

AMENDED AND RESTATED RECIPROCAL USE AND EASEMENT AGREEMENT

This Reciprocal Use and Easement Agreement ("Agreement") is entered this 16th day of January, 2020 between the WILLOWSFORD HOMEOWNERS ASSOCIATION, a Virginia Nonstock Corporation ("Association"), and WILLOWSFORD CONSERVANCY, a Virginia Nonstock Corporation ("Conservancy").

RECITALS:

WHEREAS, the Association is a Virginia Nonstock Corporation serving as the governing entity for all of the owners in the Association created by virtue of a certain Community Charter, which is recorded among the land records of Loudoun County, Virginia at Instrument Number 20110324-0019087 ("Community Charter"), and as such is the record title owner of all common areas and amenities and improvements located thereon within the Association and land subjected to such Community Charter.

WHEREAS, the Conservancy is a Virginia Nonstock Corporation created pursuant to a Community Covenant recorded among the land records of Loudoun County, Virginia at Instrument Number 20161216-0085726 ("Community Covenant") and Amended and Restated Articles of Incorporation dated December 8, 2016 for the purpose of generating, enhancing and preserving a true sense of community within the Conservancy and the Association through the creation and sponsorship of programs, activities, and services to facilitate: (1) interaction, inclusiveness, involvement, community pride and responsibility; (2) the preservation and maintenance of open space, agricultural lands, or similar conservation areas; and (3) the sharing of ideas, common interests and resources, in order to enhance the lifestyle within and contribute to the betterment of Willowsford and the greater community.

WHEREAS, the Conservancy is exempt from Federal Income Tax under Section 501(c)(4) of the Internal Revenue Code.

WHEREAS, the Community Covenants require mutual cooperation and interaction between the Association and Conservancy to accomplish the purposes and goals of the Willowsford community established by the Community Charter and Community Covenant.

WHEREAS Section 2.6 of the Community Charter states: "It is the Founder's intent that the Association and Conservancy work together and cooperate in performing their complementary roles within Willowsford."

WHEREAS, pursuant to the rights and powers established and contemplated under Section 2.6 of the Community Charter and as further described in the Community Covenant, from time to time, it is anticipated that the Conservancy shall utilize the amenities, services and property of the Association in furtherance of the purposes and mission set forth in the Community Covenant.

WHEREAS, the Association and Conservancy entered into a Reciprocal Use and Easement Agreement dated February 1, 2016.

WHEREAS, the Association and Conservancy desire to amend certain terms of the Reciprocal Use and Easement Agreement

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which Association and Conservancy expressly acknowledge, the parties hereby agree to an Amended and Restated Reciprocal Use and Easement Agreement as follows:

PART I. CONSERVANCY USE OF ASSOCIATION AMENITIES AND SERVICES

- A. The Association hereby grants the Conservancy a perpetual, nonexclusive easement on, over and through Association Common Area ("Association Common Area"). The Conservancy's use of the Association Common Area shall be limited in the manner provided in this Part I hereof.
- B. The Conservancy may use the Association Common Area and offer or otherwise provide for such activities and programs thereon, in a manner consistent with the Conservancy's role and mission, as described in the Community Covenant. The Conservancy's use of the Association Common Area shall comply with the Willowsford Standard, as established by the Founder in accordance with the power granted by the Community Covenant.
- C. The Association shall provide residential waste and recycling service to the Conservancy Farm Stand in the Grange as it does to each homeowner lot.
- D. The Conservancy shall abide by all applicable provisions of the Association's Community Charter and any rules and regulations duly adopted and published by the Association's Board of Directors.
- E. The Conservancy shall, at its expense, keep the Association Common Area in good condition and repair in a manner consistent with the Willowsford Standard during such times as the Conservancy is actively using the Association Common Area. Accordingly, before any significant use of the Association Common Area by the Conservancy, representatives of both the Conservancy and Association shall inspect the Association Common Area to be used by the Conservancy and shall document its then current condition. Similarly, following completion of the use of the Association Common Area by the Conservancy, representatives of both the Conservancy and Association shall inspect the Association Common Area to determine whether there was any damage to the Association Common Area arising from such use, in which case the Conservancy shall rectify the damage or be responsible for reimbursing the Association for all costs associated with rectifying such damage.
- F. The Conservancy shall maintain on such property equivalent types and levels of property and liability insurance as it maintains with respect to the Assigned Conservancy Property; provided, the Conservancy's responsibility for property insurance on the Association Common Area shall apply only to improvements that the Conservancy erects, installs, or otherwise places on the property. The Conservancy's liability insurance policy shall provide that the Association is an insured party with respect to liability arising out of its status as owner of the Association Common Area.
- G. Conservancy shall indemnify and defend and hold harmless the Association, its members, guests, officers, directors, invitees and its Management Agent from and against all claims, liabilities, damages, losses and expenses (including reasonable attorneys' fees) of every kind and character resulting from or relating to or arising out of (a) the Conservancy's use of the Association Common Area or the inaccuracy, non-fulfillment or breach of any representation,

warranty, covenant or agreement made by the Conservancy herein, or (b) claims, causes of actions or actions of third parties that result from or relate to or arise out of the operation by or conduct of, or obligation incurred by or on behalf of, the Conservancy.

