

Tax Map Pin Number: 7012-66-2099
Consideration: PEC - \$129,498.45
VOF - \$129,498.45 Exempt from
Recordation Tax Section 58.1-811 (A)(3)

01 06255

THIS DEED OF EASEMENT

made this 1st day of June, 2001, between FRANK G. ELGIN, herein called the Grantor, the VIRGINIA OUTDOORS FOUNDATION, an Agency of the COMMONWEALTH OF VIRGINIA, whose address is 203 Governor Street, Suite 317, Richmond, VA 23219, THE PIEDMONT ENVIRONMENTAL COUNCIL, a private non-profit conservation organization which is a Virginia non-stock corporation, whose address is 45 Horner Street, Warrenton, VA 20186, herein called the Grantees and ARCH A. MOORE, III and JOHN F. LANHAM, Trustees, either of whom may act, and THE MIDDLEBURG BANK, herein called the Bank.

WHEREAS, the Open Space Land Act of 1966 (Chapter 17, Title 10.1, §§10.1-1700 to 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 to 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, historical, scientific, open-space and recreational lands of the Commonwealth; and

WHEREAS, the Virginia Conservation Easement Act, §§10.1-1009 *et seq.* of the Code of Virginia authorizes certain charitable corporations, associations or trusts exempt from taxation pursuant to 26 U.S.C.A. 501 (c)(3) to hold a non-possessory interest in real property for purposes of retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use,

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protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archeological aspects of real property; and

WHEREAS, The Piedmont Environmental Council meets the statutory requirements of Virginia Code §10.1-1009 for a holder of a perpetual easement under the Virginia Conservation Easement Act and has had its principal office in Virginia for more than five years, as required by Virginia Code §10.1-1010.C.

WHEREAS, the Elgin family own two farms known as Mountain Home Farm and Fox Den Farm located in Fauquier County which together comprise approximately 314 acres; and

WHEREAS, pursuant to §10.1 - 1801.1 of the Code of Virginia, the Virginia Outdoors Foundation has awarded an Open-Space Lands Preservation Trust Fund grant in the amount of \$315,000 toward the purchase price of conservation easements (the "Elgin Easements") on the entire 314 acres, more or less, owned by the Elgin family in order to preserve agricultural, forestal, or other open-space land pursuant to the Open Space Land Act; and

WHEREAS, a condition of said grant is that the easements must be conveyed to the Virginia Outdoors Foundation and also to a local co-holder as defined in §§10.1 - 1801.1 and 10.1 - 1009 of the Code, and The Piedmont Environmental Council satisfies these definitions of a local co-holder; and

WHEREAS, pursuant to §10.1 - 1020 of the Code of Virginia, the Virginia Land Conservation Foundation has awarded a Virginia Land Conservation Fund grant to the Virginia Outdoors Foundation in the amount of \$315,000 toward the purchase price of the Elgin Easements; and

WHEREAS, the amount of the two grants represents less than full value of the Elgin Easements and The Piedmont Environmental Council has raised additional private funds in the amount of \$630,000 toward the purchase price of the Elgin Easements and the Grantor hereby makes a bargain sale of this easement (which is one of three Elgin

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Easements conveyed this day) to the Grantees to the extent of the cash consideration paid and a gift of the balance of the value of the easement on behalf of the beneficial owners of the trust and its property; and

WHEREAS, the Grantor is the owner of the fee of real property hereinafter described (the "Property") which it desires preserved as open-space land in the public interest.

