dwellings, thereby resulting in the extinguishment of the right to create eighteen (18) parcels and establish sixteen (16) dwelling units; and

**WHEREAS**, the Virginia Outdoors Foundation has accepted numerous open-space easements in the area known as the Southwest Mountains situated in northeastern Albemarle County between "Monticello" and "Montpelier," an area possessing houses and farms of historic significance as well as extraordinary natural and pastoral beauty and in recognition thereof, the Virginia Department of Historic Resources has designated the Southwest Mountains area of Albemarle County as a Virginia Rural Historic District

which is now listed on the Virginia Register and the National Register of Historic Places;  
and

**WHEREAS**, the Property lies within said Southwest Mountains Rural Historic District; and

**WHEREAS**, the Property lies on State Route 231, said road having been designated by the General Assembly as a Virginia Scenic Byway, and contributes in its undeveloped state to the scenic view enjoyed by the public therefrom; and

**WHEREAS**, the Property lies adjacent to other parcels of land under open-space easements deeded to the Grantee VOF and contributes to the open-space values of the area containing such lands under easements; and

**WHEREAS**, the Grantor and the County have entered into an agreement under the terms of which the County has agreed to pay the Grantor the sum of One Million One Hundred Thirty Thousand Two Hundred Ninety Dollars (\$1,130,290.00) for the Easement, a portion of which is funded by a grant from VOF to the County from the Open-Space Land Preservation Trust Fund; and

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

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

**WHEREAS**, Grantees have 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

**WHEREAS**, Grantees have 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**, Grantees, by acceptance of this Easement, designate the Property as property to be retained and used in perpetuity for the preservation and provision of open-space land pursuant to the Open-Space Land Act.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants herein and their acceptance by Grantees, Grantor does hereby give, grant and convey to Grantees 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 in Schedule "A" attached hereto and made a part hereof, and consists of 329.92 acres, more or less, located in Rivanna Magisterial District, Albemarle County, Virginia, near

Cismont, fronting on State Route 231. The Property is also identified as Tax Map and Parcel No. 0500-00-00-0450 among the tax records of the County of Albemarle, 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 conservation purpose of this Easement is to preserve land for agricultural use, preservation of scenic open space, preservation of open space designated by local government and to 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 open-space scenic, historic values, and its values as land preserved for open-space and rural uses including agriculture, livestock production and forestry.

### **SECTION II - RESTRICTIONS**

Restrictions are hereby imposed on the use of the Property pursuant to the public policies set forth above. The acts that Grantor covenants to do and not to do upon the Property, and the restrictions that Grantees are hereby entitled to enforce, are and shall be as follows:

1. **DIVISION.** The Property shall not be divided into, or separately conveyed as, more than two (2) parcels. Grantor shall give each Grantee written notice prior to making any division of the Property.

Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered divisions of the Property, provided that each Grantee is made party to the deed creating the boundary line adjustment and at least one of the following conditions is met:

(i) The entire adjacent parcel is subject to a recorded open-space easement owned by Grantee VOF; or

(ii) The proposed boundary line adjustment shall have been reviewed and approved in advance by the Board of Trustees of Grantee, VOF and the Board of Supervisors of Albemarle County.

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

(i) two (2) single-family dwellings, of which one (1) exists on the date of this Easement; and



(ii) two (2) secondary dwellings, or dwelling units such as barns or garage apartments. Such dwellings shall not individually exceed two thousand (2,000) square feet of above-ground enclosed living area; and

(iii) non-residential outbuildings and structures commonly and appropriately incidental to the dwellings permitted in subsections (i) and (ii) 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 (iii), "near" means within two hundred (200) feet of such dwelling, unless prior written approval shall have been obtained from Grantee VOF 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

(iv) farm buildings or structures, except that a farm building or farm structure exceeding four thousand five hundred (4,500) square feet in ground area may not be constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantee VOF, which approval shall be limited to consideration of 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(i).

In the event of division of the Property as provided in Paragraph 1, permitted dwellings shall be allocated between the parcels in the instrument creating the division or other recorded instrument.

Grantor shall give Grantee VOF thirty (30) days' written notice before beginning construction or enlargement of any dwelling on the Property.