- H. It is further understood and agreed that the Conservancy shall obtain, at its own cost, all necessary licenses or permits and authorizations prior to commencement of any use of the Association Common Areas under this Agreement. The Conservancy shall, at all times, remain in compliance with the provisions and conditions of any licenses or permits and any applicable ordinances or laws, and the Conservancy shall, at all times, obey and comply with the lawful direction of governmental authority.
- I. Any existing reservations for Association or owner use of the building spaces shall take precedence over Conservancy use. The Conservancy must obtain prior approval from the Association confirming available dates.
- J. The Conservancy shall be permitted to lease and occupy the Boat House and its porch and associated parking spaces in its and their entirety, for office use beginning January 1, 2021, and to enter into a long-term lease agreement of the Boat House with the Association for \$1 per year. The Conservancy shall be responsible for all costs associated with landscaping, (except that the Association will provide regular mowing for aesthetic continuity), operation and day-to-day maintenance of the Boat House, including all utility costs, along with the performance of all necessary maintenance and repairs. Every five years, the Association shall obtain a replacement reserve study that includes the Boat House. Each year, the Conservancy shall contribute a proportional share to the reserve replacement funds designated for the Boat House, as determined by the Association.
- K. The use rights assigned to the Conservancy pursuant to this Agreement shall be in addition to those rights and privileges provided for in the Community Covenant with respect to the Conservancy's use of Association property. As provided in Section 2.1 of the Community Covenant, the Association is obligated to cooperate with the Conservancy with respect to the Conservancy's role in the Willowsford community by, among other things, permitting use of Association personnel, equipment, facilities, and building space for, and otherwise facilitating or not interfering with, Conservancy functions or operations. This Agreement is intended to provide for specific use rights in addition to those which the Association provides for under Section 2.1 of the Community Covenant and no additional agreement or instrument is required to provide for or exercise the rights contemplated under Section 2.1. In recognition of the Conservancy's right to use the Association's facilities, the Conservancy shall pay to the Association a use fee in an amount not to exceed two thousand dollars (\$2,000.00) annually, in a specific amount mutually agreed to by the Association and Conservancy.

PART II. ASSOCIATION USE OF CONSERVANCY AMENITIES AND SERVICES

- A. The Conservancy hereby grants the Association a perpetual, nonexclusive easement on, over and through Conservancy Property for the use and enjoyment of the Conservancy's Amenities located on Conservancy Property in accordance with the terms and conditions of this Agreement (hereinafter "Assigned Conservancy Property"). The Association's use of the Assigned Conservancy Property shall be limited in the manner provided in this Part II hereof.

