

Instrument Control Number

005999

**Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A**

[ILS VLR Cover Sheet Agent 1.0.86]

Doc ID: 003281080012 Type: DEE
Recorded: 04/23/2007 at 11:30:36 AM
Fee Amt: \$17.00 Page 1 of 12
Albemarle County, VA
Shelby Marshall Clerk Circuit Court
File# 2007-00005999

BK 3404 PG 288-299

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Date of Instrument: [4/2/2007]
Instrument Type: [DE]

Number of Parcels [2]

Number of Pages [10]

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

Last Name	First Name	Middle Name or Initial	Suffix
[Chester]	[Elizabeth]	[B.]	[Trustee]
[Chester]	[Donal]	[G.]	[Trustee]

First and Second Grantees

☒ ☐
☒ ☐

Last Name	First Name	Middle Name or Initial	Suffix
[County of Albemarle, VA]	[]	[]	[]
[Albemarle County PRFA]	[]	[]	[]

Grantee Address (Name) [County of Albemarle, VA]
(Address 1) [401 McIntire Road]
(Address 2) []
(City, State, Zip) [Charlottesville] [VA] [22902]
Consideration [309,760.00] Existing Debt [0.00] Assumption Balance [0.00]

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

Book [2948] Page [405] Instr. No []

Parcel Identification No (PIN) [06500-00-00-01100 and 06500-00-00-011B0]

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

Short Property Description [22.011 acres, 2.45 acres, State Route 600, Albemarle County, VA]

Current Property Address (Address 1) [5381 Stony Point Pass]

(Address 2) []

(City, State, Zip) [Keswick] [VA] [22947]

Instrument Prepared by [Albemarle County Attorney's Of]

Recording Paid for by [Albemarle County Attorney's Office]

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

(Address 1) [401 McIntire Road]

(Address 2) [Suite 325]

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

Customer Case ID [] []

Cover Sheet Page # 1 of 2

Instrument Control Number

005999

**Commonwealth of Virginia
Land Record Instruments
Continuation Cover Sheet
Form C**

(LS VLR Cover Sheet Agent 1.0.66)

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Date of Instrument: [4/2/2007]

Instrument Type: [DE]

Number of Parcels [2]

Number of Pages [10]

City ☐ County ☒ [Albemarle County] (Box for Deed Stamp Only)**Grantors/Grantees/Parcel Continuation Form C**

Last Name	First Name	Middle Name or Initial	Suffix
[]	[]	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]

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

Book [2948] Page [409] Instr. No []

Parcel Identification No (PIN) [06500-00-00-011C0]

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

Short Property Description [52.0 acres, Parcel A, State Route 600, Albemarle County, Virginia]

Current Property Address (Address 1) [5383 Stony Point Pass]

(Address 2) []

(City, State, Zip) [Keswick] [VA] [22947]

Prior Instr. Recorded at: City ☐ County ☐ [] 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) [] [] []

Cover Sheet Page # 2 of 2

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

Tax Map and Parcel Numbers 06500-00-00-01100, 06500-00-00-011B0, 06500-00-00-011C0

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

DEED OF EASEMENT

THIS DEED OF EASEMENT, made this 2nd day of April 2007, between **DONAL G. CHESTER, TRUSTEE, DONAL G. CHESTER REVOCABLE DECLARATION OF TRUST DATED JANUARY 19, 2005** and **ELIZABETH B. CHESTER, TRUSTEE, ELIZABETH B. CHESTER REVOCABLE DECLARATION OF TRUST DATED JANUARY 19, 2005**, Grantors, hereinafter referred to as the "Grantors," and the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter sometimes referred to as the "County," and the **ALBEMARLE COUNTY PUBLIC RECREATIONAL FACILITIES AUTHORITY**, a public body established pursuant to Virginia Code § 15.2-5600 *et seq.*, each of whose address is 401 McIntire Road, Charlottesville, Virginia, 22902; the County and the Albemarle County Public Recreational Facilities Authority are hereinafter collectively referred to as the "Grantees."

