

NOTE TO TITLE EXAMINERS: This open-space easement contains restrictions on permitted uses and activities on the property described below, which run with the land and are applicable to the property in perpetuity.

Prepared by: ~~Return to~~ Kaufman & Canoles, P.C.
4801 Courthouse Street, Suite 300
Williamsburg, Virginia 23188

~~Return to:~~ Virginia Outdoors Foundation
P.O. Box 909
Tappahannock, Virginia 22560

PIN: 5820100002

Exempt 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 fees under Sections 17.1-266 and 17.1-279

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made this 8th day of November, 2021, between CARTER'S GROVE ASSOCIATES LLC, a Delaware limited liability company, ("Grantor") and the VIRGINIA OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA, ("Grantee") (the designations "Grantor" and "Grantee" refer to Grantor and Grantee and their respective successors and assigns);

RECITALS:

R-1 Grantor is the owner in fee simple of real property situated in James City County, Virginia, containing in the aggregate approximately 67.52 acres, more or less, as further described below (the "Property"), commonly known as "Martin's Beach", and desires to give, grant, and convey to Grantee a perpetual open-space easement over the Property as herein set forth.

R-2 Grantee is a governmental agency of the Commonwealth of Virginia and a "qualified organization" and "eligible donee" under Section 170(h)(3) of the Internal Revenue Code (references to the Internal Revenue Code in this Easement are to the United States Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings issued thereunder, or the corresponding provisions of any subsequent federal tax laws and regulations) (the "IRC") and Treasury Regulations Section 1.170A-14(c)(1) and is willing to accept a perpetual open-space easement over the Property as set forth herein.

R-3 Chapter 461 of the Virginia Acts of 1966 provides in part "that the provision and preservation of permanent open-space land are necessary to help curb urban sprawl, to prevent the spread of urban blight and deterioration, to encourage and assist more economic and desirable urban development, to help provide or preserve necessary park, recreational, historic, and scenic areas, and to conserve land and other natural resources" and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land. The balance of

the Chapter is codified in Chapter 17, Title 10.1, Sections 10.1-1700 through 10.1-1705 of the Code of Virginia (1950), as amended, (the “Open-Space Land Act”).

R-4 Pursuant to the Open-Space Land Act, the purposes of this Easement (as defined below in Section I) include retaining and protecting open-space and natural resource values of the Property, and the limitation on division, construction of buildings and other structures, and commercial and industrial uses contained in Section II ensures that the Property will remain perpetually available for agricultural, forestal, or open-space use, all as more particularly set forth below.

R-5 Chapter 525 of the Virginia Acts of 1966, codified in Chapter 18, Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia (1950), 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.

R-6 As required under Section 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the James City County Comprehensive Plan adopted on June 23, 2015, and the Property is located within an area that is designated as open space and conservation and federal, state, and local lands on the county’s future land use map.

R-7 This Easement is intended to constitute (i) a “qualified conservation contribution” as defined in IRC Section 170(h)(1) and as more particularly explained below, and (ii) a qualifying “interest in land” under the Virginia Land Conservation Incentives Act of 1999 (Section 58.1-510 *et seq.* of the Code of Virginia (1950), as amended).

R-8 This Easement is intended to be a grant “exclusively for conservation purposes” under IRC Section 170(h)(1)(C), because it effects “the preservation of open space (including farmland and forest land)” under IRC Section 170(h)(4)(A)(iii); specifically, the preservation of open space on the Property is pursuant to clearly delineated state and local governmental conservation policies and will yield a significant public benefit.

R-9 This open-space easement in gross constitutes a restriction granted in perpetuity on the use that may be made of the Property and is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below:

(i) Land conservation policies of the Commonwealth of Virginia as set forth in:

a. Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth’s policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

b. The Open-Space Land Act cited above;

c. Chapter 18, of Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia (1950), as amended, cited above;

d. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, Sections 58.1-510 through 58.1-513 of the Code of Virginia (1950), as amended, cited above, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth's unique natural resources, wildlife habitats, open spaces, and forested resources;

e. Grantee's formal practices in reviewing and accepting this Easement. Grantee has engaged in a rigorous review, considered and evaluated the benefits provided by this Easement to the general public as set forth in these recitals, and has concluded that the protection afforded the open-space character of the Property by this Easement will yield a significant public benefit and further the open-space conservation objectives of Grantee and the Commonwealth of Virginia. Treasury Regulations Section 1.170A-14(d)(4)(iii)(B) states that such review and acceptance of a conservation easement by a governmental entity tends to establish a clearly delineated governmental conservation policy as required under IRC Section 170(h)(4)(A)(iii); and

(ii) Land use policies of the County of James City County as delineated in its comprehensive plan adopted on June 23, 2015, to which plan the restrictions set forth in this Easement conform and which contains the following goals:

LU 6- "Enhance and preserve the agricultural and forestall economy and retain the character of Rural lands and the predominately wooded, natural, and small-town character of the County."

LU 6.1.2- "Encourage dedication of conservation easements to allow landowners to take advantage of State and Federal tax provisions."