WHEREAS, the Property consists of a working dairy farm with residential and farm buildings and structures on predominantly open land, springs, tributaries and Hungry Run; and

WHEREAS, the Property is located in the Bull Run Mountains Area, a unique natural area which contains significant historical and natural resources, within proximity to the Washington Metropolitan Area; and

WHEREAS, the Property lies within the Bull Run Mountains and the Hungry Run Valley, both of which are identified in the Virginia Critical Environmental Areas Study (1972) conducted by the Virginia Division of State Planning and Community Affairs as critical environmental areas; and

WHEREAS, the Virginia Outdoors Foundation holds title to approximately 2,500 acres in the Bull Run Mountains for the purposes of protecting the historic and natural resources therein for the benefit of the general public; and

WHEREAS, The Piedmont Environmental Council owns approximately 30 acres in the Bull Run Mountains which it acquired to protect it and has granted a conservation easement on it to the Virginia Outdoors Foundation; and

WHEREAS, the Property is contiguous with other lands under open-space easement held by the Virginia Outdoors Foundation; and

WHEREAS, the Property is located within an area of Fauquier County which is designated as a rural Agriculture (RA) District and which also is located on the "Scenic Roads, Areas, & Rivers Map" (map 8.11 in the Fauquier County Comprehensive Plan); and

WHEREAS, the Comprehensive Plan of Fauquier County, Virginia (1992-2010), as

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adopted by its Board of Supervisors, includes the following goals: "To recognize the county's traditionally agricultural and rural character and the need for preservation of its open spaces and scenic beauty;" and, "To protect critical environmental resources and to maintain renewable natural resources so that they are not degraded but remain viable for future generations;" and

WHEREAS, Hungry Run flows into Little River, which is a major tributary of Goose Creek; and

WHEREAS, the Property is located within the Goose Creek Watershed, an area planned for special environmental protection in the Fauquier County Comprehensive Plan, Goose Creek being a public water supply source and having been designated a State Scenic River by Act of the General Assembly of the Commonwealth of Virginia on March 25, 1976; and

WHEREAS, preservation of the Property will promote the public policies of Fauquier County by protecting open-space, scenic views, agricultural land and natural resources; and

NOW THEREFORE, in recognition of the foregoing and in consideration of the sum of \$10 cash in hand paid and other good and valuable consideration, the receipt and adequacy of all of which is acknowledged by the Grantor, the Grantor does hereby grant and convey to the Grantees an open-space easement in gross over, and the right in perpetuity to restrict the use of the real estate consisting of 65 acres, more or less, known as a portion of Fox Den Farm, described below and located in Scott Magisterial District, Fauquier County, Virginia, approximately three miles Southeast of Middleburg on the west side of Bull Run Mountain Road (State Route 629) and hereinafter referred to as the "Property:"

ALL THAT certain tract or parcel of land, lying and being situate in Scott Magisterial District, Fauquier County, Virginia, and shown as Lot 1, containing 65.00 acres, more or less, as shown on plat of survey prepared by Sigma Consultants, dated February 13, 1998, and entitled "Plat showing

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Subdivision on the Land of Roger Lee Elgin, III, Trustee of the Elgin Land Trust", recorded in Deed Book 798 at page 251 in the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

AND BEING the same property conveyed to Frank G. Elgin by Deed of Distribution dated March 2, 1998, from Roger Lee Elgin, III, Trustee of Elgin Land Trust pursuant to agreement dated October 22, 1982, recorded in Deed Book 798, page 259 in the aforesaid Clerk's Office.

AND SUBJECT, HOWEVER, to the restriction that the Grantees or their successors and assigns may not transfer or convey the open-space easement herein conveyed to the Grantees unless the Grantees condition 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 thereunder.

Restrictions are hereby imposed on uses of the property pursuant to the public policies set forth above. The acts which the Grantor, its heirs, successors, personal representatives and assigns, covenant to do and not to do upon the Property, and the restrictions which the Grantees are hereby entitled to enforce, are and shall be as follows:

1. Accumulation or dumping of trash, refuse, or junk is not permitted on the Property. This restriction shall not prevent normal agricultural or wildlife management practices, such as brush clearing, 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 government laws and regulations.

2. Display of billboards, signs, or other advertisements is not permitted on or over the Property except to state the name and/or address of the owners, to advertise the sale or lease of the Property, to advertise the sale of goods or services produced incidentally to a

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permitted use of the Property or to provide notice necessary for the protection of the Property and for giving directions to visitors. No such sign shall exceed nine square feet in size.

