

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on January 4, 2018, at 4:00 p.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia. This meeting was adjourned from January 3, 2018.

PRESENT: Mr. Norman G. Dill, Mr. Ned L. Gallaway, Ms. Ann Mallek, Ms. Diantha H. McKeel, Ms. Liz A. Palmer and Mr. Rick Randolph.

ABSENT: None.

OFFICERS PRESENT: County Executive, Jeff Richardson, County Attorney, Greg Kamptner, Clerk, Claudette Borgersen, and Senior Deputy Clerk, Travis O. Morris.

Agenda Item No. 1. Call to Order. The meeting was called to order at 4:15 p.m., by the Chair, Ms. Mallek.

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Agenda Item No. 2. Acquisition of a leasehold interest in real property.

Ms. Mallek asked if Board members needed additional information from the County Attorney regarding the details of a lease, which they had previously discussed in detail. Mr. Dill responded that he would like to see any slides related to the lease, acknowledging that the Board would not be able to change the lease.

Mr. Randolph suggested that Mr. Kamptner brief the Board with a summation of the lease and the Memorandum of Agreement, for the benefit of the public in understanding what has been agreed upon.

Mr. Kamptner stated that he has highlighted the key provisions of the deed of lease, and as the Governor had stated, Biscuit Run is a 1,200-acre piece of property to be leased for a 99-year term, with the County having no rent but assuming responsibility for maintenance of the premises. He said that under the lease, the County will be allowed to use the property as a County park, and this property is subject to open space-related recorded covenants. Mr. Kamptner explained that Section 5 has 100-foot riparian buffers on each side of the streams, with some exceptions that allow for a stream crossing with a road and trails within the buffer. He noted that the Governor had also mentioned the requirements of preserving the forest, so the deed of lease requires at least 80% of the 1,200-acres to be maintained in forest. Mr. Kamptner stated that there is also a limitation on the amount of impervious cover allowed - a maximum of 55-60 acres on the property. He said that recreational use restrictions include golf course and permanent spectator seating, and the Department of Parks and Recreation has no concerns in this regard, with temporary spectator seating permissible that would satisfy their needs.

Mr. Kamptner stated that invasive species played a role in the deed of lease as well as the memorandum of agreement, and under the lease the County is not allowed to purposefully introduce invasive species. He noted that there is an ongoing obligation for the County to work with the state to eradicate any invasive species found on the property. Mr. Kamptner stated that Exhibit C of the original lease identifies the natural heritage resources, which are not to be disturbed during the term of the lease. He said the County will maintain any roadways that already exist on the property and will obtain consent from the state Department of Conservation and Recreation (DCR) prior to constructing any new roads.

Mr. Kamptner reported that any improvements taking place onsite, reflecting the collaboration of the County and DCR, will require DCR's approval, and the state has agreed to not unreasonably withhold their permission, with a paragraph in the deed identifying what would be and would not be considered unreasonable withholding. He explained that the state can withhold permission if they determine that what the County is proposing would violate the terms of the open space covenants. Mr. Kamptner said the County has agreed to accept the property "as is," and DCR has also represented that there are no changes to the condition of the property since the 2009 Phase I environmental assessment report, which ties into the County's concern about the presence of toxic or hazardous substances. He said in that regard, the County's responsibility and potential liability applies only if they release toxic or hazardous substances on the property.

Mr. Kamptner stated that in Paragraph 17, the County will not assign or sublet the property without DCR's prior consent, with several exceptions listed, including a provision related to if the County were to have a second parks & recreational facilities authority take over maintenance of that particular park. He said the County does have insurance on the property, and he has been working with the County's Risk Manager, Lauchlin Lee, with DCR added as an additional insured to the County's commercial general liability portion of the policy.

Mr. Kamptner noted that Paragraph 24 relates to termination of the lease, which the County has negotiated, and if DCR decides to terminate the lease they have to give the County two years' prior written notice. He said a question arose as to the improvements the County might install over the next 99 years, and DCR agreed to reimburse the County for the appraised value of the improvements at the time of the notice, or the amount of the County's debt obligations for the improvements existing at the time. Mr. Kamptner noted that the termination provision for the County allows them to give six months' prior notice to DCR.

Mr. Kamptner explained that the memorandum of agreement has a number of provisions that address how DCR and the County will work together, what certain expectations are, with the key provision being DCR providing assistance in updating the master plan for the property. He said they have

agreed to work with the County on updating the master plan, as reflected in Paragraph 5, and he offered to answer questions.

Mr. Dill asked if there are time limits on the assistance from DCR in terms of planning and developing. Mr. Kamptner responded that there is no dollar amount included in the MOA, but the parties have agreed to cooperate in development of modifications to the master plan. He said it is essentially an agreement to cooperate with one another.

Mr. Kamptner stated that he has distributed two resolutions and has a pair of motions to be read by the Board.

Mr. Randolph noted the commitment of time, effort, and legal insight that Mr. Kamptner and his staff have provided on this process, doing an exemplary job representing the best interests of the residents of Albemarle County and protecting the interests of government. He also mentioned the amount of staff support outside of the County Attorney's Office, particularly Deputy County Executive, Doug Walker, and Parks & Recreation Director, Bob Crickenberger. Mr. Randolph also mentioned the involvement of Trevor Henry and Dan Mahon, as well as the support of the Board of Supervisors. He commented that there was not quite the amount of money hoped for the County to open the park, but there was some continuity in DCR personnel, such as Clyde Cristman and General Assembly leadership to work on the project.