LU 6.1.6- "Craft regulations and policies in a manner that recognizes the value of and promotes the conservation of prime farmland soils and environmentally sensitive areas and consider impacts to the County's farm and forestall [*sic*] assets in land use decisions."

R-10 The Property contains shoreline and wetlands on Grove Creek and the James River, both tributaries of the Chesapeake Bay. Protection of the Property from overdevelopment hereunder will help preserve the water quality of the Chesapeake Bay by reducing non-point source pollution.

R-11 The Property is significant as a Virginia Department of Conservation and Recreation Natural Heritage "terrestrial environment" for Mountain Camelia within the boundary of the Property. The restrictions set forth herein contribute to the success of this plant and its habitat within this community.

R-12 The Property lies adjacent to an open-space easement held by Grantee, and the restrictions set forth herein contribute to the open-space values of such other lands and the continuity of wildlife habitat on this and other nearby protected properties.

R-13 Preservation of the Property in a relatively undeveloped state by the restrictions set forth herein contributes to the "Goals and Outcomes" of the 2014 "Chesapeake Bay Watershed Agreement," entered into by the Commonwealth of Virginia, six other states, the District of Columbia, the Chesapeake Bay Commission, and seven federal agencies. That agreement's Land

Conservation Goal states in part: “By 2025, protect an additional two million acres of land throughout the watershed . . . and reduce the rate of conversion of agricultural lands, forests, and wetlands as well as the rate of changing landscapes from more natural lands that soak up pollutants to those that are paved-over, hardscaped, or otherwise impervious.”

R-14 The Property lies within the Chesapeake Bay watershed, and protection of the rivers and streams in the bay watershed will help implement the goals of Federal Executive Order 13508 (May 19, 2009), which include “restore clean water, recover habitat, sustain fish and wildlife, conserve land and increase public access in the Bay watershed by 2025”.

R-15 The entire Property is located on the Governor’s Conserve Virginia Map under the Natural Habitat & Ecosystem Diversity, Flooding Resilience and Scenic Preservation categories, and protection of the Property through this Easement supports Governor Northam’s state land conservation strategy of identifying and protecting high-value lands and conservation sites across the Commonwealth of Virginia.

R-16 The Property is located adjacent to Carters Grove, which is listed on the National Register of Historic Places and the Virginia Landmarks Register and is under easement with Grantee, and the restrictions set forth herein contribute to the protection of the historic and scenic values of the area.

R-17 This Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in these recitals and in Section I below.

R-18 Grantor and Grantee desire to protect in perpetuity the conservation values of the Property as specified in Section I (the “Conservation Values”) by restricting the use of the Property as set forth in Section II.

R-19 Grantee has determined that the restrictions set forth in Section II will preserve and protect in perpetuity the Conservation Values of the Property and will limit use of the Property to those uses consistent with, and not adversely affecting, the Conservation Values of the Property and the governmental conservation policies furthered by this Easement.

R-20 Grantee, by acceptance of this Easement, designates the Property as property to be retained and used in perpetuity for the preservation and provision of open-space land pursuant to the Open-Space Land Act.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein and made a part hereof, and in consideration of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant, and convey to Grantee for the public purposes set forth in Section I below an open-space easement in gross (this “Easement”) over, and the right in perpetuity to restrict the use of, the Property, which is described in **SCHEDULE A**, attached hereto and made a part hereof, and consists of approximately 67.52 acres, more or less, located in James City County, Virginia, along the James River, and adjacent to property owned by Grantor that fronts on Pocahontas Trail.

The Property is shown as PIN 5820100002 among the land records of the County of James City County, Virginia. **Even if the Property may have been acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions of this Easement will apply to the Property as a whole and will bind Grantor and Grantor's successors in interest in perpetuity.**

SECTION I -PURPOSES

The conservation purpose of this Easement is to preserve and protect the Conservation Values of the Property in perpetuity by imposing the restrictions on the use of the Property set forth in Section II and providing for their enforcement in Section III. The Conservation Values of the Property are described in the above recitals, are documented in the Baseline Documentation Report described in Section IV below and include the Property's open-space and natural values.

Pursuant to the Virginia Land Conservation Foundation's Conservation Value Review Criteria, the further conservation purpose of this Easement is preservation of land for natural habitat and biological diversity, watershed preservation, and preservation of scenic open space.

Grantor covenants that no acts or uses are currently being conducted or will be conducted on the Property which are: (i) inconsistent with the conservation purposes of the donation or (ii) consistent with the conservation purposes of the donation, but destructive of other significant conservation interests unless such acts or uses are necessary for the protection of the Conservation Values.

SECTION II – RESTRICTIONS

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

1. DIVISION.

(i) The Property shall be maintained as a whole, and separate conveyance of a portion of the Property is prohibited, regardless of the number of tax map parcels or tracts it currently encompasses and regardless of the subdivision regulations of James City County as they now exist or may change from time to time. For purposes of this Easement, division of the Property also includes, but is not limited to, (a) recordation of a subdivision plat, (b) judicial partitioning of the Property, (c) testamentary partitioning of the Property, or (d) pledging for debt of a portion of the Property.