3. Division or subdivision of the Property is prohibited. Boundary line adjustments with adjoining parcels are permitted and shall not be considered a division of the Property, provided that the Grantees are notified in writing prior to the completion of any boundary line adjustment and one of the following conditions is met: (a) the entire adjacent parcel is subject to an open-space easement to the Virginia Outdoors Foundation; or (b) the proposed boundary adjustment is reviewed and approved by the Board of Trustees of the Virginia Outdoors Foundation.

4. Management of forest resources, including commercial timber harvest, shall be in accord with a forest stewardship plan approved by the Virginia Outdoors Foundation, as agent for the Grantees. All forestry activities shall be carried out so as to preserve the environmental and scenic qualities of the area. Best Management Practices as defined by the Department of Forestry, shall be used to control erosion and protect water quality when any material forestry activity is undertaken. The Grantor, or its successors and assigns shall notify the Virginia Outdoors Foundation no later than 30 days prior to the start of any material forestry activity as well as within seven days of its completion.

5. A vegetative buffer of not less than thirty-five (35) feet from either bank of Hungry Run, shall be maintained and protected from degradation by livestock. Selective harvest of some individual trees is permitted, provided that the ability of the buffer to protect water quality is not impaired.

6. 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 construction of permitted buildings, connecting private roads, and utilities as described in paragraph 7 below. 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

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construction of permitted private roads. Notwithstanding the foregoing, no grading, blasting, or earth removal is permitted on the Property if it will materially diminish or impair the conservation values protected by this Easement. Mining on the Property is prohibited.

7. No permanent or temporary building or structure shall be built or maintained on the Property, other than (i) one primary single family dwelling, (ii) two secondary dwellings, not to exceed 2,500 square feet of living area each, (iii) non-residential outbuildings or structures commonly and appropriately incidental to the above described dwellings, and (iv) farm buildings or structures. Private roads and utilities that serve permitted buildings or structures may be constructed. New farm buildings or structures exceeding 4,500 square feet in ground area may not be constructed on the Property after the date of this easement unless prior written permission for said building or structure is obtained in writing from the Virginia Outdoors Foundation, as agent for the Grantees. The Virginia Outdoors Foundation's review in determining whether to grant such approval shall be limited to consideration of the size, height, and siting of the proposed structure and its impact on the conservation values of the Property.

8. Industrial or commercial activities other than the following are prohibited: (i) agriculture, including dairying, silviculture, horticulture, and equine activities, (ii) temporary or seasonal outdoor activities which do not permanently alter the physical appearance of the Property, and which are consistent with the conservation values herein protected, (iii) activities which can be and in fact are conducted within permitted buildings without material alteration to the external appearance thereof. Temporary outdoor activities involving 100 people or more shall not exceed seven days in duration unless approved by the Virginia Outdoors Foundation, as agent for the Grantees. Dairying includes as permitted activities the processing, manufacturing, marketing, transportation and delivery of dairy products and supplies.

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9. Representatives of the Grantees 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 owner or the owner's representative.

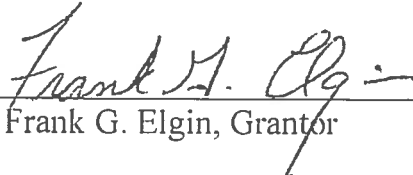
10. Grantor, his heirs, successors, personal representatives and assigns shall notify Grantees in writing within 60 days following any transfer or sale of the Property or any part thereof. In any deed conveying all or any part of the Property, this Easement shall be referenced by Deed Book and Page Number. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

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. Grantor, his heirs, successors, personal representatives and assigns hereby retain exclusive right to such access and use, subject to the terms hereof.

Acceptance of this conveyance by the Grantees is authorized by Section 10.1-1801 *et seq.* and Section 10.1-1009 of the Code of Virginia and is evidenced by the signatures of their Executive Directors hereto. Assignment of this Easement is governed by Section 10.1-1801 of the Code of Virginia.