To protect the scenic values of the Property, no new dwelling, building or other structure shall be constructed within one thousand two hundred (1,200) feet of the western boundary of State Route 231. This prohibition shall not apply to the construction or maintenance of fencing, livestock feeding or watering troughs, mailboxes, gateposts, or permitted signs, or to the repair or replacement of any buildings or structures existing as of the date of this Deed of Easement.

Private roads and utilities to serve permitted buildings or structures on the Property, and private roads and utilities to parcels created by the permitted division of the Property, and roads with permeable surfaces for other permitted uses, such as farming or forestry, may be constructed and maintained. Public and private utilities that do not serve the Property shall not cross the Property unless Grantees determine that the construction and maintenance of such utilities will not impair the conservation values of the Property and give its prior written approval for such construction and maintenance. Grantor reserves and retains separate rights to approve such public or private utilities.

The collective footprint of all buildings and structures on the Property, excluding roads, shall not exceed one percent (1%) of the total area of the Property, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values protected herein, Grantee VOF 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 (i) through (iv) above and all other impervious surfaces, excluding roads. In the event of division of the Property, the collective footprint of all structures and all other impervious surfaces on each parcel, excluding roads, shall not exceed one percent (1%) of the total area of such parcel unless otherwise allocated in the instrument of transfer or other recorded instrument.

3. **INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Industrial or commercial activities other than the following are prohibited: (i) agriculture, livestock production (animal husbandry), equine activities and forestry, and related small-scale incidental commercial or industrial operations that Grantee VOF approves in writing as being consistent with the conservation values of this Easement; (ii) processing and sale of products produced on the Property as long as no additional buildings are required; (iii) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property and that do not diminish the conservation values herein protected; and (iv) activities that can be and in fact are conducted within permitted buildings without material alteration to their external appearance. Temporary outdoor activities involving one hundred (100) or more people shall not exceed seven (7) consecutive days in any ninety (90) day period without prior written approval of the Grantee VOF.
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 VOF or the Virginia Department of Forestry. A pre-harvest plan consistent with the Forest Stewardship Management Plan shall be submitted to Grantee VOF for approval thirty (30) days before beginning any material timber harvest. The objectives of the Forest Stewardship Management Plan may include, but are not limited to, forest health and timber management. Grantee VOF shall be notified thirty (30) days prior to the clearing of over ten (10) acres of forestland for grassland, crop land, or in association with the construction of permitted buildings.

Non-commercial harvest of trees for trail clearing, firewood or Grantor's domestic use, trees that pose a hazard to human health or safety or to property, or removal of invasive species shall not require a Forest Stewardship Management Plan.

5. **RIPARIAN BUFFER.** To protect water quality there shall be no plowing, cultivation or other earth-disturbing activity in a thirty-five (35) foot buffer strip along each edge of the Mechunk Creek as measured from the top of the bank (or if applicable from the high water mark in tidal creeks, streams, etc.), 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 stream crossings that do not obstruct water flow, (iv) creation and maintenance of foot or horse trails with unimproved surfaces, and (v) dam construction to create ponds. Within this buffer strip there shall be (a) no buildings or other substantial structures constructed, (b) no storage of compost, manure, fertilizers, chemicals, machinery or equipment, and (c) no removal of trees except removal of invasive species or removal of dead, diseased or dying trees or trees posing an imminent human health or safety hazard. Mowing within buffer areas is permitted.
6. **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, (iii) erosion and sediment control pursuant to a government-required 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 VOF. 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.
7. **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.
8. **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 (9) square feet in size.
9. **GENERAL.** Grantor covenants that no acts or uses that are inconsistent with the purpose of this Easement or the conservation values herein protected shall be conducted on the Property. This paragraph shall not be construed to prevent any

matter permitted under the Restrictions set forth in Paragraphs 1 through 8 of this Section II as the Grantees have 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 values furthered by this Easement.