Boundary Line Adjustments with adjoining parcels of land are permitted and shall not be considered separate conveyances of portions of the Property or division of the Property, provided that Grantee approves such adjustments and is made party to any deed creating a Boundary Line Adjustment.

2. IMPERVIOUS COVERAGE LIMITATIONS.

(i) Impervious coverage is the roof area measured in square feet of all buildings and structures with roofs and the ground area measured in square feet of all impervious structures or surfaces without a roof including, but not limited to, paved parking or patio areas, paved basketball or tennis courts, or swimming pools, but not including roads, existing ROWs or access easements, driveways, or linear surfaces such as fences or walls. Total impervious coverage, including that of both existing and additional improvements, may not exceed 20,000 square feet of the total area of such Property.

(ii) If Grantor can demonstrate that an increase in the collective impervious coverage would result in increased protection of the Conservation Values of the Property, Grantee may approve such increase.

3. BUILDINGS, STRUCTURES, ROADS, AND UTILITIES

Buildings, structures, roads, and utilities. No buildings, structures, roads, or utilities, other than the following, are permitted on the Property:

(i) Buildings and structures.

(a) Existing and new buildings and structures on the Property with the right to construct, use, enlarge, maintain, and replace such buildings and structures, all subject to the impervious coverage limitations set forth in Section II Paragraph 2 above, the siting restrictions set forth in Section II Paragraph 3(v) below, and any other restrictions set forth elsewhere in this Easement.

(b) Any new building or structure with a roof area and any additional impervious surface, together exceeding 10,000 square feet in ground area, must have Grantee's prior review and written approval, with the exception of the 17,000 square foot building located in the Building Envelope, which approval will take into consideration the impact of the size, height, and siting of the proposed building or structure on the Conservation Values of the Property.

(c) No building may exceed 35 feet in height, measured from the average grade of the foundation thereof, excepting cupolas, chimneys, antennas, silos, or other structural features having the prior written approval of Grantee.

(ii) Roads, driveways, and trails.

(a) Private roads and driveways to serve permitted buildings and structures and roads for permitted uses and activities, such as farming or forestry.

(b) Private roads or driveways and access easements over same to serve adjacent properties, provided such roads or driveways have the prior written approval of

Grantee, which approval will take into consideration the impact of the roads or driveways on the Conservation Values of the Property.

(c) Trails including, but not limited to, hiking, biking, and equestrian trails;

(iii) **Utilities and alternative energy structures.**

(a) Public or private utilities within existing rights-of-way therefor, consistent with any recorded instrument granting such rights-of-way.

(b) Public or private utilities and alternative energy structures used to harness natural renewable energy sources such as sunlight, wind, water, or biomass to serve permitted buildings, structures, or activities on the Property. Such limitation will not prohibit the sale of excess power generated incidentally in the operation of alternative energy structures and associated equipment.

(c) Public or private utilities, including alternative energy structures as described above, to be constructed in whole or in part to serve other properties, provided Grantee determines, in its sole discretion, that the construction and maintenance of such utilities or structures will cause no impairment of the Conservation Values of the Property and gives its prior written approval for such construction and maintenance. Approval of such construction and maintenance will take into consideration the visibility and any other possible adverse impact of such utilities or structures on the Conservation Values of the Property. Grantor reserves its separate right to approve any public or private utilities.

(iv) **Signs.** Signs not exceeding 32 square feet in area.

(v) **Siting of buildings and structures.** All new buildings and structures on the Property exceeding 500 square feet in ground area must be located in the area of the Property designated as "Building Envelope". Grantor and Grantee have identified such Building Envelope as shown on the sketch attached hereto as **Exhibit A**, collectively comprising less than six and 8/10th percent (6.8%) of the total acreage of the Property. Such buildings and structures are supportive of the permitted activities on the Property, and the location of any such buildings and structures in the Building Envelope is intended to support the conservation purposes of this Easement and to help prevent adverse impact to the Conservation Values of the Property.

4. ACTIVITIES PERMITTED ON THE PROPERTY.

Activities permitted on the Property. No activities other than the-following are permitted on the Property:

(i) Agricultural, forestal and equine activities, including processing of agricultural and forestal products;

- (ii) Residential activities compatible with the limitations on buildings, structures, impervious surfaces, and ground disturbance contained herein and local, state, and federal regulations;
- (iii) Commercial activities compatible with the limitations on buildings, structures, impervious surfaces, and ground disturbance contained herein and local, state, and federal regulations;
- (iv) Management of wildlife,
- (v) Natural resource-based educational and scientific activities,
- (vi) Development of ecosystem functions on the land, including necessary equipment and structures with the prior written approval of Grantee, taking into consideration the effect of such development on the Conservation Values of the Property, and
- (vii) Outdoor recreational activities requiring little or no surface alteration of the land.