The Middleburg Bank, herein the Bank, is the note holder under a certain Deed of Trust dated March 2, 1998 and recorded in the Clerk's Office of the Circuit Court of Fauquier County, Virginia in Deed Book 798 at page 261 which subjects the Property to the Bank's lien. The Bank and the Trustees (under the Deed of Trust) hereby consent to the terms and intent of this Easement, and agree that the lien represented by the Deed of Trust shall be held subject to this Deed of Easement.

WITNESS the following signatures and seals.

 (SEAL)
Frank G. Elgin, Grantor

CGM

The Middleburg Bank

By: R. Tucker Albritton (SEAL)

Its: Assistant Vice President

Allen G. Moore III, Trustee, Trustee

Accepted:
Virginia Outdoors Foundation

By: SEE SEPARATE SIGNATURE PAGE
Tamara A. Vance, Executive Director

Accepted:
The Piedmont Environmental Council

By: Christopher G. Miller, President
Christopher G. Miller, President

COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF Fauquier, TO WIT:

I, Donna S. Sager, a Notary Public for the Commonwealth aforesaid, hereby certify that Frank G. Elgin, Grantor, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 1st day of June 2001.

Donna S. Sager
Notary Public

My commission expires: 10/31/01

The Middleburg Bank

By: _____ (SEAL)

Its: _____

Ann P. K. [Signature], Trustee

Accepted:
Virginia Outdoors Foundation

By: Tamara A. Vance
Tamara A. Vance, Executive Director

Accepted:
The Piedmont Environmental Council

By: _____
Christopher G. Miller, President

COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF Fauquier, TO WIT:

I, Donna S. Sage, a Notary Public for the Commonwealth aforesaid, hereby certify that Frank G. Elgin, Grantor, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 1st day of June, 2001.

Donna S. Sage
Notary Public

My commission expires: 10/31/01

COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF _____, TO WIT:

I, _____, a Notary Public for the Commonwealth aforesaid, hereby certify that Tamara A. Vance, Executive Director of the Virginia Outdoors Foundation, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 2001.

SEE SEPARATE NOTARY PAGE

Notary Public

My commission expires: _____

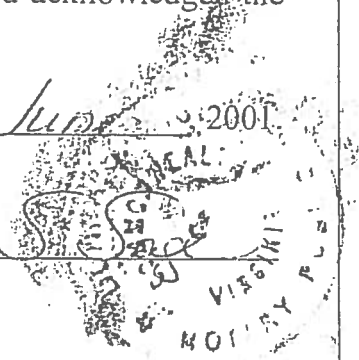
COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF Fauquier, TO WIT:

I, Donna S. Sager, a Notary Public for the Commonwealth aforesaid, hereby certify that Christopher G. Miller, President of The Piedmont Environmental Council, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 1st day of June, 2001.

Donna S. Sager
Notary Public



My commission expires: 10/31/01

COMMONWEALTH OF VIRGINIA,

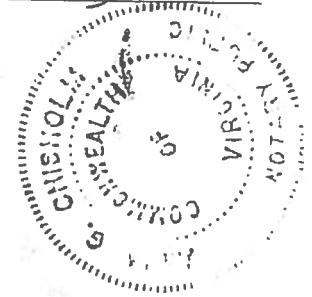
CITY/COUNTY OF Montgomery, TO WIT:

I, Anna G. Christholm, a Notary Public for the Commonwealth aforesaid, hereby certify that Tamara A. Vance, Executive Director of the Virginia Outdoors Foundation, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 1st day of June, 2001.

[Signature]
Notary Public

My commission expires: 31 Oct 2003



COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF _____, TO WIT:

I, _____, a Notary Public for the Commonwealth aforesaid, hereby certify that Christopher G. Miller, President of The Piedmont Environmental Council, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 2001.

