

023760

Prepared by: Richmond and Fishburne, L.L.P.
214 East High Street
Charlottesville, Virginia 22902

TAX MAP NO. OR PIN: 65-15, 65-15B, 81-57, 81-58, 81-44, 81-49, 81-53, 81-44A, 81-45

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 GIFT OF EASEMENT, made this 28 day of December, 2005,
between Airlie, LLC, a Virginia limited liability company, the "Grantor", and the VIRGINIA
OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA, the
"Grantee", whose address is 203 Governor Street, Suite 302, Richmond, Virginia 23219.

WITNESSETH:

WHEREAS, the Open Space Land Act of 1966, Chapter 461 of the 1966 Acts of the
Assembly, (Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as
amended) declares that the preservation of open-space land serves a public purpose by promoting the
health and welfare of the citizens of the Commonwealth by curbing urban sprawl and encouraging
more desirable and economical development of natural resources, and authorizes the use of
easements in gross to maintain the character of open-space land; and

WHEREAS, Chapter 18, Title 10.1 of the Code of Virginia (§§ 10.1-1800 through
10.1-1804, as amended) 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, the Grantor is the owner in fee simple of the real property hereinafter described
(the "Property"); and

WHEREAS, the Property possesses significant scenic, natural, open-space, and historic
values (the "Open Space Values"), the preservation of which will benefit the citizens of the
Commonwealth; and

WHEREAS, the Property has qualified for reduced taxation under the Albemarle County land
use program pursuant to Chapter 32, Title 58.1 of the Code of Virginia (§58.1-3230, et seq., as
amended);

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 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 adjacent to said Southwest Mountains Rural Historic District; and

WHEREAS, the Property lies on State Route 22 / 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 and contributes to the open-space values of the area containing such lands under easements; and

WHEREAS, the Property contains portions of the original eighteenth century plantation patented by Thomas Darsie in 1733 and known as Findowrie, including its main house which is thought to have been constructed shortly after that date and which is considered to be a classic example of a typical Virginia plantation house of the eighteenth century by the Virginia Department of Historic Resources [DHR Survey Report 02-36] and is among the least-altered buildings of its period in Albemarle County,

WHEREAS, the Grantor and the Grantee desire to protect in perpetuity the Open Space Values herein specified; and

WHEREAS, the Grantor and the Grantee intend to accomplish such protection by restricting the use of the Property as hereinafter set forth; and

WHEREAS, the Grantee has determined that the restrictions hereinafter set forth (the "Restrictions") will preserve and protect in perpetuity the "Open Space Values" of the Property, which values are reflected in the preceding paragraphs, the Grantee's evaluation of the Property, and the documentation of the condition of the Property as contained in its files and records; and

WHEREAS, the conservation purpose of this easement is to preserve and protect in perpetuity the Open Space Values of the Property; and

WHEREAS, the Grantee has determined that the Restrictions will limit the uses of the Property to those uses consistent with, and not adversely affecting the Open Space Values of the Property, the scenic values enjoyed by the general public, or the governmental conservation policies furthered by this easement.

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by the Grantee, the Grantor does hereby give, grant and convey to the Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of, the real estate consisting of 506.97 acres described below, located in Rivanna Magisterial District, Albemarle County, Virginia, near Cismont, fronting on State Route 22 / 231, and herein referred to as the "Property."

PARCEL ONE: All that certain tract or parcel of land in the Rivanna Magisterial District of Albemarle County, Virginia, on the south side of State Route 22, near Cismont, known as "Airslic" and containing 326.46 acres, more or less, as more particularly described on a composite plat made by William S. Roudabush, Jr., C.L.S., dated January 1967, and recorded in the Clerk's Office of the Circuit Court of the County aforesaid in Deed Book 427, page 193; LESS AND EXCEPT 2.01 acres more particularly described on plat of Roger W. Ray & Assoc., Inc., dated December 16, 1991, revised December 20, 1991, titled "Plat Showing Survey Of Lot A, Containing 2.01 Acres A Portion Of The Thurber M. Foreman, III Property Located On State Route 600 About 1.3 Miles South of Cismont Rivanna District, Albemarle County, Virginia", and recorded in said Clerk's Office in Deed Book 1208, page 450.