5. MANAGEMENT OF FOREST.

- (i) A pre-harvest plan must be submitted to Grantee for approval no later than fourteen (14) days before the proposed date of a material timber harvest, which approval will take into consideration whether the pre-harvest plan is consistent with the terms of this Easement. Best Management Practices for Water Quality Field Guide as promulgated by the Virginia Department of Forestry must be used when such a harvest is undertaken.
- (ii) The cutting, clearing, or removal of trees on less than ten (10) acres of the Property at any one time does not constitute a material timber harvest and does not require the submission of a pre-harvest plan to Grantee.
- (iii) All cutting, clearing, or removal of trees must comply with all other restrictions set forth in this Easement involving protected areas of the Property.

6. PROTECTION OF WATERS.

To protect water quality and natural habitat, the following must be maintained on the Property:

A 100 foot riparian buffer along the edge of the James River and Grove Creek on the Property, as measured from the high-water mark of the James River and Grove Creek. Subsequent to the Effective Date, the James River or Grove Creek may meander or change course naturally, or as a result of the restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 4 (vi) above. In such event, the riparian buffer shall remain the same width, but move relative to the movement of the watercourses. Any buildings or structures that were outside of the original riparian buffer and are determined to be within the new riparian buffer shall

not be considered in violation of these restrictions and may be maintained and replaced at such locations, but not enlarged. Livestock shall be excluded from the buffer area.

- (i) **PROHIBITED ACTIVITIES.** The following activities are prohibited within the riparian buffers:
 - (a) Storage of compost, manure, fertilizers, or chemicals;
 - (b) Construction of buildings or structures except as set forth in subparagraph (ii) below;
 - (c) Creation or maintenance of unpaved roads except as set forth in subparagraph (ii) below;
 - (d) Removal of trees except (1) removal of invasive species, (2) removal of dead, diseased or dying trees, including salvage harvests in response to a natural disaster, (3) removal of trees posing a threat to human health or safety, (4) minimal removal of trees for creation of small wildlife plots, (5) removal of trees for construction and maintenance of permitted roads, stream crossings or other structures permitted in subparagraph (ii) below, and (6) harvesting of trees with submission of a pre-harvest plan and compliance with Best Management Practices for Water Quality Guide as promulgated by the Virginia Department of Forestry; and
 - (e) Plowing cultivation, filling, dumping, or other earth-disturbing activities except as may be necessary for the activities permitted in subparagraph (ii) below.
- (ii) **PERMITTED ACTIVITIES.** The following activities are permitted within the riparian buffers:
 - (a) Fencing along or within such areas;
 - (b) Construction and maintenance of stream crossings for pedestrians, livestock, and vehicles, which crossings minimize obstruction of water flow;
 - (c) Creation and maintenance of improvements over such areas to access crossings;
 - (d) Creation and maintenance of trails;
 - (e) Maintenance of existing roads and construction and maintenance of unpaved roads;
 - (f) Creation and maintenance of natural habitat and small wildlife plots;
 - (g) Planting of trees, shrubs, grasses, and other vegetation;

- (h) Development of ecosystem functions on the land, including necessary equipment and structures, with the prior written approval of Grantee as permitted in Section II, Paragraph 4 (vi) above; and
- (i) Construction and maintenance of shoreline stabilization structures and/or portions of piers or docks for recreational or aquaculture purposes with access thereto.

8. LANDSCAPE ALTERATION, EXCAVATION, AND MINING.

- (i) Grading, blasting, filling, excavation, or earth removal may not materially alter the topography of the Property except (a) for clearing, grading, and dam construction to create and maintain ponds (but not storm water retention or detention ponds to serve other properties), (b) for restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 4 (vi) above, (c) as required in the construction of permitted buildings, structures, driveways, roads, trails, and utilities, or (d) for erosion and sediment control pursuant to an erosion and sediment control plan.
- (ii) Grading, blasting, filling, or earth removal in excess of one acre for the purposes set forth in subparagraph (i) above require 30 days' prior notice to Grantee.
- (iii) Generally accepted agricultural activities will not constitute a material alteration of the topography.
- (iv) Surface mining on the Property, subsurface mining from the surface of the Property, and drilling for oil or gas or other minerals on the Property are prohibited. Dredging on or from the Property is prohibited, except for maintenance of any ponds on the Property.

SECTION III – ENFORCEMENT

- 1. RIGHT OF INSPECTION.** Employees, agents, and other representatives of Grantee may enter the Property from time to time for purposes of (i) inspection (including photographic documentation of the condition of the Property), (ii) flagging or otherwise marking the boundaries of specific areas or zones on the Property that are restricted as to the structures or activities allowed thereon in Section II above, and (iii) enforcement of the terms of this Easement after reasonable notice to Grantor or Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to observe, document, prevent, terminate, or mitigate a potential violation of these restrictions with notice to Grantor or Grantor's representative being given at the earliest practicable time.