- B. Any activities and programs offered and conducted by the Association on the Assigned Conservancy Property shall be for the use and enjoyment of the Association's members and other permitted users of the Association's Common Area, as provided in the Charter, and the Association shall regulate the use and enjoyment of such property in the same manner as it regulates use of the Common Area under the Charter. In any event, the Association shall impose such rules, regulations, and conditions to use as are required to comply with the "Community-Wide Standard," as defined in the Charter, and the Willowsford Standard, as defined in the Community Covenant. In addition, the Conservancy may, from time to time, impose such rules, regulations, and conditions on use of the Assigned Conservancy Property as it deems necessary or appropriate in the discretion of the Conservancy's board of trustees. Notwithstanding the above, any use of the Assigned Conservancy Property which would cause the Conservancy to lose its tax-exempt status under Section 501(c)(4) of the Internal Revenue Code is prohibited.
- C. The Association shall have the right to use the water well located on the Conservancy's Common Area, which well's use is shared by the parties. Conservancy shall pay for all utility costs associated with the operation of the well. The Conservancy and Association shall share equally in the costs associated with the operation, maintenance, repair and replacement of the well. If the Conservancy becomes aware of a condition that requires maintenance or repair of the well, it shall provide notification to the Association's management staff. Generally, the Association staff will oversee procurement and completion of repairs.
- D. The Association shall, at its expense, keep such Property and all improvements constructed thereon in good condition and repair in a manner consistent with the Community-Wide Standard and the Willowsford Standard during such times as the Association is actively using the Assigned Conservancy Property. Accordingly, before any significant use of Assigned Conservancy Property by the Association, representatives of both the Association and Conservancy shall inspect the Assigned Conservancy Property to be used by the Association and shall document its then current condition. Similarly, following completion of the use of the Assigned Conservancy Property by the Association, representatives of both the Association and Conservancy shall inspect the Assigned Conservancy Property to determine whether there was any damage to the Assigned Conservancy Property arising from such use, in which case the Association shall rectify the damage or be responsible for reimbursing the Conservancy for all costs associated with rectifying such damage. Notwithstanding the foregoing, the allocation of maintenance and repair responsibility for the Association Common Area and Assigned Conservancy Property shall be as set forth in Exhibit A hereto.
- E. The Association shall maintain on such property equivalent types and levels of property and liability insurance as it maintains with respect to its Common Area under the Charter and Assigned Conservancy Property; provided, the Association's responsibility for property insurance on the Assigned Conservancy Property shall apply only to improvements that the Association erects, installs, or otherwise places on the property. The Association's liability insurance policy shall provide that the Conservancy is an insured party with respect to liability arising out of its status as owner of the Assigned Conservancy Property.
- F. The Association shall indemnify and defend and hold harmless the Conservancy, its trustees, members, guests, officers, directors, invitees and its Management Agent from and against all claims, liabilities, damages, losses and expenses (including reasonable attorneys' fees) of every kind and character resulting from or relating to or arising out of (a) the Association's use of the

Assigned Conservancy Property or the inaccuracy, non-fulfillment or breach of any representation, warranty, covenant or agreement made by the Association herein, or (b) claims, causes of actions or actions of third parties that result from or relate to or arise out of the operation by or conduct of, or obligation incurred by or on behalf of, the Association.

- G. It is further understood and agreed that the Association shall obtain, at its own cost, all necessary licenses or permits and authorizations prior to commencement of any use of the Assigned Conservancy Property under this Agreement. The Association shall, at all times, remain in compliance with the provisions and conditions of any licenses or permits and any applicable ordinances or laws, and the Association shall, at all times, obey and comply with the lawful direction of governmental authority.
- H. Any existing reservations for Conservancy or owner use of the Conservancy building spaces shall take precedence over Association use. The Association must obtain prior approval from the Conservancy confirming available dates.
- I. The use rights assigned to the Association and its members pursuant to this Agreement shall be in addition to any use rights established in accordance with the Community Covenant.

PART III. MISCELLANEOUS

- A. Nothing in this Agreement shall be construed to create any rights in the general public or to constitute a dedication to the public of any rights in any portion of the Assigned Conservancy Property or the Association Common Area. The parties may from time to time take such steps, consistent with the rights of the Conservancy and the Association and its members hereunder, as they reasonably deem necessary to prevent any accrual of rights of the public in any portion of the Assigned Conservancy Property or the Association Common Area.
- B. The persons executing this Agreement on behalf of the Association and the Conservancy represent that they have the authority to enter into this Agreement and that the Agreement is fully binding upon the parties in accordance with its terms.
- C. This Agreement is made for the exclusive benefit of the Conservancy and the Association and for no other person or entity. Nothing expressed in or implied from this Agreement is intended or shall be construed to confer on any other person or entity other than the Conservancy and the Association any rights or remedies hereunder
- D. This Agreement shall inure to the benefit of and be binding on the successors and assigns of the parties hereto.
- E. All written notices required herein shall be delivered by hand or sent by certified mail, return receipt requested to the following addresses:

If the Conservancy:

Willowsford Conservancy
c/o Executive Director
44095 Pipeline Plaza, Suite 140
Willowsford, VA 20147

If the Association:

Willowsford Homeowners Association
c/o Community Manager
23506 Founders Drive
Ashburn, VA 20148

