

Wilmington, Delaware
_____, 2023

#

Sponsor:

**Council
Member
Oliver**

WHEREAS, pursuant to City Charter Section 1-101, the City may acquire, hold, manage, and dispose of property on such terms as it deems proper for any municipal purpose; and

WHEREAS, City Code Section 2-627 authorizes the Department of Public Works, subject to the approval of Council by resolution, to grant such easements as shall be necessary to facilitate the construction, maintenance, operation, and/or repair of streets, roads, sidewalks, and/or other public rights-of-way; and

WHEREAS, the City is the owner of that certain real property located at 501 Alapocas Drive, Wilmington, Delaware 19803 (being Tax Parcel No. 06-127.00-001) (the “Right-of-Way”); and

WHEREAS, The Nemours Foundation (“Nemours”) is the owner of that certain real property located at 1600 Rockland Road, Wilmington, Delaware, 19803 (being Tax Parcel No. 06-118.00-002) (the “Nemours Property”), which abuts the Right-of-Way; and

WHEREAS, Nemours has requested an access easement across the Right-of-Way for the benefit of the Nemours Property to allow access to and from Old Country Road for purposes of (i) ingress, egress, construction, and maintenance projects, (ii) access for maintenance, service, and emergency vehicles, and (iii) installation of utilities on the Nemours Property, as set forth in a proposed agreement between the City and Nemours (the “Access Easement Agreement”), a copy of which, in substantial form, is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, City Council deems it necessary and appropriate to approve the grant of the easement to Nemours as set forth in the Access Easement Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that Council hereby approves the City's grant of an easement to Nemours in the Right-of-Way (being Tax Parcel No. 06-127.00-001) pursuant to the terms of the Access Easement Agreement, a copy of which, in substantial form, is attached hereto and incorporated herein as Exhibit A.

BE IT FURTHER RESOLVED that the Mayor, or his designee, is hereby authorized to execute any and all documents necessary to effectuate the grant of the easement, and the appropriate officers of the City are hereby authorized to take any and all further undertakings and assurances that may be appropriate.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution approves the City's grant of an access easement in 501 Alapocas Drive (being Tax Parcel No. 06-127.00-001) to The Nemours Foundation to allow access to and from Old Country Road for purposes of (i) ingress, egress, construction, and maintenance projects, (ii) access for maintenance, service, and emergency vehicles, and (iii) installation of utilities on 1600 Rockland Road.

W0123194

EXHIBIT A

Tax Parcel No.: 06-127.00-001
Tax Parcel No.: 06-118.00-002

Prepared By and Return To:
Wendie C. Stabler, Esquire
Saul Ewing LLP
P.O. Box 1266
Wilmington, DE 19899

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (this "Agreement") is entered into this _____ day of _____, 2023, by and between the CITY OF WILMINGTON, a municipal corporation of the State of Delaware ("Grantor"), and THE NEMOURS FOUNDATION, a Florida corporation ("Grantee"), based upon the facts set forth below.

WITNESSETH:

WHEREAS, Grantor is the owner of that certain real property located at 501 Alapocas Drive, Wilmington, Delaware, 19803, designated as New Castle County Tax Parcel Number 06-127.00-001 (the "Grantor Property");

WHEREAS, Grantee is the owner of that certain real property located at 1600 Rockland Road, Wilmington, Delaware, 19803, designated as New Castle County Tax Parcel Number 06-118.00-002 (the "Grantee Property");

WHEREAS, the Grantee Property abuts the Grantor Property;

WHEREAS, based upon a request from Grantee, Grantor desires to provide an easement across the Grantor Property for the benefit of the Grantee Property to allow access to and from Old County Road as depicted on Exhibit A, which is attached hereto and incorporated herein, for purposes of ingress, egress, construction and maintenance projects on the Grantee Property, as well as access for maintenance, service and emergency vehicles; and

WHEREAS, Grantor and Grantee have executed this Agreement to grant to and for the benefit of the Grantee Property a perpetual easement across the Grantor Property as described herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and conditions hereinafter set forth, the parties hereto, intending to be legally bound, do hereby covenant and declare for themselves, their successors and assigns, as follows:

