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This document was prepared by:  
Department of Historic Resources  
2801 Kensington Avenue  
Richmond, VA 23221

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Exempted from recordation taxes  
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sections 58.1-811(A)(3) and 58.1-811(D)  
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**CORRECTED**  
**DEED OF GIFT OF EASEMENT**

FORT COLVIN  
FREDERICK COUNTY  
DHR file number: 034-0026 and 44FK592

***THIS CORRECTED DEED OF GIFT OF EASEMENT*** made this 16<sup>th</sup> day of August, 2007, by **THE ASSOCIATION FOR THE PRESERVATION OF VIRGINIA ANTIQUITIES**, a Virginia non-profit corporation, whose address is 204 West Franklin Street, Richmond, Virginia 23220, and its heirs, successors and assigns, ("Grantor"), and the **COMMONWEALTH of VIRGINIA, BOARD OF HISTORIC RESOURCES**, whose address is Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia 23221 ("Grantee"),

**WITNESSETH:**

**WHEREAS**, Chapter 22, Title 10.1 of the Code of Virginia of 1950, as amended, entitled "Historic Resources," was enacted to support the preservation and protection of the Commonwealth of Virginia's significant historic, architectural, archaeological, and cultural resources, and charges the Board of Historic Resources to designate as historic landmarks to be listed in the Virginia Landmarks Register such buildings, structures, districts, and sites which it determines to have local, statewide, or national significance, and to receive properties and easements in gross or other interests in properties for the purpose of, among other things, the preservation and protection of such designated landmarks; and

**WHEREAS**, Chapter 17, Title 10.1 of the Code of Virginia of 1950, as amended, entitled "Open-Space Land Act," was enacted to preserve open-space lands for historic or scenic purposes, and authorizes any public body to receive easements in gross or other interests in properties for the purpose of preserving such historic or scenic open-space lands; and

**WHEREAS**, the Grantor is the owner in fee simple of a property known as Fort Colvin consisting of a tract of land containing 2.027 acres, more or less, as more particularly described on Attachment A attached hereto, which land includes a stone and frame building that is of historic and architectural significance; which together with its surrounding acreage has historic value, and is listed on the Virginia Landmarks Register and the National Register of Historic Places; and

**WHEREAS**, the Grantor acquired Fort Colvin with funds from the Virginia Historic Preservation Foundation revolving fund with the intent of ensuring the permanent preservation of the said property and its setting through a preservation easement upon transfer of title; and

**WHEREAS**, the Grantor has entered into a contract with the French and Indian War Foundation, a 501(C)3 non-profit organization, for purchase of the said property; and

**WHEREAS**, the French and Indian War Foundation intends to acquire the property for the purpose of maintaining it as a museum for the benefit of the public; and

**WHEREAS**, both the Grantor, the French and Indian War Foundation, and the Grantee desire to ensure the preservation of Fort Colvin and the protection of the historic and architectural features that led it to be placed on such Registers; and

**WHEREAS**, the Comprehensive Plan for Frederick County states among its objectives the development of a historic preservation policy "to protect the historic resources in Frederick County" and states as an implementation strategy the development of "techniques for protecting and enhancing historic resources including zoning methods, impact analysis, conservation easements and tax incentives for rehabilitation efforts";

**NOW THEREFORE**, in recognition of the foregoing, the Grantor does hereby grant and convey to the Grantee an easement in gross and right in perpetuity to restrict as herein provided the use of the property described in "Attachment A" attached hereto ("Easement Property");

**AND SUBJECT, HOWEVER**, to the restriction that the Grantee may not transfer or convey the easement herein conveyed to the Grantee unless the Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions, limitations, and conservation purposes set forth in the conveyance of the Easement Property 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.

The restrictions hereby imposed on the use of the Easement Property are in accord with the policy of the Commonwealth of Virginia, as set forth in Chapters 22 and 17 of Title 10.1 of the Code of Virginia of 1950, as amended, to preserve the Commonwealth's designated historic landmarks, and to preserve historic and scenic open-space lands in the Commonwealth. The acts which the Grantor covenants to do and not to do upon the Easement Property, and the restrictions

which the Grantee is hereby entitled to enforce, shall be as follows:

1. **DOCUMENTATION:** The parties agree that the photographs of the Easement Property taken by Sarah Cooleen of the Association for the Preservation of Virginia Antiquities on December 11, 2006 (DHR negative number 23273) accurately document the appearance and condition of the Easement Property as of the date of this Easement. The negatives of the photographs shall be stored permanently in the archives of the Virginia Department of Historic Resources, which is located at 2801 Kensington Avenue, Richmond, Virginia, or its successors. Hereafter, the Easement Property shall be maintained, preserved, and protected in its documented state as nearly as practicable, except for changes that are expressly permitted hereunder.
2. **PERMITTED BUILDINGS:** No building or structure shall be built or maintained on the Easement Property other than (i) the main building also known as Fort Colvin (ii) the following ancillary structures currently existing on the easement property: remains of a footbridge southwest of the main building (iii) reconstructions of historic outbuildings or structures which are documented through professional historical or archaeological investigation to have been located on the Easement Property (iv) such buildings or structures as may be necessary for the use of the Easement Property as a museum or related cultural facility.
3. **EXTERIOR ALTERATIONS AND NEW CONSTRUCTION:** The building shall not be demolished or removed from the Easement Property, nor shall it be materially altered, restored, renovated, or extended, except in a way that would, in the opinion of the Grantee, be in keeping with the historic character of the Easement Property and provided that the prior written approval of the Grantee to such actions shall have been obtained. No other building or structure shall be constructed, altered, restored, renovated, extended, or demolished except in a way that would, in the opinion of the Grantee, be in keeping with the historic, architectural, and scenic character of the Easement Property, and provided that the prior written approval of the Grantee to such actions shall have been obtained. The location, size, and design of any new building or structure shall be in keeping with the historic and architectural character of the Easement Property and are expressly made subject to the prior written approval of the Grantee.
4. **DESTRUCTION:** In the event that Fort Colvin or any other building or structure named in Paragraph 2 above is destroyed or damaged by causes beyond the Grantor's reasonable control including fire, flood, storm, earth movement, or other acts of God, to such an extent that in the opinion of the Grantee the building's historic integrity is irremediably compromised, nothing herein shall obligate the Grantor to reconstruct the building or return it to its condition prior to such calamity.
5. **INTERIORS:** The character-defining historic interior architectural elements of the building, including enclosed staircase, wood sheathing, exposed joists, wainscoting, windows, window frames, doors, door frames, stairs, staircases, floorboards, and hardware shall not be altered or removed from the Easement Property without the prior written approval of the Grantee. The