PARCEL TWO:

TRACT ONE: All that certain tract or parcel of land situated in the County of Albemarle, Virginia, on the southwest side of State Route 600, containing 130.01 acres, more or less, shown as "T.M. 81-44, 49, and 53" on a plat made by Roger W. Ray and Associates, Inc., dated November 7, 1991, and recorded in the aforesaid Clerk's Office in Deed Book 1188, page 431 and 432.

TRACT TWO: All that certain tract or parcel of land situated in the County of Albemarle, Virginia, on the eastern side of the C&O Railway, containing 23.47 acres, more or less, shown as "T.M. 81-44", (currently being T.M. 81-44A) on a plat by Roger W. Ray and Associates,

Inc., dated November 7, 1991, and recorded in the aforesaid Clerk's Office in Deed Book 1188, page 431 and 432.

TRACT THREE: All that certain lot or parcel of land situated in the County of Albemarle, Virginia in the vicinity of Campbell Station, containing in the aggregate 29.035 acres, more or less, as shown on Albemarle Tax Map 81, Sheet 45, and more particularly described as 28.172 acres, more or less, plus a small triangular parcel designated "Marvin C. Boswell", more particularly described on a plat made by Robert L. Lum, Certified Land Surveyor, dated July 5, 1985, and recorded in the Clerk's Office, Circuit Court, Albemarle County, Virginia in Deed Book 852, page 366 and again at page 370.

The Property is the same property conveyed to Airlie, LLC by deed of John D. Phillips dated November 4, 2005 and recorded in the Clerk's Office, Circuit Court, Albemarle County, Virginia in Deed Book 3105, page 61.

The above-described tracts are shown as Tax Map and parcel numbers: 65-15, 65-15B, 81-57, 81-58, 81-44, 81-49, 81-53, 81-44A, 81-45 among the land records of Albemarle County and total 506.97 acres in the aggregate. The Property shall be considered to be one parcel for the purposes of this easement, and the restrictions and covenants of this easement shall apply to the Property as a whole.

AND SUBJECT, HOWEVER, to the restriction that the Grantee may not transfer or convey the open-space easement herein conveyed to the Grantee unless the Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in the conveyance accomplished by this deed are to be continued 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 there under.

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

1. **TRASH.** Accumulation or dumping of trash, refuse, or junk 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, as long as such practices are conducted in accordance with applicable laws and regulations.
2. **SIGNS.** Display of billboards, signs, or other advertisements that are visible from outside the Property is not permitted on or over the Property except to: (i) state the name and/or address of the owners or 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. No such sign shall exceed nine square feet in size.

3. DIVISION. The Property shall not be divided or subdivided into, or separately conveyed as more than three parcels (the "3 Parcels"). One of the three parcels shall be solely for the off-conveyance of the single family dwelling known as Findowerie discussed in paragraph 6(ii) herein, and any associated non-residential outbuildings, structures and amenities. Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered a prohibited division of the Property, provided that the Grantee is made party to any boundary line adjustment and at least one of the following conditions is met: (i) the entire adjacent parcel is subject to an existing, recorded open-space easement conveyed to the Grantee, or (ii) the proposed boundary line adjustment is reviewed and approved in advance by the Board of Trustees of the Grantee, such approval not to be unreasonably withheld.

4. MANAGEMENT OF FOREST. Commercial timber harvesting shall be in accord with a forest stewardship plan approved by the Grantee. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when commercial forestry activity is undertaken. A pre-harvest plan consistent with the forest stewardship plan shall be submitted to VOF at least 30 days prior to beginning such commercial timber harvesting.

The primary objectives of the forest stewardship plan shall be to improve wildlife habitat, maintain the health of the forest, and preserve historic and cultural resources.