1. **Grant of Easement.** Grantor hereby grants to Grantee, to and for the benefit of the Grantee Property, a perpetual easement containing 2,633 feet (the “Access Easement”) for vehicular and pedestrian access over and across the Grantor Property as depicted on Exhibit A and described on Exhibit B, which are attached hereto and incorporated herein, to be used by Grantee, its successors, permitted assigns, permitted lessees, guests and invitees, for (a) vehicular and pedestrian access, ingress, egress and regress to and from Old County Road and the Grantee Property for purposes of general access, construction and maintenance projects (including maintenance of any Landscaping Buffer (as defined below) on the Grantee Property), as well as access for maintenance, service and emergency vehicles and (b) installation of utilities. The use of the Access Easement granted hereunder shall at all times be exercised in (x) a reasonable, prudent and safe manner, (y) a manner that avoids unsafe conditions or damage to existing or proposed improvements and (z) in a manner that minimizes disturbance of landscaping, paved surfaces or utilities. The Access Easement rights set forth herein shall run with the Grantee Property and benefit all parties having or acquiring title thereto and the Access Easement obligations of Grantor shall be binding upon the Grantor Property and upon all parties having or acquiring title thereto. This grant of a private easement, limited to the purposes herein, shall not be considered or held to have dedicated or otherwise created a street, whether private or public, except as may otherwise be required by any regulatory authority having jurisdiction over the Grantee Property.

2. **Installation of Easement Improvements.** In the event Grantee desires to construct an access road in the Access Easement and/or an entrance or gate (with any such gate to contain emergency access features allowing access by first responders) from Old County Road onto the Access Easement (collectively, the “Easement Improvements”), Grantee shall (i) do so at Grantee’s sole cost and expense and (ii) install a landscaping buffer between the Easement Improvements and the remainder of the Grantor Property, which shall consist of plants native to the local region (the “Landscaping Buffer”). Prior to making the Easement Improvements or installing the Landscaping Buffer, Grantee shall obtain the consent of Grantor’s Commissioner of Public Works (the “Commissioner”), which shall not be unreasonably withheld. Grantee shall indemnify, defend and hold Grantor, its officers, agents, and employees, harmless in connection with any such construction. All construction activities shall be performed in a manner so as not to cause material damage to the Grantor Property. At the conclusion of construction of the Easement Improvements, any portions of the Grantor Property which have been disturbed during the construction of the Easement Improvements shall be restored to substantially their original condition to the satisfaction of the Commissioner, to the extent practically feasible. Grantee shall perform all construction work in a workmanlike and professional manner in accordance with all applicable laws and regulations and in such a manner that will not interference with the business or operations of Grantor.

3. **Maintenance of the Access Easement; Non-Interference.** In the event Grantee causes the Easement Improvements to be constructed, then Grantee, at its sole cost and expense, shall be solely responsible for all of the maintenance and repair (including snowplowing, landscaping work, and repaving, as necessary) of the Easement Improvements and the Landscaping Buffer and shall maintain same in good condition and repair.

4. **Term of Access Easement.** This Access Easement and all the rights and obligations hereunder shall continue in perpetuity and shall be covenants running with the land, binding and benefiting the parties hereto and their respective successors and permitted assigns.

5. **Retained Rights.** Grantor expressly retains for itself, any and all utilities, and members of the public full rights to the use of the Grantor Property for any lawful purposes that do not interfere with, or impede the use of, the Access Easement granted to Grantee herein, including by way of example but not limitation, the right to utilize the Grantor Property for continued ingress, egress, and regress.

6. **Snow Removal.** Grantor shall not be responsible for any snow removal or repair within the Access Easement.

7. **Right of Grantor to Request Alteration or Removal of the Easement Improvements.** Grantor shall have the right to require that Grantee, at Grantee's sole cost and expense, alter or remove any or all of the Easement Improvements if the Commissioner deems such alteration or removal necessary for any public purpose or in the event of an emergency. In such an event (except in the event of an emergency), Grant shall provide Grantee with ninety (90) days' written notice of such demand.

