



**Albemarle County
Economic Development Authority**

**RESOLUTION APPROVING AN AMENDED AND RESTATED NOTE WITH
THE LEWIS AND CLARK EXPLORATORY CENTER OF VIRGINIA, INC.**

WHEREAS, the Board of Directors of the Economic Development Authority (the EDA) finds it is in the best interest of the County to extend repayment of the 2013 loan to The Lewis and Clark Exploratory Center, Inc. (the "LCEC"), subject to the terms of the attached Amended and Restated Note to the Economic Development Authority of Albemarle County, Virginia (the "Note"), which the LCEC has accepted and signed.

NOW, THEREFORE, BE IT RESOLVED that the EDA hereby approves the terms of the Note and authorizes the Chair to execute the same on behalf of the EDA upon the approval of the Board of Supervisors for the County of Albemarle, Virginia.


MOTION

I move that the EDA adopt this Resolution approving the terms of the Note and authorizing the Chair to execute the Note upon approval by the Board of Supervisors for the County of Albemarle, Virginia.

[Certification of Vote on Following Page]

CERTIFICATION OF VOTE

I, Roger Johnson, do hereby certify that the foregoing writing is the Resolution duly adopted by the Albemarle County Economic Development Authority by a vote of 5 to 0 with no abstentions as recorded below, at a meeting held on February 21, 2023. I certify this document is a true and exact copy of the original Resolution, Motion and Certification except for replacement of the current County seal heading the first page.

DocuSigned by:

5C40D3F28593441...

Roger Johnson
Assistant Secretary

	Yes	No
Dir. Long	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dir. Ray	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dir. Shreve	<input type="checkbox"/>	<input type="checkbox"/> [Absent]
Dir. McNaughton	<input type="checkbox"/>	<input type="checkbox"/> [Absent]
Dir. Mottola	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dir. Lawless	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dir. Morrill	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**AMENDED AND RESTATED
NOTE TO THE ECONOMIC DEVELOPMENT AUTHORITY
OF ALBEMARLE COUNTY, VIRGINIA**

Albemarle County, Virginia

\$124,847.00

December 31, 2022

IMPORTANT NOTICE

THIS INSTRUMENT CONTAINS A CONFESSION OF JUDGMENT PROVISION WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE AS A DEBTOR AND ALLOWS THE CREDITOR TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT ANY FURTHER NOTICE.

FOR VALUE RECEIVED, THE LEWIS AND CLARK EXPLORATORY CENTER OF VIRGINIA, INC., a Virginia nonstock corporation (the "LCEC"), unconditionally promises to pay to the order of the ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA (the "EDA") without offset, at 401 McIntire Road, Charlottesville, Virginia, 22902, or at such other place as the EDA may designate, the sum of **ONE HUNDRED TWENTY-FOUR THOUSAND EIGHT HUNDRED FORTY-SEVEN DOLLARS (\$124,847.00)** (the "Principal Amount Outstanding"), and payable on the basis set forth below.

This Note renews, modifies and is given in substitution for a Note to the Economic Development Authority of Albemarle County, Virginia, dated April 17, 2013, in the original principal amount of \$130,000 (the "Original Note"), as amended by a First Amendment to the Note of The Lewis and Clark Exploratory Center of Virginia, Inc. to the Economic Development Authority of Albemarle County, Virginia, dated February 8, 2017 (the "First Amendment"), as amended by a Second Amendment to the Note of The Lewis and Clark Exploratory Center of Virginia, Inc. to the Economic Development Authority of Albemarle County, Virginia, dated December 21, 2017 (the "Second Amendment").

WITNESSETH:

WHEREAS, LCEC has not satisfied the Original Note, the First Amendment to the Note, or the Second Amendment to the Note; and

WHEREAS, LCEC and the EDA, with the approval of the Board of Supervisors for the County of Albemarle, Virginia, desire to amend and restate the Original Note, as amended from time to time, to allow the LCEC to make annual payments in specified sums, which shall be applied to the Principal Amount Outstanding, to waive the 5% late charge so long as LCEC satisfies certain terms of this Note, to permit repayment without the accrual of interest, and to extend the date by which the Principal Amount Outstanding is due and payable.