4a. RIPARIAN BUFFER. A forested buffer extending 35 feet from each bank of Mechunk Creek on TMP 81-44A shall be maintained. This buffer shall be protected from degradation by livestock. Removal of non-native invasive species and minimal harvest of trees is permitted, provided that the function of the buffer to protect water quality is not impaired.

There shall be no plowing, cultivation, or similar earth disturbing activity within 35 feet of each bank of Jack's Branch on the Property and the buffer shall be protected from degradation by livestock.

5. GRADING, BLASTING, MINING. Grading, blasting or earth removal shall not materially alter the topography of the Property except for dam construction to create private ponds, or as required in the construction of permitted buildings, structures, connecting private roads, and utilities as described in Paragraph 6. Generally accepted agricultural activities shall not constitute any such material alteration. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in the construction of permitted buildings and private roads. Notwithstanding the foregoing, no grading, blasting, or earth removal is permitted on the Property if it will

materially diminish or impair the Open Space Values of the Property. Mining on the Property by surface mining or any other method is prohibited.

6. BUILDINGS AND STRUCTURES. No permanent or temporary building or structure may be built or maintained on the Property other than:

- (i) a main residence (which currently exists), which may be repaired, renovated, replaced, or reasonably enlarged, and non-residential outbuildings, structures, and amenities commonly and appropriately incidental thereto,
- (ii) the single family dwelling built in the 1700s known as "Findowerie" and non-residential outbuildings, structures, and amenities commonly and appropriately incidental thereto. Findowerie is one of the oldest standing structures in Albemarle County and as such has significant historical value. Any exterior alteration or additions to Findowerie shall be conducted after the Grantor first consults with the Grantee and the Virginia Department of Historic Resources,
- (iii) one additional single family dwelling, subject to the siting limitations in this paragraph 6, and non-residential outbuildings, structures, and amenities commonly and appropriately incidental thereto,
- (iv) four existing cottages, which may be repaired, renovated or replaced but not materially enlarged without the approval of Grantee, and non-residential outbuildings, structures, and amenities commonly and appropriately incidental thereto,
- (v) two new cottages not to exceed 2,000 square feet of livable space each, clustered near a dwelling permitted in subparagraphs (i), (iii) or (iv) herein, and non-residential outbuildings, structures, and amenities commonly and appropriately incidental thereto,
- (vi) farm buildings or structures, except that a farm building or structure exceeding 4,500 square feet in ground area may not be built on the Property unless prior written approval for the building or structure is obtained from the Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the Open-Space Values of the Property; for the 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 7(i).
- (ix) a polo field and outdoor riding arena, subject to the limitations in paragraph 5, and facilities commonly and appropriately incidental thereto.

No building may be constructed closer to State Route 22 / 231 than the existing main residence. This prohibition shall apply to all that portion of the Property fronting on State Route 22 / 231. This prohibition shall not apply to the construction or maintenance of fencing, livestock feeding or watering troughs, mailboxes, gateposts, permitted signs, or the repair or replacement of any buildings or structures existing as of the date of this Deed of Gift of Easement.

Private roads and utilities that serve permitted buildings or structures in this Paragraph 6 may be constructed.

In the event of subdivision of the Property as provided in Paragraph 3 above, permitted dwellings shall be allocated among the parcels in the instrument creating the subdivision, and private roads and utilities may be constructed on each parcel.