unpainted wood sheathing boards on the interior of the building shall not be painted.

- 6. **ARCHAEOLOGY:** Archaeologically significant deposits, sites, or features on the Easement Property shall not be intentionally disturbed or excavated except by or under the supervision of a professionally qualified archaeologist and provided plans for such archaeological activity have been submitted to, and approved by the Grantee prior to any ground-disturbing activities. Artifacts and objects of antiquity professionally excavated from archaeological deposits, sites, or features on the Easement Property shall be treated and preserved according to the Department of Historic Resources State Curation Standards (March 24, 1998). The Grantor shall take all reasonable precautions to protect archaeological deposits, sites, or features on the Easement Property from looting, vandalism, erosion, mutilation, or destruction from any cause.
- 7. **TRASH:** No permanent dump of junk, trash, rubbish, or any other unsightly or offensive material shall be permitted on the Easement Property visible from a public right of way or from the tavern building.
- 8. **TREES AND VEGETATION:** Trees and vegetation on the Easement Property shall be managed in accordance with sound arboreal and horticultural practices and in such a way as to prevent damage to Fort Colvin.
- 9. **TOPOGRAPHY:** Grading and earth removal shall not alter the topographic aspect of the Easement Property, except as required in the construction of permitted buildings, structures, or roads. Mining on the Easement Property by surface mining or any other method is prohibited.
- 10. **ROADS AND UTILITY LINES:** The location of any new roads or any new utility lines on the Easement Property (except over existing rights of way) shall be subject to the prior written approval of the Grantee.
- 11. **SUBDIVISION:** The Easement Property shall not be divided, subdivided, or conveyed in fee other than as a single tract.
- 12. **SIGNS:** No sign, billboard, or outdoor advertising structure shall be displayed on the Easement Property without the consent of the Grantee, other than signs not exceeding three square feet for any or all of the following purposes: (i) to state the name and address of the Easement Property or property owners, (ii) to provide information necessary for the normal conduct of any permitted business or activity on the Easement Property, (iii) to advertise the Easement Property for sale or rental, and (iv) to provide notice necessary for the protection of the Easement Property and for giving directions to visitors.
- 13. **PUBLIC ACCESS:** The parties hereby acknowledge that the Easement Property is visible from Stonebrook Road, a public right-of-way, and that members of the general public may view the Easement Property from said right-of-way. The Grantor also agrees that photographs of the Easement Property taken by the Grantee for purposes of documenting the appearance,

condition, and features of the Easement Property, or for other purposes pursuant to this Easement, may be published or otherwise made available to the public at the discretion of the Grantee. The Grantor further agrees that the Easement Property may be opened to the public, which may be the public at large, or in smaller groups, as designated by the Grantee, for one day from 10 AM to 5 PM every year hereafter, provided that the Grantee makes a written request for such opening by no later than February 1 in any such year. The scheduling of the date for such opening shall be by mutual consent. Any such public admission may be subject to restrictions mutually agreed upon as reasonably designed for the protection of the property. Such admission may also be subject to a reasonable fee payable to the Grantor. The Grantor also agrees that the Easement Property may be opened by appointment with the Grantor to persons affiliated with educational organizations, professional architectural associations, and historical societies.

14. **INSPECTIONS:** The Grantee and its representatives may enter the Easement Property from time to time, upon reasonable notice to the Grantor, for the sole purpose of inspections and enforcement of the terms of the easement granted herein.
15. **EASEMENT MARKER:** The Grantee, in its discretion, and upon reasonable notice to the Grantor, may erect at a location acceptable to the Grantor, a single marker or sign, not exceeding two feet by two feet, which states the name of the Grantee and advises that the Grantee owns the easement granted herein.
16. **ENFORCEMENT:** 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 Easement Property to a condition of compliance with the terms of this easement as existed on the date of this Deed of Gift of 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 temporary or permanent injunction. If the court determines that the Grantor failed to comply with this easement, the Grantor shall reimburse the Grantee any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys' 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 ensure 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.
17. **APPROVALS:** Whenever a written request for the Grantee's approval is submitted pursuant hereto and the Grantee fails to respond in writing within 30 days of receipt of such request, then the Grantee shall be deemed to have approved the request, and the Grantor may proceed with the action for which approval was requested. Nothing herein shall be construed, however, to require the Grantee to issue a final decision on such request within such 30-day period, provided that such final decisions are issued in as timely a fashion as is practicable under the circumstances. Such circumstances shall include the complexity of the request or proposed