# Examined and Rotumed to:

Document Prepared By

Georgia H. Herbert, P.C. The Plains VA 20108

DEC 14 1990

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Exempted from recordation taxes under the Code of Virginia (1950), as amended, Sections 58.1-811 (A)(3), 58.1-811(C)(4), and 10.1-1803

#### **DEED OF GIFT OF EASEMENT**

THIS DEED OF GIFT OF EASEMENT made this \_\_\_\_\_\_\_ day of December, 1998, by and between NORTH WALES, L.L.C., a Delaware Limited Liability Company who with its successors in title to all or any portion of the Property is herein called the Grantor, and the <u>VIRGINIA</u>

OUTDOORS FOUNDATION, an Agency of the Commonwealth of Virginia, whose address is 203

Governor Street, Suite 316, Richmond, Virginia 23219-2010, herein called the Grantee,

#### WITNESSETH:

WHEREAS, the Virginia Open Space Land Act of 1966 (Chapter 17, Title 10.1, §§ 10.1-1700 to 10.1-1705 of the Code of Virginia) 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;

WHEREAS, Chapter 18, Title 10.1 of the Code of Virginia (§§ 10.1-1800 to 10.1-1804) declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Virginia Outdoors Foundation (an agency of the Commonwealth of Virginia) 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;

WHEREAS, the Grantor is the owner of the fee of the 1,042 acre property hereinafter described ("the Property") which it desires preserved as open-space land in the public interest;

WHEREAS, preservation of the present character of the Property will further the goals of the Fauquier County Comprehensive Plan by preserving open-space and agricultural land;

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WHEREAS, Fauquier County has funded the continuing preservation of the Property as open-space and agricultural land by providing Use Value Assessment of the Property for real property tax purposes;

WHEREAS, the Grantor's Property is adjacent to other property under open space easement to the Granter;

WHEREAS, the Property is contiguous to and has a substantial common boundary with the Commonwealth of Virginia's Whitney State Forest;

WHEREAS, the Property abuts State Routes 802 and 681, both of which are designated County Scenic Roads under the Fauquier County Comprehensive Plan adopted by the Fauquier County Board of Supervisors and Route 802 is, in addition, a Commonwealth of Virginia (Scenic) Byway;

WHEREAS, the Property is located within the Upper Rappahannock Watershed, an area planned for special environmental protection in the Fauquier County Comprehensive Plan and in the Critical Environmental Areas Report by the General Assembly of the Commonwealth of Virginia, the Rappahannock River being a public water supply source and having been designated a Scenic River by Chapter 124 of the Acts of the 1985 General Assembly of the Commonwealth of Virginia;

WHEREAS, the specific conservation values of the Property are documented in a report to be kept on file at the offices of the Grantee and incorporated herein by this reference, which documentation ("Baseline Documentation") the parties agree provides an accurate representation of the Property as of the effective date of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant;

WHEREAS, the Grantor believes that with the intelligent and careful use of open space conservation easements; the scenic, natural, agricultural, and open space values of properties can be protected in a manner that permits continuing private ownership of land while fulfilling public conservation purposes;

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WHEREAS, the Grantor intends, as owner of the Property, to convey to the Grantee the right to preserve and protect the conservation values of the Property in perpetuity;

WHEREAS, the Grantee represents that the Grantee is a "qualified conservation organization," as that term is defined in Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"); and

WHEREAS, the Grantor and the Grantee recognize the scenic, natural, agricultural, and open space character of the Property, and have the common purpose of the conservation and protection in perpetuity of the Property through the use of restrictions on the Property and with the transfer from the Grantor to the Grantee of the right to enforce the restrictions and protect the Property, intending the grant of such restrictions and rights to qualify as a "qualified conservation contribution" as that term is defined under Section 170(h)(2)(C) of the Code;

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by the Grantee, and pursuant to Section 170(h) of the Code and the laws of the Commonwealth of Virginia, in particular the Virginia Open Space Land Act of 1966, the Grantor does hereby grant and convey to the Grantee an open-space easement in gross of the nature and character and to the extent hereinafter set forth (the "Easement") over, and the right in perpetuity to restrict the use of, the following described real estate consisting of 1,042 acres, more or less, in the Marshall Magisterial District of Fauquier County, Virginia (the "Property"):

ALL THAT certain tract or parcel of land located in Marshall Magisterial District, Fauquier County, Virginia, containing 1,142.2350 acres, more or less, according to plat and survey of James G. Butler, dated June 10, 1998 and recorded June 29, 1998 in Deed Book 808 at Page 1798 among the land records of Fauquier County, Virginia, LESS AND EXCEPT that area of approximately 100 acres marked "Area not under open-space easement" on the attached Sketch Plat.