8. **Abandonment of Access Easement; Default.** If Grantee, or its successors and permitted assigns, ever abandons its use of the Access Easement and/or Easement Improvements or defaults on its obligations under this Agreement, the Access Easement as set forth in Section 1 above shall automatically terminate, be null and void, and will no longer encumber the Grantor Property. "Abandonment" has its plain and legal meaning but includes the following: the failure to maintain the Access Easement and the Easement Improvements to the standards required by all applicable statutes, ordinances, and regulations. If Grantee, or its successors and permitted assigns, abandons the Access Easement and/or the Easement Improvements or if this Agreement otherwise terminates, Grantee, its successors or permitted assigns, shall, at Grantee's sole cost and expense, remove the Easement Improvements and restore the Grantor Property to its condition before the installation of the Easement Improvements, or, alternatively, shall be liable to Grantor for the full amount of the cost to Grantor of restoring the Grantor Property to its pre-installation condition. Grantee shall notify Grantor in writing of its intent to abandon the Access Easement and/or the Easement Improvements at least ninety (90) days before it takes any action that is reasonably likely to cause an abandonment of the Access Easement and/or the Easement Improvements, or, if appropriate, immediately following the discovery of any change or condition that necessitates an abandonment of the Access Easement and/or the Easement Improvements.

9. **Termination of Access Easement by Grantor.** Grantor shall have the right to terminate the Access Easement upon ninety (90) days' written notice to Grantee for any public purpose deemed necessary by the Commissioner. The ninety-day notice requirement shall not apply to any situation deemed by the Commissioner to be an emergency.

10. **No Encumbrances or Assignments.** Grantee shall not encumber or assign the Access Easement without the express prior written approval of Grantor.

11. **No Third-Party Beneficiaries.** Notwithstanding anything contained in this Agreement to the contrary, this Agreement is solely for the benefit of the parties hereto, their successors and permitted assigns, and shall not benefit any third party or create or operate to create, either expressly or impliedly any rights, title or interests hereunder in favor of any third party.

12. **Indemnification.** Grantee shall defend, indemnify, and hold Grantor, its officers, agents, and employees, safe and harmless from and against from any and all losses, costs, damages, claims, actions or liabilities on account of the death or injury of any person or persons and/or any and all damage or destruction of any property on the Access Easement or the Grantor Property whenever such death, injury, property damage or destruction arises from or grows out of the exercise of Grantee's rights herein. This section shall survive any subsequent termination of this Agreement.

13. **Insurance.** Grantee shall carry commercial general liability insurance with commercially reasonable limits of not less than One Million Dollars (\$1,000,000.00) with contractual liability sufficient to cover Grantee's obligations pursuant to Section 12 of this Agreement. Grantee shall name Grantor as an additional insured on Grantee's insurance policy. A copy of the certificate of insurance shall be provided to Grantor.

14. **Permits.** Grantee, at its sole cost and expense, shall obtain all required permits for the construction, installation, use, maintenance, repair, replacement and removal of the Easement Improvements.

15. **Notices.** All notices under this Agreement shall be in writing and sent prepaid by (i) certified mail, return receipt requested, (ii) overnight courier of national or regional recognition (such as UPS or Federal Express) or (iii) personal delivery or courier. The written notice shall to the extent practicable cite to the applicable term of this Agreement and must in all cases be accompanied by a copy of the fully executed Agreement:

If intended for the City of Wilmington (Grantor):

City of Wilmington
Department of Public Works
800 North French Street, Sixth Floor
Wilmington, DE 19801
Attn: Commissioner

- with a copy to -

City of Wilmington
Law Department
800 North French Street, Ninth Floor
Wilmington, DE 19801
Attn: City Solicitor

If intended for The Nemours Foundation (Grantee):

The Nemours Foundation
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

- with a copy to -

Saul Ewing LLP
P.O. Box 1266
Wilmington, DE 19899
Attn: Wendie C. Stabler, Esquire

16. **Due Authorization.** Grantor and Grantee each represent to the other that they are duly authorized to execute this Agreement, including, but not limited to, any approvals that may be required of Grantor by the Wilmington City Council. Grantee shall be solely responsible for obtaining approvals from New Castle County and/or the State of Delaware.