- F. Should any party desire to change the address for notice, that party shall be required to deliver written notice to the other party.
- G. This Agreement constitutes the complete understanding of the parties hereto with respect to the subject matter hereof. This Agreement may be modified or amended only upon the written agreement of the Conservancy and the Association, acting by and through their respective boards. Any amendment to this Agreement shall be set forth in an instrument in writing signed by two officers of the Conservancy and two officers of the Association, certifying that the requisite approval of their respective boards of directors was obtained.
- H. The recitals set forth at the beginning of this Agreement are hereby incorporated herein and made a part of this Agreement.
- I. The captions or titles provided in this Agreement are solely for the sake of convenience, and in no way are intended to, nor shall, modify or limit the meaning of any term or provision of this Agreement.
- J. If any court of competent jurisdiction holds that any provision in this Agreement is invalid or unenforceable, the court shall construe and apply this Agreement without regard to such invalid or unenforceable provision and give effect to the remainder of this Agreement to the maximum extent permitted by law.
- K. The Agreement shall be controlled by the laws of the Commonwealth of Virginia. The parties agree that all disputes regarding arising out of and related to the Parties' respective obligations arising under this Agreement, which are not able to be amicably resolved by the Parties, shall be resolved by expedited, final and binding arbitration in accordance with the following procedures.
 - a. The Parties agree that, except as otherwise provided herein, disputes arising hereunder shall be presented before a single arbiter, and the Parties shall cooperate reasonably with one another to determine the person who shall serve as the single Arbiter (the "Arbiter"). In the event the Parties fail to agree on an Arbiter, then one (1) Arbiter shall be selected by the American Arbitration Association ("AAA") to resolve the dispute. The Arbiter shall render his or her decision in accordance with the terms of this Agreement and the commercial rules of the AAA. If there is no AAA or successor organization, then each party shall appoint their own Arbiter and the two appointed Arbiters shall jointly appoint a third Arbiter.
 - b. The arbitration process shall be invoked by either Party faxing or e-mailing and sending to the other Party by regular mail a detailed claim specifying the nature of the dispute.

- c. All communications with the Arbiter(s) shall either be in person, by conference call, involving representatives of Conservancy and Association, or in writing, with faxed or e-mailed and mailed copies to the other Party. Each Party shall have ten (10) days from the date of the other Party's submission of the dispute to arbitration in which to respond to those submittals with any submissions which it desires the Arbiter to review in deciding the subject dispute. All formal submissions to the Arbiter(s) shall be in writing. The Parties shall not have a right to a hearing before the Arbiter(s) unless both Parties and Arbiter agree in writing. The Parties agree that any such hearing shall be conducted in Loudoun County, Virginia.
 - d. The parties expressly waive any right to claim any rights or entitlements with respect to any such disputes except as expressly decided by the Arbiter(s). The Parties further agree, jointly and severally, that the Arbiter(s) shall not incur any liability for his or her actions and participation in this Agreement as Arbiter(s).
 - e. The Arbiter(s) fees and expenses in relation to any such involvement as Arbiter(s) shall, for each involvement, be paid by the Party against whom the Arbiter(s) finds in relation to each such dispute. The Arbiter(s) shall break out his or her expenses and carefully allocate and account for his or her time and energy spent in resolution of each dispute for purposes of assessing responsibility for that expense. In addition, the Party against whom the Arbiter(s) finds in relation to such dispute shall reimburse the prevailing Party for its costs and expenses incurred in connection with the arbitration, including without limitation expert witness fees and reasonable attorneys' fees.
 - f. Unless otherwise agreed to by the Parties, or unless a reasonable extension of time is requested by the Arbiter(s), then within thirty (30) days after the arbitration process has been invoked, the Arbiter(s) shall issue a written decision on any dispute submitted and shall provide such decision to each of the Parties and their attorneys by fax and regular mail at the addresses and fax numbers identified in this Agreement. With respect to disputes that necessitate a determination by the Arbiter(s) of subsequent action to be taken by or on behalf of either Party, the Arbiter(s) shall detail the required action and specify which Party is responsible for performing such action and any other necessary details related to such performance. All decisions rendered by the Arbiter(s) shall be final and binding on the Parties in accordance with the Virginia Uniform Arbitration Act.
- L. Failure of either party to insist upon compliance with any provision hereof shall not constitute a waiver of the rights of such party to subsequently insist upon compliance with that provision or any other provision of this Agreement.
- M. The parties acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to the effect of each and every one of the terms, conditions, and restrictions of this Agreement and each acknowledges and agrees to the enforcement thereof. Should any provision of this Agreement require judicial interpretation, it is agreed that the court shall not apply the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the document. Typewritten or handwritten provisions inserted in this Agreement that are initialed by the parties shall control over all printed provisions of this Agreement in conflict therewith. Headings of paragraphs are for convenience only and shall not be construed to define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

N. This Agreement may be executed in separate counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all the parties.

O. The Effective Date of this Agreement shall be the latest date of signature by any of the parties.

ASSOCIATION:

Willowsford Homeowners Association

By: _____

Title: _____

Date: _____

[Handwritten Signature]
President
1/16/20

CONSERVANCY:

Willowsford Conservancy

By: _____

Title: _____

Date: _____

[Handwritten Signature]
President
1/16/20