- 7. INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Industrial or commercial activities other than the following are prohibited: (i) agriculture, viticulture, aquaculture, silviculture, horticulture, and equine activities, (ii) 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 (iii) activities that can be and in fact are conducted within permitted buildings without material alteration to the external appearance thereof. Temporary outdoor activities involving 100 or more people shall not exceed seven days in duration unless approved by the Grantee in advance in writing. Notwithstanding the foregoing, any commercial recreational use of the Property is permitted only to the extent such use would otherwise be permitted under Section 2031(c)(8)(B) of the Internal Revenue Code of 1986 as amended.
- 8. ENFORCEMENT.** Representatives of the Grantee may enter the Property from time to time for purposes of inspection and enforcement of the terms of this easement after permission from or reasonable notice to the owner or the owner's representative. The Grantee has 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 gift 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 the Grantor failed to comply with this easement, the Grantor shall reimburse the Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorney's fees, in addition to any other payments ordered by such court. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this easement by any prior failure to act and the Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by the Grantee.
- 9. NOTICES TO GRANTEE.** The Grantor shall notify the Grantee in writing at, or prior to, closing on any inter vivos transfer or sale of the Property. This deed of easement shall be referenced by deed book and page number, or instrument number, in any deed conveying any interest in the property. The Grantor shall notify the Grantee in writing prior to undertaking any activity on the Property that may be inconsistent with the Open-Space Values or the Restrictions. If the Grantor believes or reasonably should believe that the exercise of a right not prohibited by this Easement may have a significant adverse effect on the purpose of this

Easement or may impair the conservation interests or Open Space Values associated with the Property, the Grantor shall notify the Grantee in writing before exercising such right.

10. **EXTINGUISHMENT.** The Grantor and the Grantee intend that this easement be perpetual and not be extinguished, and extinguishment of this easement is not permitted under the Open-Space Land Act, Virginia Code Section 10.1-1700 et seq. 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 Grantee 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. The Grantor agrees that the donation of the perpetual conservation restriction in this easement gives rise to a property right, immediately vested in the Grantee, 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 Grantee shall use all its share 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.
11. **DOCUMENTATION.** Documentation retained in the offices of the Grantee describes the condition and character of the Property at the time of the gift. The Documentation may be used to determine compliance with and enforcement of the terms of the easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination.
12. **SUCCESSORS IN INTEREST.** The covenants, terms, conditions and restrictions contained in this easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.
13. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to the easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement. This easement shall not be construed to permit any use of the Property which is otherwise prohibited by federal, state, or local law or regulation.

If any provision of this deed 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.

Although this easement in gross 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. The Grantor retains the exclusive right to such access and use, subject to the terms hereof.

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, audit and challenge by all appropriate tax authorities. The Virginia Outdoors Foundation makes 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. The parties hereto intend that the easement conveyed herein shall be a qualified conservation contribution within the meaning of Section 170(h) of the Internal Revenue Code of 1986, as amended, 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. By its execution hereof, the Grantee acknowledges and confirms receipt of the Easement and further acknowledges that the Grantee has not provided any goods or services to the Grantor in consideration of the grant of the Easement.

Acceptance of this conveyance by the Grantee is authorized by section 10.1-1801 of the Code of Virginia and is evidenced by the signature of its Deputy Director hereto.

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WITNESS the following signatures and seals.

AIRSLIE, LLC

By: *Barbara Bianco*
Title: *Sole Member*

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Charlottesville, TO WIT:

I, Mary Jane Watkins, a Notary Public for the Commonwealth aforesaid, hereby certify that Barbara Bianco, sole member of Airslie, LLC, a Virginia limited liability company, Grantor, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 28th day of December, 2005.

Mary Jane Watkins
Notary Public

My commission expires: 05/31/06 (SEAL)

Accepted:
VIRGINIA OUTDOORS FOUNDATION,

By: *Tamara A. Vance*
Tamara A. Vance, Deputy Director

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF Montgomery, TO WIT:

I, *Anna G. Chisholm*, a Notary Public for the Commonwealth aforesaid, hereby certify that Tamara A. Vance, Deputy Director 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 27th day of December, 2005.

[Signature]

Notary Public

My commission expires: 31 OCT 2007 (SEAL)

RECORDED IN CLERKS OFFICE OF
ALBEMARLE ON
December 28, 2005 AT 12:18:12 PM
\$0.00 GRANTOR TAX PD
AS REQUIRED BY VA CODE §58.1-802
STATE: \$0.00 LOCAL: \$0.00
ALBEMARLE COUNTY, VA
SHELBY MARSHALL CLERK CIRCUIT COURT
Deetta J. Mason DC

Airslie Farm