17. **Amendments; Waiver; Remedies; Damages.** Except as otherwise set forth herein, this Agreement may only be changed, modified or amended in writing by the mutual consent of Grantor and Grantee. The provisions of this Agreement may only be waived in or by a writing signed by the party against whom enforcement of any waiver is sought. No waiver by either party hereto of any breach of any covenant, agreement, representation or warranty hereunder shall be deemed a waiver of any proceeding or succeeding breach of the same. The exercise of any right granted to either party herein shall not operate as a waiver of any default or breach on the part of the other party hereto. Each and all of the several rights and remedies of either party hereto under or contained in or by reason of this Agreement shall be construed as cumulative and no one as exclusive of the others, or by any right or priority allowed by law. Notwithstanding the foregoing, neither party shall be entitled to recover special, punitive or consequential damages from the other party as a result of a breach of this Agreement.

18. **Severability.** If any clause or provision of this Agreement is held to be illegal, invalid or unenforceable, then and in such event, it is the express intention of the parties hereto that the remainder of this Agreement shall not be affected thereby and each clause or provision of this Agreement other than those declared illegal, invalid or unenforceable shall be legal, valid and enforceable to the fullest extent permitted by law or in equity.

19. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

20. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. All disputes in connection with this Agreement shall be resolved by a court of competent jurisdiction located New Castle County, Delaware.

21. **Miscellaneous.**

(a) The paragraph headings in this Agreement are for convenience only, do not define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part thereof.

(b) This Agreement constitutes the entire agreement between the parties, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

(c) This Agreement shall be recorded in the office of the Recorder of Deeds for New Castle County, Delaware.

22. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. Counterparts to this Agreement may be executed and delivered by electronic means, including, without limitation, facsimile, email, .pdf or .tif transmission, and for purposes of this Agreement signatures transmitted by electronic means shall be deemed to be original signatures.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Access Easement Agreement to be executed under their respective Hands and Seals as a sealed instrument under Delaware law this ____ day of _____, 2023.

**SEALED AND DELIVERED
IN THE PRESENCE OF**

GRANTOR:

THE CITY OF WILMINGTON

Witness:

By: _____ (Seal)
Name:
Title:

STATE OF DELAWARE)
) SS.
COUNTY OF NEW CASTLE)

BE IT REMEMBERED, that on this ____ day of _____, 2023, came before me, the Subscriber, a Notary Public in and for the State and County aforesaid, _____ of the CITY OF WILMINGTON, party to this Access Easement Agreement, known to me personally to be such, and acknowledged this Access Easement Agreement to be his or her act and deed on behalf of said company.

GIVEN under my Hand and Seal of Office the day and year aforesaid.

Notary Public
My Commission Expires:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under their respective Hands and Seals as a sealed instrument under Delaware law this ____ day of _____, 2023.

**SEALED AND DELIVERED
IN THE PRESENCE OF**

GRANTEE:

THE NEMOURS FOUNDATION

Witness:

By: _____ (Seal)

Name:

Title:

STATE OF DELAWARE)
) SS.
COUNTY OF NEW CASTLE)

BE IT REMEMBERED, that on this ____ day of _____, 2023, came before me, the Subscriber, a Notary Public in and for the State and County aforesaid, _____ of THE NEMOURS FOUNDATION, party to this Access Easement Agreement, known to me personally to be such, and acknowledged this Access Easement Agreement to be his or her act and deed on behalf of said company.