### **SECTION III – ENFORCEMENT**

1. **RIGHT OF INSPECTION.** Representatives of each Grantee may enter the Property from time to time for purposes of inspection (including photographic documentation of the condition of the Property) and enforcement of the terms of this Easement after permission from or reasonable notice to Grantor or 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 Grantor or Grantor's representative being given at the earliest practicable time.
2. **ENFORCEMENT.** Grantees have 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 conveyance 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 Grantees for any reasonable costs of enforcement, including costs of restoration, court costs and attorney's fees, in addition to any other payments ordered by the court. Either 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 either 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 offices of the Grantees including, but not limited to, the Baseline Documentation Report ("Documentation Report"), describes the condition and character of the Property at the time of the gift. The Documentation Report may be used to determine compliance with and enforcement of the terms of this Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. Grantor has made available to Grantees, prior to conveyance of this Easement, documentation sufficient to establish the condition of the Property at the time of the conveyance. The parties hereby acknowledge that the Documentation Report 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. Landowner's rights and obligations under this Easement terminate upon proper transfer of Landowner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
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 (other than utility and access easements) including, but not limited to, any mortgages not subordinated to this Easement.
4. **ACCEPTANCE.** Acceptance of this conveyance by Grantee VOF is authorized by Virginia Code Section 10.1-1801 and is evidenced by the signature of a Deputy Director, by authority granted by VOF's Grantee's Board of Trustees and the County acting by and through its County Executive, duly authorized by resolution adopted by the Board of Supervisors of the County of Albemarle, Virginia, accepts the conveyance of this property pursuant to Virginia Code Section 15.2-1803, as evidenced by the County Executive's signature hereto and the recordation of this Deed.

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 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 each Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantees 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 GRANTEES.** Grantor agrees to notify Grantees 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; 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.
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 IRS regulations (see Section 1.170A-13(c)(5)), and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantees make 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, each Grantee acknowledges and confirms receipt of the Easement and further acknowledges that such Grantee has not provided any goods

or services to Grantor in consideration of the grant of the Easement, except for the cash consideration recited herein.

10. **MERGER.** Grantor and Grantees 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 GRANTEES.** Neither Grantee may transfer or convey this Easement unless such 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.
12. **GRANTEES' PROPERTY RIGHT.** Grantor agrees that the conveyance of this Easement gives rise to a property right, immediately vested in Grantees, with a fair market value that is equal to the proportionate value that the perpetual conservation restriction at the time of the conveyance bears to the value of the Property as a whole at that time.
13. **EXTINGUISHMENT, CONVERSION, DIVERSION.** Grantor and Grantees intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Section 10.1-1704 of the Open-Space Land Act which does not permit extinguishment of open-space easements or loss of open space. Nevertheless, should an attempt be made to extinguish this Easement, such extinguishment can be made only by judicial proceedings and only if in compliance with Section 10.1-1704. In any sale or exchange of the Property subsequent to an extinguishment, Grantees shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Section 12 above, but not to be less than the proportion that the value of this Easement at the time of extinguishment bears to the then value of the Property as a whole. Grantees shall use all their share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this easement and the Open-Space Land Act.
14. **AMENDMENT.** Grantees and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property, provided that no amendment shall affect this Easement's perpetual duration or reduce the Property's conservation values. No amendment shall be effective unless documented in a notarized writing executed by each Grantee and Grantor and recorded among the land records of the County of Albemarle, Virginia.
15. **SEVERABILITY.** If any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.

16. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement.
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 in the Circuit Court Clerk's Office of the County of Albemarle, Virginia, and either Grantee may re-record it any time as may be required to preserve its rights under this Easement.
19. **MISCELLANEOUS.** If the County of Albemarle, Virginia should cease to exist, this Easement shall vest solely in the VOF; provided, however, that VOF within two (2) years of the date the County of Albemarle ceases to exist shall convey the interest hereunder previously held by the County of Albemarle to another qualified local holder within the meaning of Virginia Code Section 10.1-1801.1.D.

(This space intentionally left blank. Signatures on next page.)



(Signatures for Deed of Easement among Michael Allen Dowell, H. Edmunds Coleman, III, and John Gordon Coleman, Jr. as Grantor and the Virginia Outdoors Foundation and the County of Albemarle Virginia as Grantee.)