2. ENFORCEMENT.

- (i) Grantee, in accepting this Easement, commits to protecting the Conservation Values and advancing the conservation purposes of this Easement and has the resources necessary to enforce the restrictions set forth herein. Grantee has the right to bring a judicial proceeding to enforce the restrictions, which right specifically includes the right (a) to require restoration of the Property to its condition on the Effective Date or to require restoration of the Property to its condition prior to a violation hereof, provided that such prior condition was in compliance with the provisions of this Easement; (b) to recover any damages arising from non-compliance; (c) to compel Grantor to disgorge to Grantee any proceeds received in activities undertaken in violation of the restrictions set forth in Section II of this Easement; (d) to require Grantor to replant or pay for the replanting of trees on the Property harvested in violation of the restrictions involving timber or trees set forth in Section II of this Easement, (e) to require Grantor to pay the costs of ascertaining the value of the timber harvested in violation of restrictions involving timber or trees set forth in Section II of this Easement; (f) to pay to Grantee three times the value of the timber on the stump for the value (at the time of harvesting) of such timber harvested in violation of restrictions involving timber or trees set forth in Section II of this Easement, constituting the agreed-upon harm to the Conservation Values protected herein caused by such wrongful harvest; (g) to enjoin non-compliance by temporary or permanent injunction; and (h) to pursue any other appropriate remedy in equity or at law. If the court determines that Grantor failed to comply with this Easement, Grantor must reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs, expert-witness costs, and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay will not waive or forfeit its right to take such action as may be necessary to ensure compliance with this Easement, and Grantor hereby waives any defense of waiver, estoppel, or laches with respect to any failure to act by Grantee.
- (ii) Notwithstanding any other provision of this Easement, Grantor will not be responsible or liable for any damage to the Property or change in the condition of the Property (a) caused by fire, flood, storm, Act of God, governmental act, or other cause outside of Grantor's control or (b) resulting from prudent action taken by Grantor to avoid, abate, prevent, or mitigate such damage to or changes in the condition of the Property from such causes.
- (iii) Nothing in this Easement creates any right in the public or any third party to maintain a judicial proceeding against Grantor or Grantee. The conveyance of this Easement to Grantee does not affect the property rights of contiguous landowners or vest in any contiguous or nearby landowner rights in the Property or the administration of this Easement by Grantee.

SECTION IV – DOCUMENTATION

Grantor has made available to Grantee, prior to conveyance of this Easement, documentation sufficient to describe the condition and character of the Property, and the Baseline Documentation Report (BDR), describes the condition and character of the Property on the Effective Date. The BDR may be used to determine compliance with and enforcement of the terms of this Easement. However, the parties are not precluded from using other relevant evidence or information to assist in that determination. The parties hereby acknowledge that the BDR contained in the files of Grantee is an accurate representation of the Property and contains a statement signed by Grantor and a representative of Grantee as required by Treasury Regulation Section 1.170A-14(g)(5)(i).

Grantee may compile written reports and photographic documentation of the condition of the Property from time to time as a result of inspection of the Property pursuant to Section III 1. above.

SECTION V – GENERAL PROVISIONS

1. **DURATION.** This Easement will be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions, and restrictions contained in this Easement are binding upon, and inure to the benefit of, Grantor and its successors in title to the Property, or any portion thereof or interest therein, and will continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer will survive transfer.
2. **NO PUBLIC ACCESS AND GRANTOR'S RETENTION OF USE.** Although this Easement will benefit the public as described above, nothing herein may be construed to convey to the public a right of access to or use of the Property. Subject to the terms hereof, Grantor retains the exclusive right to such access on and use of the Property.
3. **GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor represents, covenants, and warrants that (i) Grantor has good fee simple title to the Property (including the mineral rights located under the surface of the Property), (ii) Grantor has all right and authority to give, grant and convey this Easement, (iii) the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record), including, but not limited to, any leases, option contracts, mortgage liens, deed of trust liens, or other liens not subordinated to this Easement, (iv) no consent of any third party is required for Grantor to enter into this Easement, (v) each person and/or entity signing on behalf of Grantor is authorized to do so, and (vi) Grantor is duly organized and legally existing under the laws of the State of Delaware.
4. **ACCEPTANCE.** Grantee accepts this conveyance pursuant to Virginia Code Section 10.1-1801, which acceptance is evidenced by the signature of a Deputy Director or Staff Attorney by authority granted by Grantee's Board of Trustees.

5. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, has been or may be proffered or dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; proffered or dedicated as open space in, or as part of, any real estate development plan; or proffered or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits. No development rights that have been encumbered or extinguished by this Easement may be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement, or otherwise.

6. **CONSTRUCTION.** Pursuant to the public policy of the Commonwealth of Virginia favoring land conservation, any general rule of construction to the contrary notwithstanding (including the common-law rule that covenants restricting the free use of land are disfavored and must be strictly construed), it is the intent of the parties hereto that this Easement and all language contained herein be liberally construed in favor of the grant to effect the purposes of this Easement and the policies and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation that is consistent with the purposes of this Easement (to protect the Conservation Values of the Property and prevent the exercise of reserved rights in a way that would impair such values) and that would render the provision valid will be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses consistent with the purposes of and not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a “qualified conservation contribution” as that term is defined in IRC Section 170(h)(1) and Treasury Regulation Section 1.170A-14, and the restrictions and other provisions of this Easement will be construed and applied in a manner that will not prevent it from being a qualified conservation contribution.