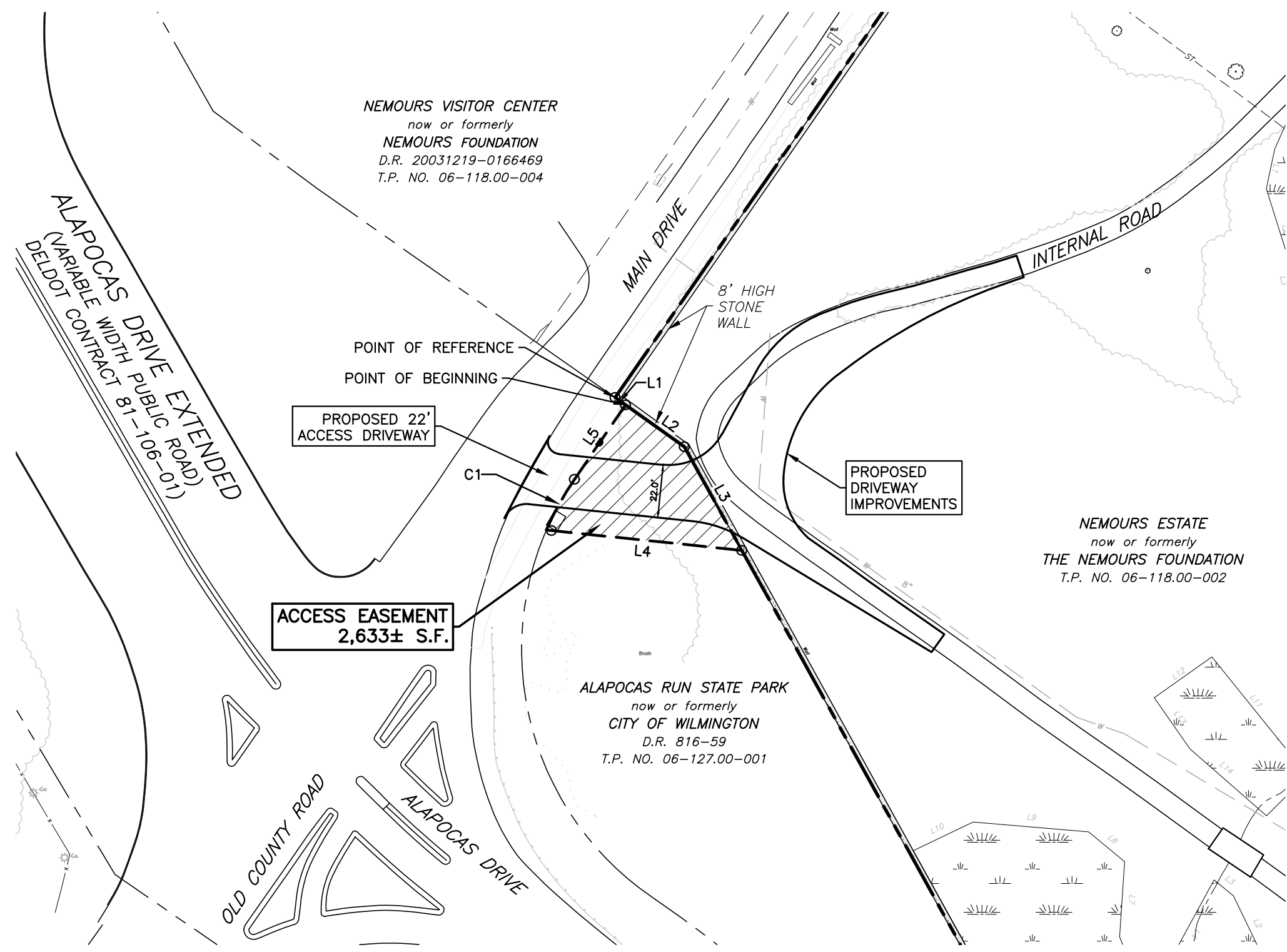
GIVEN under my Hand and Seal of Office the day and year aforesaid.