WITNESS the following signatures and seals:

*Michael Allen Dowell*  
MICHAEL ALLEN DOWELL, Grantor

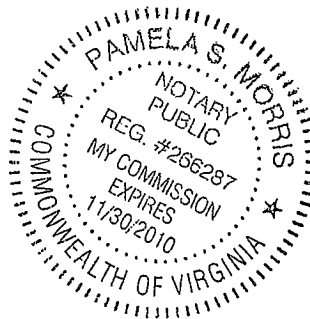
COMMONWEALTH OF VIRGINIA

~~CITY~~/COUNTY OF Orange, to-wit:

I, Pamela S. Morris, a Notary Public for the Commonwealth aforesaid, hereby certify that Michael Allen Dowell, Grantor, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 8<sup>th</sup> day of October, 2008.

Pamela S. Morris  
Notary Public  
My Commission expires: 11/30/2010  
Notary Registration No. 266287  
(SEAL)



(Signatures continued on next page.)

(Signatures for Deed of Easement among Michael Allen Dowell, H. Edmunds Coleman, III, and John Gordon Coleman, Jr. as Grantor and the Virginia Outdoors Foundation and the County of Albemarle Virginia as Grantee.)

H. Edmunds Coleman III  
H. EDMUNDS COLEMAN, III

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Winchester, to-wit:

I, Kara Elizabeth Edmonson, a Notary Public for the Commonwealth aforesaid, hereby certify that H. Edmunds Coleman, III, Grantor, personally appeared before me this day and acknowledged the foregoing instrument.

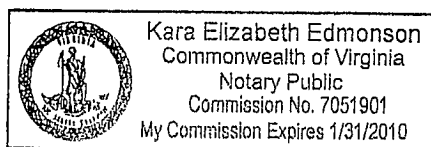
WITNESS my hand and official seal this 8<sup>th</sup> day of September, 2008.

Kara Elizabeth Edmonson  
Notary Public

My Commission expires: January 31, 2010


Notary Registration No. 7051901

(SEAL)



(Signatures continued on next page.)

(Signatures for Deed of Easement among Michael Allen Dowell, H. Edmunds Coleman, III, and John Gordon Coleman, Jr. as Grantor and the Virginia Outdoors Foundation and the County of Albemarle Virginia as Grantee.)

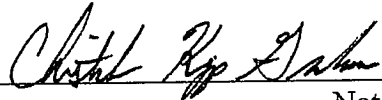
  
JOHN GORDON COLEMAN, JR.

~~State of Alabama~~  
~~COMMONWEALTH OF VIRGINIA~~

CITY/COUNTY OF Tuscaloosa, to-wit:

I, Christopher Kipp Graham, a Notary Public for the Commonwealth aforesaid, hereby certify that John Gordon Coleman, Jr., Grantor, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 16<sup>th</sup> day of September, 2008.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires 12-28-11  
My Commission expires: \_\_\_\_\_  
Notary Registration No. \_\_\_\_\_  
(SEAL)

(Signatures continued on next page.)

(Signatures for Deed of Easement among Michael Allen Dowell, H. Edmunds Coleman, III, and John Gordon Coleman, Jr. as Grantor and the Virginia Outdoors Foundation and the County of Albemarle Virginia as Grantee.)

Accepted:

**VIRGINIA OUTDOORS FOUNDATION**

By: F. Bruce Stewart  
Name: F. Bruce Stewart  
Title: Staff Attorney

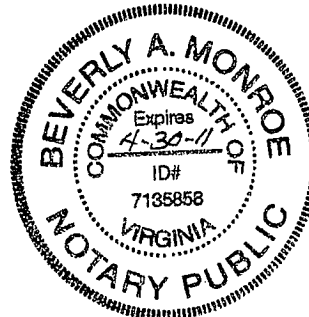
**COMMONWEALTH OF VIRGINIA**

**CITY/COUNTY OF** Williamsburg, to-wit:

I, BEVERLY A. MONROE, a Notary Public for the Commonwealth aforesaid, hereby certify that F. Bruce Stewart, Deputy Director or Staff Counsel of the Virginia Outdoors Foundation, personally appeared before me this day and acknowledged the foregoing instrument on behalf of the Virginia Outdoors Foundation.

**WITNESS** my hand and official seal this 17th day of October, 2008.

Beverly A. Monroe  
Notary Public  
My Commission expires: April 30, 2011  
Notary Registration No. 7135858  
(SEAL)



(Signatures continued on next page.)

(Signatures for Deed of Easement among Michael Allen Dowell, H. Edmunds Coleman, III, and John Gordon Coleman, Jr. as Grantor and the Virginia Outdoors Foundation and the County of Albemarle Virginia as Grantee.)