7. **REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement must be referenced by deed book and page number, instrument number, or other appropriate reference in any deed or other instrument conveying any interest in the Property. Failure of Grantor to comply with this requirement will not impair the validity of this Easement or the conveyance or limit this Easement’s enforceability in any way.

8. **NOTICE TO GRANTEE AND GRANTOR.** For the purpose of giving notices hereunder the current address of Grantee is Main Street Centre, 600 East Main Street, Suite 402, Richmond, Virginia 23219, and any notice to Grantor should be given to the recipient at the address at which the real estate tax bill is mailed for the Property or portion thereof that is the subject of the notice and which is currently 70 West Madison Ste 4600, Chicago, IL 60602-4215.
 - (i) **Grantor must notify Grantee in writing at or prior to closing on any *inter vivos* transfer, other than a deed of trust or mortgage, of all or any part of the Property.**

- (ii) In addition, Grantor agrees to notify Grantee in writing before exercising any reserved or permitted right that may have an adverse effect on the Conservation Values of the Property as encumbered by this Easement or that, because of unforeseen or changed circumstances, involves activities or structures regarding which this Easement is silent or ambiguous. (The purpose of requiring such notice is to afford Grantee an adequate opportunity to either (a) prohibit or approve and monitor such activities to ensure that they are carried out in a manner not having an adverse impact on the Conservation Values of the Property or (b) to prohibit or permit the construction of such structures, depending upon whether the construction of such structures will have an adverse impact on the Conservation Values of the Property.) Such notice must describe the proposed activity or structure in sufficient detail to allow Grantee to judge the consistency of the proposed activity or construction of the proposed structures with the purposes of this Easement. Grantee may grant its consent if it determines, in its sole discretion, that the performance of such activities or the construction of such structures does not confer upon Grantor an impermissible private benefit, does not violate any of the terms of this Easement, and does not have an adverse impact on the Conservation Values of the Property. Grantor may not engage in the proposed activities or construction of such structures unless and until Grantor receives Grantee's approval in writing.
- (iii) Failure of Grantor to comply with these requirements will not impair the validity of this Easement or limit its enforceability in any way.

- 9. **TAX MATTERS.** 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 Treasury Regulation Section 1.170A-13(c)(5), and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from conveyance of this Easement, that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable.
- 10. **GOODS AND SERVICES.** By its execution hereof, Grantee acknowledges and confirms receipt of this Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of this Easement.
- 11. **NO MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement will not merge into the fee interest, but will survive the deed and continue to encumber the Property.
- 12. **ASSIGNMENT BY GRANTEE.** Assignment of this Easement is permitted by Virginia Code Section 10.1-1801, but Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (i) all restrictions set forth in this Easement are to be continued in perpetuity, (ii) the transferee then qualifies as an eligible donee as defined in IRC Section 170(h)(3) and the applicable Treasury Regulations, and (iii) the transferee is a public body as defined in Section 10.1-1700 of the Open-Space Land Act.

13. **GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the conveyance of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that this Easement on the Effective Date bears to the value of the Property as a whole at that time.
14. **CONVERSION OR DIVERSION.** Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Section 10.1-1704 of the Open-Space Land Act, which does not permit loss of open space.
15. **EXTINGUISHMENT.** This Easement may be extinguished, in whole or in part, only (i) in a judicial proceeding in a court of competent jurisdiction, (ii) upon a finding by the court that a subsequent unexpected change in the conditions surrounding the Property has made impossible or impractical the continued use of the Property (or the portion thereof to be removed from this Easement) for conservation purposes, and (iii) with a payment to Grantee of a share of the proceeds from a subsequent sale, exchange, or involuntary conversion of the Property at least equal to the proportionate value of this Easement computed as set forth in Section V, Paragraph 13 above. Grantee must use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purposes of this Easement. For purposes of this Easement, an extinguishment involves the removal of all or any part of the Property from this Easement.
16. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's Conservation Values or add acreage to the restricted property by an amended deed of easement, provided that no amendment may (i) affect this Easement's perpetual duration or remove this Easement from any portion of the Property, (ii) conflict with or be contrary to or inconsistent with the conservation purposes of this Easement, (iii) reduce the protection of the Conservation Values, (iv) affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land", (v) affect the status of Grantee as a "qualified organization" or "eligible donee", or (vi) create an impermissible private benefit or private inurement in violation of federal tax law. No amendment will be effective unless documented in a notarized document executed by Grantee and Grantor and recorded in the Clerk's Office of the Circuit Court of James City County, Virginia.
17. **COST RECOVERY CHARGES.** Grantee reserves the right to recover its costs incurred in responding to requests initiated by Grantor involving matters such as boundary line adjustments, easement amendments, project reviews for ecosystem services, preparation of reports to facilitate sales, and access or utility easements over the Property. Such cost recovery charges will be determined and periodically adjusted by Grantee's Board of Trustees, as set forth in a published fee schedule.
18. **JOINT OWNERSHIP.** If Grantor at any time owns the Property or any portion of or interest therein in joint tenancy, tenancy by the entirety, or tenancy in common, all such tenants will be jointly and severally liable for all obligations of Grantor set forth herein.