AND BEING part of the property conveyed to North Wales, L.L.C. by Deed dated December 18, 1997, recorded in Deed Book 793 at Page 417 in the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

AND SUBJECT, HOWEVER, to the restriction that the Grantee or its successors and assigns may not transfer or convey the open-space easement herein conveyed to

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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 thereunder.

This conveyance is further made subject to all matters of record which may affect said parcel of land.

The Grantor declares that the Property shall be held, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, restrictions, and easements hereinafter set forth, which covenants, conditions, restrictions, and easements shall be deemed to run with the land in perpetuity and to burden the Property in perpetuity. Restrictions are hereby imposed on uses of the Property pursuant to the public policies set forth above. It is the purpose of this Easement to ensure that the Property will be retained forever predominantly in its scenic and open-space condition for conservation purposes in the public interest and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property and the Property's natural resources and associated ecosystems. 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 Grantee is hereby entitled to enforce are and shall be as follows:

- Accumulation of trash, refuse, junk or any other unsightly material is not permitted on the Property.
- 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 owner, to advertise the sale or lease of the Property, to advertise the sale of goods or services produced incidentally to a permitted use of the Property, or to provide notice necessary for the protection of the Property and for giving direction to visitors. No such sign shall exceed three feet by three feet in size.

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- 3. Subdivision of the Property is prohibited. Boundary line adjustments with adjoining parcels of land shall not be considered a subdivision of the Property, provided that the Grantee is notified in writing prior to any conveyance and one of the following conditions is met:
  - i) The entire adjacent parcel is subject to an open space easement to the Grantee.
- ii) The proposed boundary line adjustment is reviewed and approved by the Board of Trustees of the Grantee, which approval shall not be unreasonably withheld.
- 4. Management of forest resources shall be in accord with a forest stewardship plan prepared for the Grantor by a professional forester (the "Forest Management Plan"). The Grantor will provide the Grantee a copy of the Forest Management Plan and any amendments to it. All forest management activities shall be carried out so as to maintain biodiversity, enhance wildlife habitat, and preserve the environmental and scenic quality of the area. To control erosion and protect water quality, Forestry Best Management Practices as defined by the Virginia Department of Forestry shall be used. The Grantor will do no commercial timbering except in accordance with the Forest Management Plan as it may be amended from time to time.
- 5. Grading, blasting or earth removal shall not materially alter the topography of the Property except for dam construction to create private conservation ponds or lakes, or as required in construction of permitted buildings, facilities, and connecting private roads, described in Paragraph 6, below. Mining on the Property is prohibited.
- 6. A. No permanent or temporary building or structure shall be built or maintained on the Property other than (i) one primary single-family dwelling and non-residential outbuildings commonly and appropriately incidental thereto, (ii) nine secondary residential dwellings and non-residential outbuildings commonly and appropriately incidental thereto, (iii) farm buildings or structures, (iv) a private family cemetery, and (v) connecting private roads. No farm buildings or structures, except the indoor riding arena described in Paragraph 6D, which exceed 6,000 square feet in ground area shall be constructed on the Property without the prior written approval of the Grantee. In determin-

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ing whether to grant such approval, the Grantee shall consider the size, setting and design of the proposed structure and its impact on the open-space quality of the Property. The Grantee's approval shall not be unreasonably withheld.

- B. No residence, tenant house, stable, barn, telecommunications tower, or other building of any nature except the existing Steward's Stand may be constructed or maintained within the "No-Build Zone" between the "Steward's Stand" and the pond as indicated on the attached Sketch Plat. Said prohibition shall not apply to the construction or maintenance of customary fencing, livestock watering troughs and sheds not served by electricity or water within the "No-Build Zone", to alterations, repairs or maintenance of any structures existing within the "No-Build Zone" on the date of this easement, or to the establishment of a private family cemetery within the "No Build Zone".
- C. The Grantor reserves the right for itself, its successors and assigns to construct on the Property swimming pool(s), tennis court(s), croquet lawn(s), one practice golf course not to exceed nine holes, and other similar private recreational facilities for use by residents of the Property and their guests.
- D. The Grantor reserves for itself, its successors and assigns the right to build without obtaining the prior written approval of the Grantee one indoor riding arena which exceeds 6,000 square feet in ground area in the general vicinity of the main stable complex.
- E. Any additional electric and telephone lines installed on the Property after the date of this easement shall be installed underground.
- F. The prohibitions of this Paragraph 6 shall not apply to the maintenance, repair, reconstruction or refurbishment of any structures on the Property on the date of this deed of gift of easement. The Grantor and the Grantee hereby acknowledge that some structures presently existing on the Property may not be in conformance with all provisions of this Paragraph 6.
- Industrial or commercial activities other than the following are prohibited: (i) agriculture, including but not limited to horse and cattle breeding and training, silviculture, viticulture, and