COUNTY OF ALBEMARLE, VIRGINIA

By:

Robert W. Tucker, Jr.  
Name: Robert W. Tucker, Jr.  
Title: County Executive

COMMONWEALTH OF VIRGINIA

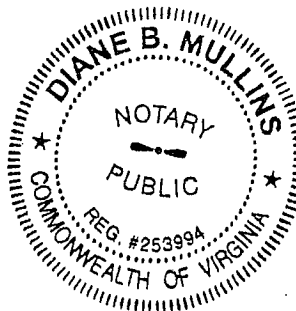
CITY/COUNTY OF Charlottesville, to-wit:

I, Diane B. Mullins, a Notary Public for the Commonwealth aforesaid, hereby certify that Robert W. Tucker, Jr., County Executive, personally appeared before me this day and acknowledged the foregoing instrument on behalf of the County of Albemarle, Virginia.

WITNESS my hand and official seal this 28<sup>th</sup> day of October, 2008.

Diane B. Mullins  
Notary Public

My Commission expires: June 30 2009  
Notary Registration No. 253994  
(SEAL)



Approved as to form:

Jay M. Davis  
Albemarle County Attorney

## SCHEDULE A

**ALL THAT CERTAIN TRACT OR PARCEL OF LAND** situated in the County of Albemarle, Virginia, fronting on the west side of State Route 231, containing 332 ¼ acres, more or less, as shown on plat by J. T. E. Simms, S. A. C., dated September 1899, recorded in the Clerk's Office of the Circuit Court of the County of Albemarle, Virginia, in Deed Book 115, Page 392; **LESS AND EXCEPT** the following:

**FIRST:** those strips of land conveyed to the Commonwealth of Virginia in instrument recorded in the aforesaid Clerk's Office in Deed Book 241, Page 281;

**SECOND:** 1 acre, more or less, conveyed to Central Virginia Electric Cooperative in instrument recorded in the aforesaid Clerk's Office in Deed Book 389, Page 501; and

**THIRD:** Parcel "A" containing 1.29 acres, and Parcel "B" containing 0.72 acre, conveyed to Virginia Electric and Power Company in instrument recorded in the aforesaid Clerk's Office in Deed Book 824, Page 235, with plat attached at Page 238.

This being the same property as was conveyed to Louis Dowell, Bennie Dowell and William Dowell by Deed from Elizabeth G. Knight and John S. Knight, her husband, dated December 29, 1978, recorded December 29, 1978, in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, in Deed Book 662, Page 111. Lewis Alvin Dowell (a/k/a Louis Dowell) died testate December 11, 1992, and by his Will dated December 27, 1991, probated December 28, 1992, in Albemarle Will Book 75, Page 398, he devised his undivided interest in the subject property to W. E. Dowell, Bennie B. Dowell and Lois D. Coleman. Bennie B. Dowell died testate August 12, 1997, and by his

Will dated September 8, 1993, probated October 2, 1997, in Albemarle Will Book 88, Page 402, he devised his undivided interest in the subject property to W. E. Dowell and Michael Allen Dowell. Lois D. Coleman died intestate November 5, 1997, as evidenced by her list of heirs recorded in Orange Will Book 59, Page 661, and by operation of law, her undivided interest in the subject property vested in John Gordon Coleman, Jr. and H. Edmunds Coleman, III. W. E. Dowell, a/k/a Bill Dowell and Willy Edward Dowell, died testate April 28, 2006, and by his Will dated August 10, 1998, together with Codicil dated November 22, 2002, probated May 16, 2006, in Albemarle Will Book 116, Page 704, he devised his undivided interest in the subject property to Michael A. Dowell.

\\Carolyn's Documents\Easements\1 A - J old easements\Dowell\dowell estate new rev 8-15-08.doc

RECORDED IN CLERKS OFFICE OF  
ALBEMARLE COUNTY ON  
October 29, 2008 AT 9:51:32 AM  
\$0.00 GRANTOR TAX PD  
AS REQUIRED BY VA CODE § 58.1-802  
STATE: \$0.00 LOCAL: \$0.00  
ALBEMARLE COUNTY, VA  
DEBRA M. SMITH, CLERK