Notary Public

My commission expires: _____

COMMONWEALTH OF VIRGINIA,

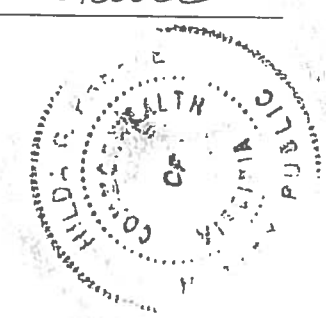
CITY/COUNTY OF Loudoun , TO WIT:

I, Ailda G. Preece , a Notary Public for the Commonwealth aforesaid, hereby certify that R. RUCKER SLATER , as AVP of The Middleburg Bank personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 4th day of June , 2001.

Ailda G. Preece
Notary Public

My commission expires: 8-31-01



COMMONWEALTH OF VIRGINIA,

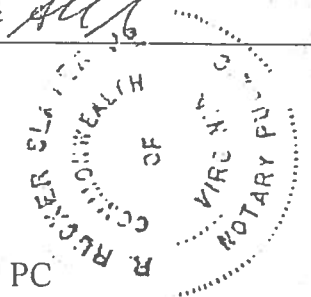
CITY/COUNTY OF Loudoun , TO WIT:

I, R. Rucker Slater Jr , a Notary Public for the Commonwealth aforesaid, hereby certify that ALLEN A MORSE III , as Trustee under Deed of Trust, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 4 day of June , 2001.

R. Rucker Slater Jr
Notary Public

My commission expires: 8-31-02



Document prepared by:
Walker, Jones, Lawrence, Duggan & Savage, PC
Virginia Outdoors Foundation
Georgia H. Herbert, P.C.

VIRGINIA: IN THE CLERK'S OFFICE OF THE FAUQUIER CIRCUIT COURT

This instrument was received in this Office and with

certificate admitted to record on JUN - 5 2001

at 2:26 P m. Tax of \$ _____ imposed by Section

58.1-802 Paid. Consideration: \$ 129,498.45

State Tax \$ 194.25 County Tax \$ 64.75

Transfer Fee \$ _____ VSLF \$1.00 Technology Fee \$3.00

Clerk's Fee \$ 21.00 Total: \$ 284.00

Teste: Gail H Barb Clerk 1-772

285.00



Mr. Ian Abernathy
PO Box 566
Upperville, VA 20185

August 5, 2012

Re: VOF/PEC Easement # FAU-VOF-944

Dear Mr. Abernathy,

Thank you for the documentation you provided in June and July 2013 with living area measurements for the existing dwelling on Fox Den Farm. We understand that it is your intention to put the property on the market and you would like confirmation that the existing dwelling counts as a secondary dwelling under the easement terms. The easement on your property has the following language:

7. No permanent or temporary building or structure may be built or maintained on the Property, other than (i) one primary single family dwelling, (ii) two secondary dwellings, not to exceed 2,500 sq. ft. in living area each,...

The hand drawn floor plan you provided on July 18th indicates that the existing dwelling has 1,302.71 sq. ft. of living area on the 1st floor and 1,223.83 sq. ft. of living area on the 2nd floor. This includes all rooms, hallways and stairs but not the unenclosed outdoor porches for a total of 2,526.54 sq. ft. in living area. We understand you are willing to remove parts of the house specifically the 2nd floor bathroom (36.646 sq. ft.) adjacent to the outdoor porch to fall under the 2,500 sq. ft. living area cap. We do not feel that is necessary as the overage is small enough to not have a negative impact on the conservation values protected by the easement.

However, VOF and PEC both agree that this existing building, now designated as one of the two allowed secondary dwellings may not be enlarged by any amount in the future including the enclosing of any of the outdoor porches. With this designation, VOF and PEC recognize that there are 2 additional building rights on your property, a primary single family dwelling and one secondary dwelling not to exceed 2,500 sq. ft. in living area.

If you have any questions or concerns, please do not hesitate to contact Erika at (540) 347-7727 ext. 229 or at erichardson@vofonline.org or Heather at 540-347-2334 or at hrichards@pecva.org

Sincerely,

Erika Richardson
Stewardship Manager
Virginia Outdoors Foundation

Heather M. Richards
Vice President, Conservation and Rural Programs
Piedmont Environmental Council