WITNESSETH

WHEREAS, the Grantors are the owners in fee simple of the real property located in Albemarle County that is described below and hereinafter referred to as the "Property;"

WHEREAS, the Property contains 76.461 acres, more or less, in the aggregate;

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.*);

WHEREAS, the Grantors have voluntarily agreed to have the Property be subject to the terms of this conservation easement (hereinafter, the "Easement");

WHEREAS, the Property lies in the Southwest Mountains Rural Historic District, has over one thousand eight hundred (1,800) feet of common boundary with another permanently protected property, contains perennial woodland streams and important forested lands and other

attributes that justify its qualification under the ACE Program and the Open-Space Land Act, and it will be protected under the Easement as follows: (1) ten (10) theoretical development parcels will be eliminated; and (2) forest management will follow the best technical advice of a professional forester in order to maintain and improve the long-term health and productivity of the forestland resource;

WHEREAS, the Property has a total of thirteen (13) division rights, as that term is defined in Appendix A.1 of the Albemarle County Code, which, if fully exercised, could result in the establishment of thirteen (13) dwelling units on the Property; at the time of the granting of this Easement, there are two (2) dwelling units on the Property;

WHEREAS, the Virginia Open-Space Land Act (Virginia Code § 10.1-1700 *et seq.*) as amended, (hereinafter, the "Virginia Open-Space Land Act"), declares that purposes for providing and preserving open-space land under an easement authorized by the Virginia Open-Space Land Act include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property;

WHEREAS, the following goals and objectives of the Albemarle County Comprehensive Plan will be advanced by placing the Property under the Easement: maintaining the integrity of existing stream channels, with the intent to maintain both biological functions and drainage; protecting the availability and quality of surface drinking water supplies; protecting the availability and quality of groundwater resources; conserving ecological communities to ensure their continued genetic diversity, and to protect ecosystems that provide essential services to humans; and promoting the protection of those important open space lands that cannot be adequately protected through regulation;

WHEREAS, the Grantees' acquisition of this easement furthers the purposes of the ACE Program in that the 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;

WHEREAS, the Grantors desire to establish an easement on the Property for the purpose of preserving such lands as open space in perpetuity in order to protect the values described herein;

WHEREAS, the protection of the Property by this Easement will yield significant public benefits described herein; and

WHEREAS, the Grantors and the County have entered into an agreement under the terms of which the County has agreed to pay the Grantors the total sum of Three Hundred Nine Thousand Seven Hundred Sixty Dollars (\$309,760.00) for this Easement.

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 Grantors hereby grant, convey, covenant and agree as follows:

1. **GRANT AND CONVEYANCE OF EASEMENT.** The Grantors hereby grant and convey to the Grantees and their successors and assigns, with GENERAL WARRANTY AND ENGLISH COVENANTS OF TITLE, a conservation easement (the Easement) in gross over the Property described below, restricting in perpetuity the use of the Property in the manner set forth herein:

All those certain tracts or parcels of land situated in the County of Albemarle, Virginia, located on State Route 600, shown as Sheet 65, Parcel 11, containing 22.011 acres, more or less, Sheet 65, Parcel 11B, containing 2.431 acres, more or less, and Sheet 65, Parcel 11C, containing 52.000 acres, more or less, on a plat by B. Aubrey Huffman & Associates, Ltd., dated June 21, 1994, and recorded in the Clerk's Office of the Circuit Court of the County of Albemarle, Virginia, in Deed Book 1419, page 400.

The Property is also identified in the County's tax maps as Tax Map and Parcel Numbers 06500-00-00-01100, 06500-00-00-011B0 and 06500-00-00-011C0, and is the same land acquired by the Grantors by deeds from Donal G. Chester, a/k/a Donal Gordon Chester and Elizabeth B. Chester, husband and wife, dated February 11, 2005, recorded March 30, 2005, in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, in Deed Book 2948, page 405, and by deed from Donal Gordon Chester, dated February 11, 2005, recorded March 30, 2005, in the aforesaid Clerk's Office in Deed Book 2948, page 409.