Notary Public
My Commission Expires:

Exhibit A

Depiction of Access Easement

P:\Land Projects\25793 Nemoirs Estate\Plan Prod\Access Easement\25793.01-EXHIB-01.dwg, 10/26/2023 10:34:20 AM, kgoldstone



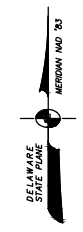
PARCEL LINE DATA		
LINE No.	BEARING	DISTANCE
L1	S54°37'51"E	5.32'
L2	S54°37'51"E	30.04'
L3	S29°00'39"E	49.34'
L4	N84°04'25"W	81.86'
L5	N34°30'52"E	37.61'

EASEMENT CURVE DATA			
CURVE No.	RADIUS	LENGTH	CHORD
C1	125.00'	24.15'	N28°58'43"E 24.12'

ACCESS EASEMENT
2,633± S.F.

PROPOSED DRIVEWAY IMPROVEMENTS

- NOTES:**
1. PREPARED FOR: NEMOURS FOUNDATION.
 2. HORIZONTAL DATUM: DELAWARE STATE PLANE MERIDIAN NAD'83.



TAX PARCEL:
06-118.00-002

GRAPHIC SCALE (FEET)

SCALE: 1" = 50'

DATE: OCTOBER 24, 2023

EXHIBIT PLAN
ALAPOCAS DRIVE ACCESS EASEMENT
THE NEMOURS FOUNDATION
BRANDYWINE HUNDRED
NEW CASTLE COUNTY, DELAWARE

1600 ROCKLAND ROAD

MOD. GRID 106/366	FILE NO. 25793.01-EXHIB-01	SHEET 1 OF 1	REVISION REV. 0	DRAWING NO. C1.01
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VANDEMARK & LYNCH, INC.
ENGINEERS - SURVEYORS
4305 MILLER ROAD WILMINGTON, DE 19802 (302) 764-7635 WWW.VDLENG.COM

Exhibit B

Legal Description of Access Easement



File: 25793.01-EXHIB-01

4305 MILLER ROAD
WILMINGTON, DE 19802-1901
(302) 764-7635 FAX (302) 764-4170
www.vdleng.com
October 24, 2023

Description of **Access Easement** through Alapocas Run State Park, land now or formerly of The City of Wilmington, situate on the northeasterly side of Alapocas Drive near Powder Mill Road, Brandywine Hundred, New Castle County, Delaware (Tax Parcel 06-127.00-001).

ALL THAT CERTAIN tract, piece or parcel of land situate on the northeasterly side of Alapocas Drive near Powder Mill Road, Brandywine Hundred, New Castle County, Delaware, shown on a plan prepared by VanDemark & Lynch, Inc., Engineers, Planners and Surveyors, Wilmington, Delaware, File No. 25793.01-EXHIB-01, dated October 24, 2023, entitled "Exhibit Plan, Alapocas Drive Access Easement, The Nemours Foundation", and being more particularly described as follows, to wit:

BEGINNING at a point, the northerly corner for Alapocas Run State Park, land now or formerly of The City of Wilmington (Deed Record 816, Page 59), being the southeasterly corner of the northeasterly terminus of Old County Road, a variable width public road, on a southwesterly line for the Nemours Estate, land now or formerly of the Nemours Foundation (Tax Parcel 06-118.00-002), said point being measured, South 54°37'51" East, 5.32 feet from the corner of an 8' high stone wall at the westerly corner for said Nemours Estate;

THENCE, from the said point of Beginning, along or near said 8' high stone wall, the two (2) following described courses and distances:

1. South 54°37'51" East, 30.04 feet to a point; and
2. South 29°00'39" East, 49.34 feet to a point;

THENCE through said Alapocas Run State Park, North 84°04'25" West, 81.86 feet to a point on the southeasterly side of said Old County Road;

THENCE along said southeasterly side of Old County Road, the two (2) following described courses and distances:

1. Northeasterly, by a curve to the right having a radius of 125.00 feet, an arc length of 24.15 feet to a point, said point being distant by a chord of North 28°58'43" East, 24.12 feet from the last described point; and
2. North 34°30'52" East, 37.61 feet to the point and place of Beginning.

Containing within said metes and bounds, 2,633 square feet of land, being the same, more or less...

KG