19. **SEVERABILITY.** It is the express intent of the parties hereto that all provisions of this Easement be considered and construed as part of the whole and that no provision will be applied in isolation without consideration of the overall purposes of this Easement. Nevertheless, if any provision of this Easement 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 will not be affected thereby.
20. **ENTIRE AGREEMENT.** This instrument (including Schedule A and Exhibit A) sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement.
21. **CONTROLLING LAW.** The interpretation and performance of this Easement will be governed by the laws of the Commonwealth of Virginia and the United States, resolving any ambiguities or questions of the validity of specific provisions in a manner consistent with the provisions of Section V, Paragraph 6 above in order to give maximum effect to its conservation purposes.
22. **RECODIFICATION AND AMENDMENT OF STATUTES AND REGULATIONS**
This Easement cites various federal and state statutes and regulations applicable to open-space easements. In the event that such statutes or regulations are re-codified or amended, this Easement will be interpreted and enforced according to the re-codified or amended statutes and regulations most closely corresponding to those cited herein and carrying out the purposes recited herein.
23. **RECORDING.** This Easement will be recorded in the land records in the Clerk's Office of the Circuit Court of James City County, Virginia, and Grantee may take any steps necessary in said clerk's office to preserve its rights under this Easement in the future.
24. **COUNTERPARTS.** This Easement may be executed in one or more counterpart copies, each of which, when executed and delivered, will be an original, but all of which will constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto will not affect the validity of this Easement.
25. **DEFINITIONS.** For purposes of this Easement, the phrase "Effective Date" means the date upon which this Easement was first put to record in the Clerk's Office of the Circuit Court of James City County, Virginia. The words "currently" or "existing" mean currently or existing on the Effective Date. Time will be calculated in calendar days, not business days.


WITNESS the following signatures and seals:

[Remainder of Page Intentionally Left Blank; Signatures to Follow on Next Pages.]

[Counterpart signature page 1 of 2 of Deed of Open-Space Easement]

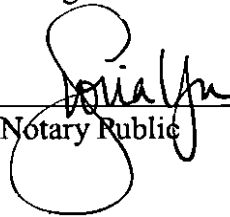
GRANTOR:

CARTER'S GROVE ASSOCIATES LLC,
a Delaware limited liability company

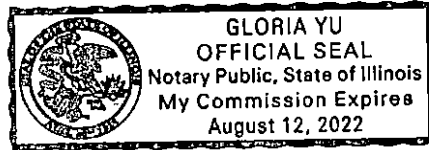
By: 
Samuel Menco, Manager

STATE OF ILLINOIS;
CITY/COUNTY OF CHICAGO / COOK, to-wit:

The foregoing instrument was acknowledged before me this the 8th day of November,
2021, by SAMUEL MENCOFF, who is personally known to me, or who produced
_____ as identification, as Manager of Carter's Grove Associates LLC, a
Delaware limited liability company, on its behalf.


Notary Public

My commission expires: 12AUG2022
My registration number is: 655086



[Counterpart signature page 2 of 2 of Deed of Open-Space Easement]

Accepted:
VIRGINIA OUTDOORS FOUNDATION,

By: 

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

The foregoing instrument was acknowledged before me this 16th day of November, 2021 by Anna G. Chisholm, a Deputy Director of the Virginia Outdoors Foundation.

Kathy Ann Combs
Notary Public

My commission expires: July 31, 2025
Registration No. 7559419

(SEAL)

Kathy Ann Combs
NOTARY PUBLIC
REG. # 7559419
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES 7/31/2025

SCHEDULE A

LEGAL DESCRIPTION

That parcel of land situate in James City County, Virginia, designated as "THE COLONIAL WILLIAMSBURG FOUNDATION PARCEL ID: 5820100002 ZONED R2 INST. NO. 140010704 2,941,013 SQ. FT. 67.52 ± AC." on Drawing Numbers Sv-6 and Sv-8 (Revised) on that plat (the "ALTA Plat") dated 9/11/14, made by Vanasse Hangen Brustlin, Inc., and entitled "CARTER'S GROVE MARTIN'S BEACH Williamsburg, Virginia" which plat is on file with and available from the Grantee.

LESS AND EXCEPT that 9,560 square foot portion of a Variable Width Sanitary Sewer Easement conveyed to Hampton Roads Sanitation District referenced in Instrument Number 140014402, which portion is designated as "PORTION OF VARIABLE WIDTH SANITARY SEWER EASEMENT TO HRSD INST. NO. 1400114402 9,560 SQ. FT." on Drawing Number Sv-8 (Revised) of the ALTA Plat.