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horticulture, (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 activities, involving 100 people or more, shall not exceed seven days in duration without prior approval of the Virginia Outdoors Foundation. Notwithstanding any other provision of this easement, no commercial recreational use (except for deminimis commercial recreational uses) shall be allowed on the Property.

- 8. The Grantor hereby grants the following rights to the Grantee, which rights shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee:
- (a) to prevent the Grantor or third persons (whether or not claiming by, through, or under the Grantor) from conducting any activity on or use of the Property that is inconsistent with the purpose of this Easement, and to require of the Grantor or third persons the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use;
- (b) to enter upon the Property (but not building interiors) at reasonable times and in a reasonable manner in order to monitor the Grantor's compliance with and otherwise enforce the terms of this Easement, provided that such entry (i) shall occur during no more than one twenty-four hour period per calendar year, (ii) shall follow reasonable notice to the Grantor, and (iii) shall not unreasonably interfere with the Grantor's use and quiet enjoyment of the Property as restricted by this Easement:
- (c) to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring removal of offending structures and restoration of the Property to the condition that existed prior to any such violation (it being agreed that the Grantee will have no adequate remedy at law); and

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(d) to enforce this Easement in the case of breaches by the Grantor or by third persons (whether or not claiming by, through, or under the Grantor) by appropriate legal proceedings after providing the Grantor with reasonable written notice and a reasonable opportunity to cure.

9. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, without limitation, acts of trespassers, fire, flood, storm, and natural earth movement, major tree disease, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, nothing herein shall preclude the Grantor's and the Grantee's rights to pursue any third party for damages to the Property from vandalism, trespass, or any other violations of the terms of this Easement.

In connection with any action to enforce the terms of this Easement, the Grantor and the Grantee shall each be responsible for their own respective costs of suit, including reasonable attorneys' fees. Notwithstanding the foregoing, the Grantor agrees to reimburse the Grantee for all reasonable costs of suit, including reasonable attorneys' fees, incurred by the Grantee in enforcing this Easement provided that a violation of this Easement by the Grantor is acknowledged by the Grantor or determined to have occurred by a final non-appealable judgment issued by a court of competent jurisdiction.

Notwithstanding all of the above, Grantor's obligation to reimburse Grantee for attorneys' fees shall not exceed an amount of money equal to \$25,000 in 1998 dollars.

10. The Grantor, its heirs, successors, personal representatives and assigns shall notify the Grantee in writing prior to any proposed transfer or sale of the Property. This easement shall be referenced by deed book and page number in any deed conveying any interest in the Property. 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.

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The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.

Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purposes of the Grantee.

If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement shall not be affected thereby.

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, all of which are merged herein.

The covenants, terms, conditions, and restrictions of 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, provided that an owner is not responsible for breaches of the terms hereof that occur after that owner ceases to have any interest in the Property.

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

North Wales, L.L.C. c/o Prentiss Properties

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3890 West Northwest Highway, Suite 400 Dallas, TX 75220

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With a copy to:

Georgia H. Herbert, P.C.

P.O. Box 21

The Plains, VA 20198

To Grantee:

Virginia Outdoors Foundation 203 Governor Street, Suite 316 Richmond, VA 23219-2010

or to such other address as any of the above parties from time to time shall designate by written notice to the others.

Although this Easement 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, its 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 Virginia Outdoors Foundation is authorized by Section 10.1-1801 of the Code of Virginia, and is evidenced by the signature of its Executive Director, Tamara A. Vance. Assignment of this Easement is governed by Section 10.1-1801 of the Code of Virginia.

