

This document was prepared by:
Albemarle County Attorney
County of Albemarle
401 McIntire Road
Charlottesville, Virginia 22902

Parcel ID Numbers 05600-00-00-03600

This deed is exempt from taxation under Virginia Code § 58.1-811(A)(3).

DEED OF DEDICATION AND EASEMENT

THIS DEED OF DEDICATION AND EASEMENT (this “Deed”) is made this ____ day of _____, 2016 by and between **SM CHARLOTTESVILLE, LLC**, a Virginia limited liability company (the “Grantor”), to be indexed as Grantor, and the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “County”), to be indexed as Grantee.

WITNESS:

WHEREAS, the Grantor is the owner of a certain parcel of land located in the County, designated as Parcel ID 05600-00-00-03600, being the same parcel conveyed to SM Charlottesville, LLC by deed of record in the office of the Clerk of the Albemarle County Circuit Court at Deed Book 4670, Page 346 (the “Property”), more particularly shown on that certain plat prepared by Roudabush, Gale & Associates, dated January 21, 2016, last revised _____, 2016, and entitled “SUBDIVISION OF TAX MAP 56 PARCELS 35, 36 & 36A CHESTERFIELD LANDING WHITEHALL MAGISTERIAL DISTRICT ALBEMARLE COUNTY, VA”, a copy of which is attached hereto to be recorded with this deed (the “Plat”). Reference is made to the Plat for a more particular description of the easement conveyed herein.

WHEREAS, the Grantor desires to dedicate, grant and convey to the County, and the County is willing to accept, an easement over the Property for the purpose of allowing the County to establish and maintain a public access trail and greenway, including authorized improvements (collectively, the “Greenway”), subject to the terms and conditions stated in this Deed.

NOW, THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, and for other good and valuable consideration, the receipt of which is

hereby acknowledged, the Grantor hereby dedicates, grants, conveys, covenants and agrees as follows:

1. DEDICATION, GRANT AND CONVEYANCE OF EASEMENT. For and in consideration of ONE DOLLAR (\$1.00), cash in hand paid, the Grantor hereby dedicates, grants and conveys to the County and their successors and assigns (hereafter, all references to the County include its successors and assigns), with GENERAL WARRANTY AND ENGLISH COVENANTS OF TITLE, a greenway trail easement (the “Easement”) in gross over the Property described below, restricting in perpetuity the use of the Property in the manner set forth herein:

That certain easement, shown and designated as “OPEN SPACE 2” on the Plat. Reference is made to the Plat for a more particular description of the location of the Easement.

2. PURPOSES OF THE EASEMENT. The purposes of the Easement are to establish on the Property a segment of a countywide system of greenway trails that will link people to the area’s natural, recreational, cultural and commercial resources. As part of this system, the Easement will serve to protect important and/or sensitive resources, provide recreational and educational opportunities, provide an alternative transportation system, and provide an economic benefit.

3. ESTABLISHMENT AND MAINTENANCE OF THE GREENWAY. The County shall have the right to establish and maintain at its expense a Greenway within the Easement, as follows:

A. Public access trail. The County may establish and maintain, in its sole discretion, either Class A or Class B trails. The trails shall be available for pedestrians and bicyclists.

B. Improvements. The County may establish and maintain the following improvements within the Easement: (1) appropriate trail surfaces, foot bridges and associated trail structures and culverts; (2) trail markers and signs along all trails and at all points of access; (3) barriers, fences and gates to prevent motorized vehicular access into the Easement; (4) benches for the convenience and comfort of the public; and (5) all other improvements that are reasonable for a public access trail.

C. Ownership of improvements. All improvements within the Easement established by the County shall be and remain the property of the County.

D. Right to inspect, maintain and operate the greenway. The County may enter the easement to inspect, maintain and operate the Greenway as provided herein:

1. Right to disturb and maintain the Easement premises. The County shall have the right to trim, cut or remove any trees, brush or shrubbery; remove and relocate fences, structures or other obstructions; and take other similar action reasonably necessary to establish, maintain and operate an adequate and fully functioning Greenway; provided, however, that: (1) the County, at its own expense, shall restore as nearly as possible, repair and replace only ground cover disturbed, damaged or removed as a result of establishing, maintaining or operating the Greenway to the extent the restoration or replacement is consistent with its proper maintenance, operation, and use; and (2) after the County establishes the Greenway, no trees having a diameter at breast height of four (4) inches or greater shall be removed, destroyed or cut within the Easement except to protect public safety, eliminate trees that are either diseased, dying or dead, or is deemed necessary in accordance with standard arborist practices.

2. Obligation to remove trash and other debris. The County shall remove from the Easement all trash and other debris resulting from the establishment, maintenance or operation of the Greenway.

4. **RESTRICTIONS ON USES AND ACTIVITIES IN THE EASEMENT.** The County shall have the right to regulate and restrict the uses and activities of the public within the Easement, in its sole discretion.

5. **MISCELLANEOUS PROVISIONS.**

A. Easement runs with the land. The Easement shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs.

B. Exclusivity; restrictions. The Easement is an exclusive easement. Neither the Grantor nor any person acting under the Grantor's express or implied consent shall modify, alter, reconstruct, interfere with, disturb or otherwise change in any way the land or any improvement located within the Easement; and further provided that such persons shall not construct or maintain any roadway, or erect any building, fence, retaining wall or other structure within the Easement.

C. County's right to assign. The County shall have the right to assign this Deed as its interests may require. An eligible assignee shall be one that is able to perform the terms, conditions and obligations of this Deed to assure that its purposes are fulfilled.

D. Enforcement. In addition to any remedy provided by law to enforce the terms of this Deed, the parties shall have the following rights and obligations:

1. Action at law inadequate remedy. It is conclusively presumed that an action at law seeking a monetary remedy is an inadequate remedy for any breach or violation, or any attempted breach or violation, of any term of this Deed.

2. Failure to enforce does not waive right to enforce. The failure of the County to enforce any term of this Deed shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve the Grantor from thereafter complying with any such term.

3. No third party right of enforcement. Nothing in this Easement shall create any right in the public or any third party to maintain any suit or action against any party hereto.

E. Relation to applicable laws. This Deed does not replace, abrogate or otherwise supersede any federal, state or local laws applicable to the Property.

F. Severability. If any provision of this Deed is determined to be invalid by a court of competent jurisdiction, the remainder of this Easement shall not be affected thereby.

G. Recordation. Upon execution by the parties, this Deed shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of Albemarle, Virginia.

H. Authority to accept easement. The County is authorized to accept the Easement pursuant to Virginia Code § 15.2-1800.

I. Hold harmless. The County shall hold the Grantor harmless as provided in Virginia Code § 29.1-509(E).

WITNESS the following signatures.

GRANTOR:

SM CHARLOTTESVILLE, LLC, a Virginia
limited liability company

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____,
2016 by _____, as _____ of SM Charlottesville, LLC, a Virginia
limited liability company, Grantor.

Notary Public

My Commission Expires:_____

Registration number:_____

GRANTEE:

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Thomas C. Foley
County Executive

Approved as to form:

County Attorney

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by Thomas C. Foley, as County Executive, on behalf of Albemarle County, Grantee.

Notary Public

My Commission Expires: _____
Registration number: _____