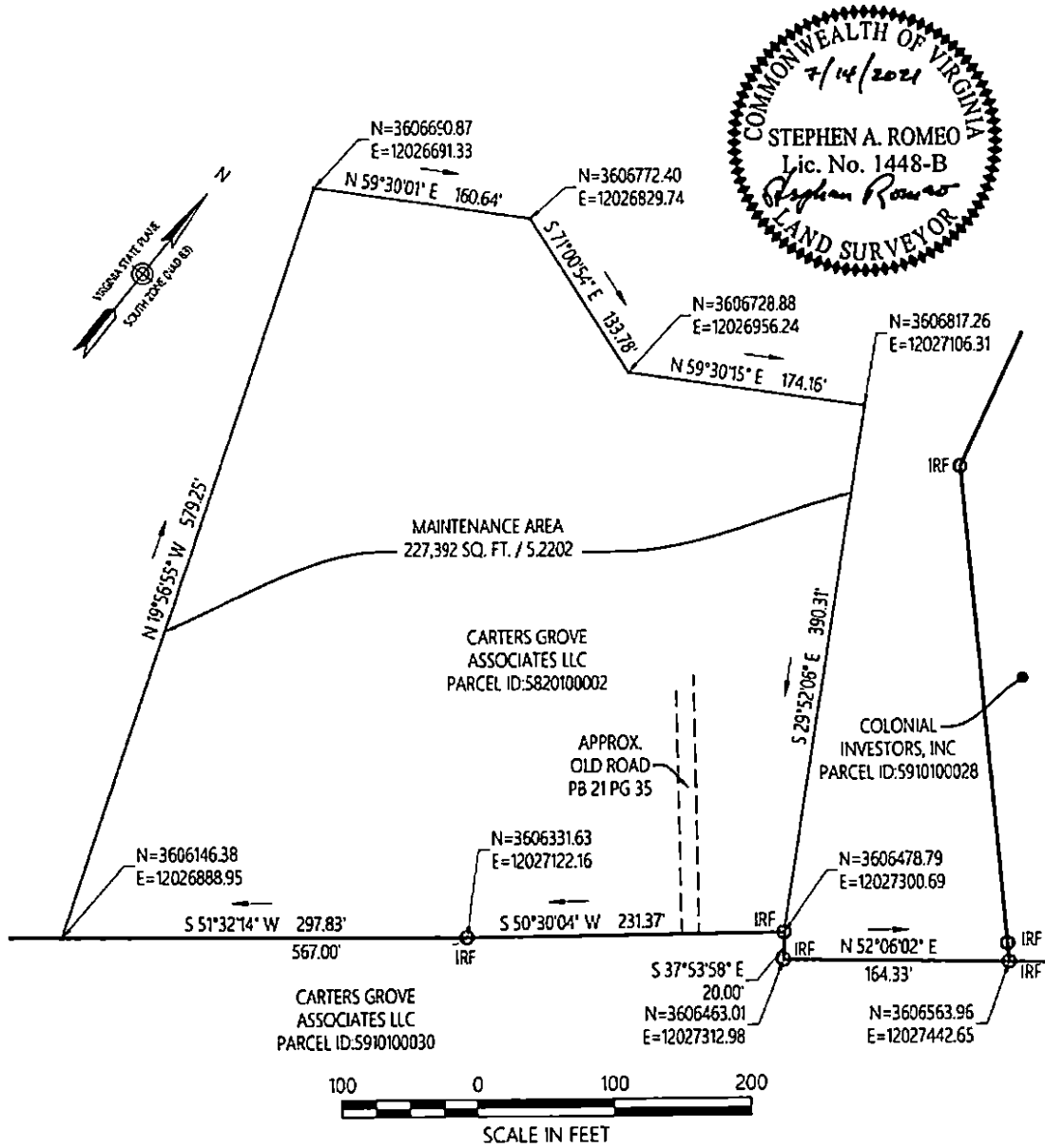
IT BEING a portion of the same property conveyed by deed dated September 4, 2014, from The Colonial Williamsburg Foundation, a Virginia non-stock corporation, to Carter's Grove Associates LLC, a Delaware limited liability company, recorded September 17, 2014 in the Clerk's Office of the Circuit Court of the City of Williamsburg & County of James City, Virginia, as Instrument No. 140015057.

PLAT ATTACHED

INSTRUMENT 210023492
RECORDED IN THE CLERK'S OFFICE OF
WMSBG/JAMES CITY CIRCUIT ON
NOVEMBER 30, 2021 AT 02:07 PM
MONA A. FOLEY, CLERK
RECORDED BY: SPA

EXHIBIT A

"BUILDING ENVELOPE"



351 McLaws Circle, Suite 3
Williamsburg, Virginia

Plat Showing
Maintenance Area ("Building Envelope")
Carters Grove
Williamsburg, Virginia

Date:
7/14/2021
Job Number
34122.11