WITNESS the following signatures and seals:

NORTH WALES, L.L.C., GRANTOR

MICHAEL W. PRENIMOR A CONTROL

(SEAL)

ACCEPTED:

VIRGINIA OUTDOORS FOUNDATION GRANTEE

AMARAA WANGE (SEAL)

**EXECUTIVE DIRECTOR** 

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COMMONWEALTH OF VIRGINIA CITY/COUNTY OF 12: ch mond, to-wit:

I, Hathleen Carter, a Notary Public in and 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 1/24 day of December, 4

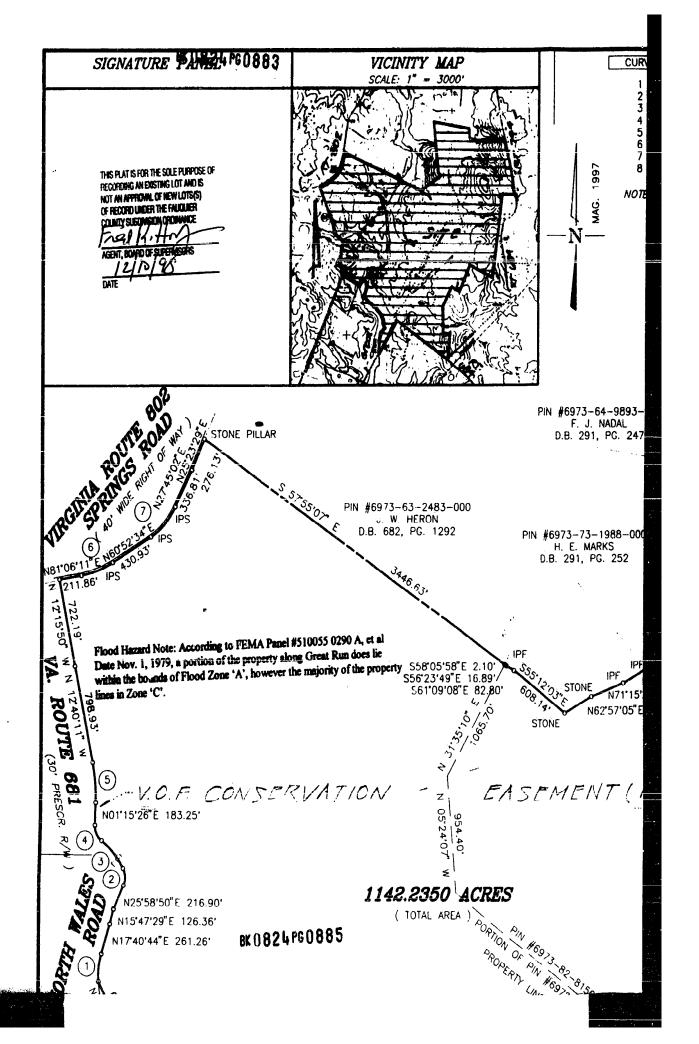
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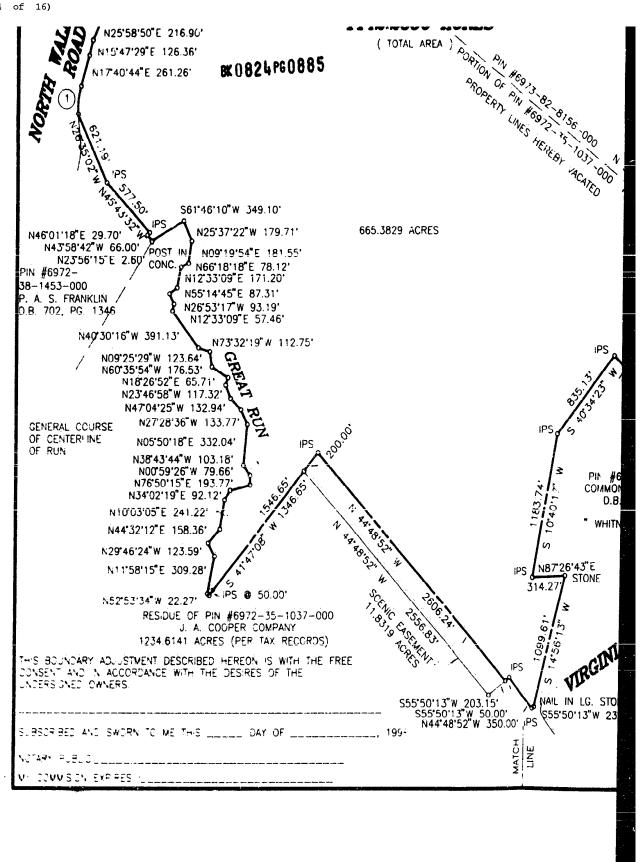
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VINCENIA, IN THE CLERK'S OFFICE OF THE PAUQUIER CIRCUIT COURT This instrument was received in this office and with
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58.1-802 Paid. Consideration: \$
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