2. **USES AND ACTIVITIES.** In order to accomplish the purposes of the ACE Program and the Open-Space Land Act (Virginia Code § 10.1-1700 *et seq.*), all uses and activities on the Property shall conform to all applicable provisions of the Albemarle County Comprehensive Plan and comply with the applicable requirements of the Albemarle County Zoning Ordinance (Albemarle County Code, Chapter 18). No use or activity, including any such use or activity expressly authorized herein, shall impair an identified conservation purpose of this Easement. The Property also shall be subject to the following additional restrictions:

A. Division of the Property and boundary line adjustments. The Property may not be divided and its boundary lines may be adjusted only as provided herein:

1. Division. The Property is currently composed of three (3) parcels. For all purposes of this Easement, the Property shall be considered to be one (1) parcel and the Property may not be divided or subdivided; the Property may be sold or conveyed only as a whole; no parcel shall be separately sold or conveyed.

2. Boundary line adjustments. The exterior boundary lines of the Property shall not be adjusted unless the property sharing the same boundary line is subject to a substantially equivalent conservation easement and the adjustment is approved in writing by each Grantee. Boundary line adjustments within the Property shall be approved if the adjustment is consistent with the Easement.

B. Construction, installation, location, placement of structures and improvements. There shall be no construction, placement or maintenance of any structure or improvements on the Property unless the structure or improvements are either on the Property as of the date of this Easement or are authorized as follows:

1. Location of structures. Each new structure for which a building site is required shall be located on a building site shown on a site plan approved by the County.

2. Types of structures. No permanent or temporary buildings or structures may be built, maintained or replaced on the Property other than:

(i) One single-family dwelling, not to exceed 7,000 square feet of above ground livable-space, unless prior written approval is obtained from each Grantee, and non-residential outbuildings or structures commonly and appropriately incidental thereto;

(ii) Two accessory dwellings, and non-residential outbuildings or structures commonly and appropriately incidental thereto; and

(iii) Farm buildings or structures, except that no farm building or structure shall exceed a structural footprint of 4,500 square feet unless prior written approval for a greater footprint is obtained from each Grantee.

3. Improvements. The following may be constructed, installed, located or placed, provided they are otherwise consistent with this Easement; (a) driveways and other improvements and facilities customary and related to the use of a single parcel; and (b) improvements and facilities related to a land division including, but not limited to, public streets or private roads, and drainage and other utility facilities required by the County.

C. Commercial and industrial uses prohibited; description of uses not deemed to be commercial and industrial uses. No industrial or commercial uses shall be conducted on the

Property; provided, however, that the following uses are not deemed to be commercial or industrial uses for purposes of this Easement and are specifically permitted:

1. *De minimis* commercial recreational uses.
2. Agricultural uses including, but not limited to, establishing, reestablishing, maintaining or using cultivated fields, orchards or pastures (including clearing woodland areas for conversion to crop or pastureland) in accordance with generally accepted agricultural practices, including horticultural specialties; livestock, including all domestic and domesticated animals; and livestock products. The processing of agricultural products is not an agricultural use, except as an accessory use.
3. Forestal uses including, but not limited to, reforestation, site preparation, timber harvesting and other commercial forest management activities are permitted provided the Grantors adhere to established Best Management Practices (as provided in subsection 2(F)); and uses the best technical advice of a professional forester to maintain and improve the long-term health and productivity of the forestland. The processing of wood products is not a forestal use, except as an accessory use. The clearing of land for conversion to farmland or other agricultural uses, however, may be permitted. The Grantors shall notify the Grantees thirty (30) days before the anticipated start of any harvesting activity and seven (7) days prior to the anticipated completion of such harvesting activity.
4. Temporary or seasonal activities that do not permanently alter the physical appearance of the Property and are otherwise consistent with this Easement including, but not limited to, the sale of agricultural products grown or raised on the Property, and the granting of licenses to enter and use the Property for hunting or fishing.
5. Activities that can be and in fact are conducted within permitted buildings, without material alteration to the external appearance thereof, including, but not limited to, tourist lodging. For purposes of this Easement, the term "tourist lodging" means one or more rooms located within a single-family dwelling which is actually used as such, which rooms are used secondarily to such single-family use for the temporary accommodation of transients in return for compensation, whether or not such rooms are used in conjunction with other portions of such dwelling, or as such term is hereafter defined in the Albemarle County Zoning Ordinance.
6. Uses subordinate and customarily incidental to a principal use of the Property that are not expressly prohibited by and are otherwise consistent with this Easement.
7. Uses or activities not expressly excepted herein, but which are determined by each Grantee in writing not to be a commercial or industrial use, and to be consistent with this

Easement. In making this determination, the Grantees may consider, among other things, whether the scope of a use or activity excepted herein has evolved over time as a result of changes in the law or customary practices.