NOW, THEREFORE, for value received, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by the EDA and the LCEC as follows:

1. **Term; extension; right to prepay.** If not sooner paid, the entire Principal Amount Outstanding, less credits for past payments and without interest, shall be due and payable on December 31, 2026.

a. **Installment payments.** LCEC shall make annual installment payments of principal on or before December 31st of each of the following four years according to this schedule:

- i. December 31, 2023: \$15,000.00.
- ii. December 31, 2024: \$25,000.00.
- iii. December 31, 2025: \$35,000.00.
- iv. December 31, 2026: \$49,847.00.

b. **Current Balance.** The Parties agree that the Principal Amount Outstanding as of the date of this Note is \$124,847.00. The Parties acknowledge that the LCEC has made a \$5,000.00 payment toward the \$15,000.00 payment due by December 31, 2023 prior to the execution of this Note. The installment payment schedule accounts for such payments such that no further credit shall be given for prior payments.

c. **Matching Credits.** As approved by the County's Board of Supervisors by Resolution, LCEC shall receive a one-time credit towards the Principal Amount Outstanding if early payment in full is made according to the following schedule:

- i. By December 31, 2023: \$25,000.00.
- ii. By December 31, 2024: \$20,000.00.
- iii. By December 31, 2025: \$15,000.00.
- iv. By December 31, 2026 (Maturity Date): \$0.00.

d. **Prepayments.** LCEC may pay this Note in whole or in part, without penalty, at any time before any installment payment becomes due.

2. **Interest.** Interest will not be charged on the Principal Amount Outstanding.

3. **Late Charges.** As approved by the County's Board of Supervisors by Resolution, the late charge (5% of \$130,000) that would otherwise be due and payable under the terms of the Original Note is hereby waived so long as there is not an Event of Default which is not cured as provided hereinbelow.

4. **Covenants and Conditions.** LCEC hereby: waives presentment, demand, protest and notice of dishonor; waives the benefit of all homestead and similar exemptions as to this Note; agrees to pay all costs and expenses incurred by the EDA in connection with the enforcement of this Note, and or other sums required to be paid herein, and the collection of any judgment rendered hereon, and the defense of any claim arising out of, or in any way related to, this Note, or related to the making of the loan evidenced hereby, including without limitation, the reasonable actual attorney's fees incurred by the EDA if this Note is placed in the hands of an attorney with regard to collection hereof. The attorney's fees provided for herein are intended by the LCEC to take into account post-judgment collection efforts on the part of the EDA's attorneys. LCEC represents and warrants that its President is authorized to sign this Note.

Any failure by the EDA to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other rights at any time.

The term "EDA" used herein shall include any future holder of this Note.

5. **Laws and Venue.** This Note shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. The proper and exclusive jurisdiction and venue for any action brought pursuant to this Note shall be in the Circuit Court of Albemarle County, Virginia.

6. **Severability.** Whenever possible, each provision of this Note shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note. This Note shall apply to and bind the LCEC's heirs, personal representatives, successors and assigns and shall inure to the benefit of the EDA, its successors and assigns.

7. **Default and Acceleration.** The happening of any of the following events shall constitute an Event of Default: (a) the failure to make when due any payment due herein, whether of principal, late charges or otherwise; (b) the failure to timely perform, observe or comply with any of the terms, warranties, covenants, obligations or conditions contained in this Note; (c) termination of or occurrence of any other event affecting the validity of this Note (d) the dissolution, merger, consolidation, or termination of existence of the LCEC; (e) the insolvency of the LCEC, or the application for the insolvency of the LCEC, or the application for the appointment of a receiver or custodian for the LCEC or the property of the LCEC, or the entry of an order for relief or the filing of a petition by or against the LCEC under the provisions of any bankruptcy or insolvency law, or any assignment for the benefit of creditors by or against the LCEC; (f) a determination by the EDA that a material adverse change in the financial condition of the LCEC has occurred since the date hereof, or the EDA otherwise in good faith believes the prospect of payment or performance hereof is impaired; or (g) the failure of the LCEC to perform any obligation to the EDA hereunder or under the terms of any other agreement between the LCEC to the EDA, which failure is not cured as provided herein or therein.