D. Billboards and signs. There shall be no display of billboards, signs or other advertisements on the Property, except to: (1) state solely the name of the owners, the name of the farm, and/or the address of the Property; (2) advertise the sale or lease of the Property; (3) advertise the sale of goods or services produced as permitted by this Easement; (4) give directions to visitors; or (5) provide warnings pertaining to trespassing, hunting, dangerous conditions and other similar such warnings. No sign shall exceed twenty-four (24) square feet.

E. Grading, blasting, earth removal and mining. Grading, blasting or earth removal shall not materially alter the topography of the Property; provided that grading, blasting or earth removal shall be allowed for dam construction to create private conservation ponds or lakes, and during the construction of permitted structures or associated improvements, and that such activities employ applicable Best Management Practices. Common agricultural activities such as plowing, erosion control and restoration, and the burial of dead animals, are not activities that materially alter the topography of the Property. Mining on the Property is prohibited.

F. Management of forestal resources. Applicable Best Management Practices, as established by a responsible state agency, shall be used in all forestal activities to control erosion and protect water quality.

G. Accumulation of waste material. There shall be no accumulation or dumping of trash, refuse or junk on the Property. This restriction shall not prohibit customary agricultural, horticultural or wildlife management practices including, but not limited to, establishing brush, compost or manure piles, or the routine and customary short-term accumulation of household trash.

3. MISCELLANEOUS PROVISIONS

A. No public right of access to Property. This Easement does not create, and shall not be construed to create, any right of the public to enter upon or to use the Property or any portion thereof, except as the Grantors may otherwise allow.

B. Easement applies to the whole Property and runs with the land. This Easement shall apply to the Property as a whole rather than to individual parcels, and shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs.

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

1. Monitoring. Representatives of either Grantee may enter the Property from time to time for the purpose of inspection and enforcement of the terms of this Easement after permission from or reasonable notice to the Grantors or the Grantors' representative.

2. Restoration. Upon any breach of any term of this Easement by the Grantors, either Grantee may require by written demand to the Grantors that the Property be restored promptly to its condition at the time the Easement was granted.

3. Documentation of condition. Documentation is retained in the offices of the County that describes the condition and character of the Property at the time this Easement was granted. This documentation may be used to determine compliance with and enforcement of the terms of this Easement. However, neither the Grantors nor the Grantees are precluded from using other relevant evidence or information to assist in that determination.

4. 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 Easement.

5. Failure to enforce does not waive right to enforce. The failure of either Grantee to enforce any term of this Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve the Grantors from thereafter complying with any such term.

6. 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.

D. No buy-back option. The Grantors shall not have the option to reacquire any property rights relinquished by this Easement.

E. Notice of proposed transfer or sale. The Grantors shall notify each Grantee in writing at the time of closing on any transfer or sale of the Property. In any deed conveying all or any part of the Property, this Easement shall be referenced by deed book and page number in the deed of conveyance and shall state that this Easement is binding upon all successors in interest in the Property in perpetuity.

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

G. Reference to existing laws. All references to existing laws shall include such laws as they may be hereafter amended or recodified, whether they are referenced herein or not.

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

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

J. Authority to convey easement. The Grantors covenant that he is vested with good title to the Property and may convey this Easement.

K. Authority to accept easement. The Grantees are authorized to accept this Easement pursuant to Virginia Code § 10.1-1701. 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 § 15.2-1803, as evidenced by the County Executive's signature hereto and the recordation of this Deed.

L. Transfer of easement by grantees. Neither Grantee nor their successors or assigns may convey or lease this Easement unless the conveyance or lease is conditioned as follows: (1) the conveyance or lease are subject to contractual arrangements that will assure that the Property is subject to the restrictions and conservation purposes set forth in this 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.

M. Extinguishment. Restrictions set forth in the Easement can be extinguished only by judicial proceeding and only if such extinguishment also complies with the requirements of section 10.1-1704 of the Virginia Code. In any sale or exchange of the Property subsequent to such extinguishment, the County shall be entitled to a portion of the proceeds at least equal to the proportionate value of the perpetual conservation restriction computed as set forth below, but not to be less than the proportionate value that the perpetual conservation restriction at the time of the extinguishment bears to the then value of the Property as a whole. At the time of the grant, the proportionate value of the Easement (\$352,000.00) is twenty-four and nine-tenths percent (24.9%) of the appraised fair market value (\$1,414,500.00) of the Property. The Grantor agrees that the donation of the perpetual conservation restriction in this Easement gives rise to a property right, immediately vested in the Grantees, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time. The County shall use all of the proceeds from the sale of the Property in a manner consistent with the conservation purposes of this Easement and of the Open-Space Land Act. No part of the Property may be converted or diverted from open space uses as herein defined except in accordance with Virginia Code Section 10.1-1704.

N. No warranty by grantees as to qualification for charitable gift. The Grantors and the Grantees 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 26 C.F.R. § 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Grantees make no express or implied warranties regarding whether any tax benefits will be available to the Grantors from this Easement, whether any such tax benefits might be transferable, or whether there will be any market for any tax benefits that might be transferable.

O. Construction. This Easement shall be construed to promote the purposes of this Easement, the ACE Program, and the Open-Space Land Act.

WITNESS the following signatures and seals.

GRANTOR

Donal G. Chester
Donal G. Chester, Trustee
Donal G. Chester Revocable Declaration
of Trust dated January 19, 2005

GRANTOR

Elizabeth B. Chester
Elizabeth B. Chester, Trustee
Elizabeth B. Chester Revocable Trust
of Trust dated January 19, 2005

COUNTY OF ALBEMARLE

By: Robert W. Tucker Jr.
Robert W. Tucker Jr.
County Executive

ALBEMARLE COUNTY PUBLIC
RECREATIONAL FACILITIES
AUTHORITY

By: Charlotte D. Buttrick
Charlotte D. Buttrick
Chairman

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Charlottesville:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this 2nd day of April, 2007 by Donal G. Chester, Trustee, Donal G. Chester Revocable Declaration of Trust dated January 19, 2005, Grantor.

Brenda H. Vess
Notary Public

My Commission Expires: 3-31-2010

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Charlottesville:

The foregoing *Deed of Easement* was signed, sworn to and acknowledged before me this 2nd day of April, 2007 by Elizabeth B. Chester, Trustee, Elizabeth B. Chester Revocable Declaration of Trust dated January 19, 2005, Grantor.

Brenda H. Vess
Notary Public

My Commission Expires: 3-31-2010

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Albemarle:

The foregoing *Deed of Easement* was signed, sworn to and acknowledged before me this 4th day of April, 2007 by Robert W. Tucker, Jr., County Executive, on behalf of the County of Albemarle, Virginia, Grantee.

Alison R. Mullins
Notary Public

My Commission Expires: June 30, 2009

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Albemarle:

The foregoing *Deed of Easement* was signed, sworn to and acknowledged before me this 20th day of April, 2007 by Charlotte D. Buttrick, Chairman, on behalf of the Albemarle County Public Recreational Facilities Authority, Grantee.

Marsha A. Davis
Notary Public

My Commission Expires: 1/31/2010

Approved as to form:

By: [Signature]
County Attorney

RECORDED IN CLERKS OFFICE OF
ALBEMARLE ON
April 23, 2007 AT 11:33:36 AM
\$0.00 GRANTOR TAX PD
AS REQUIRED BY VA CODE §56.1-802
STATE: \$0.00 LOCAL: \$0.00
ALBEMARLE COUNTY, VA
SHELBY MARSHALL CLERK CIRCUIT COURT
[Signature] DC

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