Upon the EDA's knowledge of any Event of Default, the EDA shall send written notice of default to the LCEC. In the event that the LCEC has not cured the default within thirty (30) days after receipt of the notice, this Note shall, at the sole option of the EDA, become immediately due and payable in full without further notice or demand on the LCEC. Thereupon, the EDA shall have the right, immediately and without notice to the LCEC or further action by it, to set-off against this Note any other liabilities of the LCEC owed to the EDA, whether or not due, and further to take any and all actions necessary to collect any outstanding balance due hereunder.

8. **Default under Agreement of Lease.** LCEC's default in the payment of any installment shall be considered a material breach and a Default of Tenant under Article XIII of the Amended Agreement of Lease dated August 7, 2007 (the Lease), between LCEC, the County of Albemarle (the County), and the City of Charlottesville. Upon such default and at the County's election, LCEC must quit the lease and surrender the premises as provided in the Lease.

9. **Confession of Judgment.** Any attorney-at-law, including any attorney-at-law employed in the Albemarle County Attorney's Office or any attorney-at-law retained or otherwise appointed by the holder of this Note, may appear in any court of record or clerk's office in any jurisdiction and venue permitted hereunder, after the above obligation becomes due, and waive the

issuing and service of process, and confess a judgment against the undersigned in favor of the holder hereof, for the amount then appearing due, together with costs of filing, suit, and recording such confession of judgment and imposition legal judgment interest, and, thereupon, release all errors and waive all right of appeal.

10. **Reporting.** LCEC must report semi-annually beginning on July 31, 2023 and every January 31 and July 31 thereafter in writing to the EDA, under the EDA's promise of confidentiality as deemed to be requested by the LCEC, of its financial condition, budgeting, revenues and revenue projections, fundraising projections, and capacity to meet the installment payments required under this Note. Such reports shall include copies of LCEC's financial statements.

11. **Force Majeure.** LCEC's obligation to make payments shall be extended as provided below if as a result of a Force Majeure Event (defined below) the LCEC is obligated to close or materially curtail its operations (a "Force Majeure Closure"). "Force Majeure Event(s)" means: (a) federal, state or local government order, law, or action; or (b) national, state, regional or local emergency. LCEC shall give notice within 10 business days of the Force Majeure Closure to the EDA. LCEC shall also give notice to the EDA when operations have reopened. The installment payments dates shall be extended for the time period LCEC's operations were closed or materially curtailed.

12. **Notice.** Any notices, elections, and designations permitted or required to be made under this Note shall be in writing, signed by the party giving such notice, election, or designation, and shall be delivered personally or sent by registered or certified mail or by electronic mail to the other party at the address set forth below or at such other address as may be supplied in writing. The date of personal delivery or the date of mailing, as the case may be, shall be the date of giving such notice, election, or designation. For the purposes of this note, the addresses of the maker and the holder are:

LCEC: Lewis and Clark Exploratory Center of Virginia, Inc.
Post Office Box 281
Charlottesville, Virginia 22902
ATTN:
Email:

EDA: Economic Development Authority of Albemarle County, Virginia
401 McIntire Road, Suite 130
Charlottesville, Virginia 22902
ATTN: Roger Johnson, Director of Economic Development
Email: economicdevelopmentauthority@albemarle.org

[Signature Pages Follow]

WITNESS the following signatures and seals.

**THE LEWIS AND CLARK EXPLORATORY CENTER
OF VIRGINIA, INC.**

By: Malou Stark Dichtel [SEAL]
President

Feb. 9, 2023
Date

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Greene:

The foregoing instrument was acknowledged before me this 9th day of February, 2023, by Malou Stark Dichtel, President of The Lewis and Clark Exploratory Center of Virginia, Inc.

[Signature] Clerk
Notary Public. Greene County Circuit Court

My commission expires: N/A
Registration Number:

**ECONOMIC DEVELOPMENT AUTHORITY OF
ALBEMARLE COUNTY, VIRGINIA**

By: _____ [SEAL]
Donald D. Long, Chair

Date

COMMONWEALTH OF VIRGINIA
CITY OF CHARLOTTESVILLE:

The foregoing instrument was acknowledged before me this ___ day of _____, 20__, by Donald D. Long, Chair of the Economic Development Authority of the County of Albemarle, Virginia.

Notary Public

My commission expires:
Registration Number:

Approved as to Form:

County Attorney for EDA