Mr. Randolph noted that they had tried a regional approach, which did not work out, but Senator Emmett Hanger's support was crucial from the onset. He said there was a good faith effort toward a regional route, with discussions between Senator Hanger and Senator Creigh Deeds in that regard. Mr. Randolph noted that it did not work out regionally because of the lack of interest by two contiguous counties that were also looking to open parks, and the City having too many other obligations.

Mr. Kamptner acknowledged the assistance of experts who crafted the final language of the lease, as well as Mr. Bob Crickenberger, Mr. Trevor Henry, Mr. Blake Abplanalp and Mr. Mark Graham, with the help of Mr. Doug Walker.

Mr. Randolph also recognized Ms. Jody Saunders and Ms. Emily Kilroy.

Mr. Randolph **moved** that the Board adopt the proposed resolution to approve a deed of lease between the Commonwealth of Virginia, Department of Conservation and Recreation and the County of Albemarle. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.  
NAYS: None.

**RESOLUTION TO APPROVE A DEED OF LEASE  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA,  
DEPARTMENT OF CONSERVATION AND RECREATION  
AND THE COUNTY OF ALBEMARLE, VIRGINIA**

**WHEREAS**, the Board finds that it is in the best interest of the County to enter into a deed of lease and a related memorandum of agreement with the Commonwealth of Virginia, Department of Conservation and Recreation for the lands in Albemarle County commonly known as Biscuit Run for use as a public park.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Albemarle County, Virginia hereby approves the Deed of Lease between the Commonwealth of Virginia, Department of Conservation and Recreation and the County for the County's lease of Biscuit Run, and authorizes the County Executive to execute the Deed of Lease on behalf of the County once it has been approved as to substance and form by the County Attorney.

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**DEED OF LEASE**

This DEED OF LEASE (the "Lease") is dated the 4th day of January, 2018, by and between the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF CONSERVATION AND RECREATION (the "Landlord") and the COUNTY OF ALBEMARLE, a Virginia political subdivision (the "Tenant"), with approval of the Governor pursuant to Section 2.2-1150(A)(1) of the Code of Virginia (1950), as amended.

**WITNESSETH**

WHEREAS, the Landlord owns certain property within the County of Albemarle, Virginia, as more particularly described on the attached Exhibit A, which it acquired for purposes of development into a public park;

WHEREAS, Landlord does not currently have sufficient resources available to develop the property into a park; and

WHEREAS, the Tenant wishes to see the property developed into a park to serve its residents and is willing to accept control of, and responsibility for, the property to accomplish the same.

NOW, THEREFORE, in consideration of the foregoing recitals and as further set forth herein, the parties agree as follows:

**1. LEASED PREMISES.** For and in consideration of the terms, conditions, covenants, promises and agreements herein made, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Landlord leases to Tenant the following real property (the "Premises"), together with the right of ingress and egress, in the County of Albemarle, Virginia, subject, however, to all easements, restrictions and covenants of record:

SEE ATTACHED EXHIBIT A

**2. TERM.** The term of this Lease shall be ninety-nine (99) years, beginning on January 4, 2018 (the "Commencement Date"), and terminating on January 3, 2117 (the "Termination Date"), unless sooner terminated as provided herein.

**3. RENT.** In lieu of rental payments, Tenant shall bear all expenses and responsibility for maintaining the Premises pursuant to Sections 12 and 21 hereof and insure the Landlord against any and all claims arising out of Tenant's use of the Premises as set forth in Sections 19 and 22 and, to the extent it is authorized by Virginia law, indemnify, defend, and hold harmless the Commonwealth of Virginia, Landlord, and its agents and employees as set forth in Sections 19 and 22.

**4. USE OF PREMISES; EXISTING RESTRICTIONS.** The Premises are to be used and occupied by the Tenant for a county park, including all uses reasonably related thereto (such as concession and appropriate merchandise sales). Tenant acknowledges that usage of the Premises is restricted by the terms of the deeds by which Landlord acquired the Premises, as well as certain restrictions associated with the funding used by the Landlord to acquire the Premises, and Tenant agrees that it shall conform its use of the Premises to the same.

**5. RIPARIAN BUFFERS.** Tenant agrees that it shall maintain one hundred (100)-foot wide foot vegetated buffer strip ("Riparian Buffer") along each edge of any streams or delineated wetlands on the Premises. Riparian Buffer widths shall be measured on a horizontal plane from, and perpendicular to, the top of the bank the water course or wetland for which the Riparian Buffer is established. The following activities shall be prohibited within any Riparian Buffer:

- (a) Grazing of livestock.
- (b) Storage of compost, manure, fertilizers, chemicals, machinery or equipment.
- (c) Application of fertilizers or biosolids.
- (d) Removal of trees except: (i) removal of invasive species, (ii) removal of dead, diseased or dying trees, including salvage harvests in response to a natural disaster, such as a tornado, hurricane, wildfire, flood, or other acts of nature, and (iii) removal of trees posing a human health or safety hazard.
- (e) Plowing, cultivation, road-building, grading or other earth-disturbing activity, except as may be reasonably necessary for: (i) wetland or stream bank restoration, or erosion control, pursuant to a government permit, or (ii) establishing or maintaining fencing along or within the buffer area.
- (f) Building construction.

The following activities are allowed within the Riparian Buffers:

- (a) Planting of native trees, shrubs, or other vegetation.
- (b) Vegetative pruning to improve health and form of existing trees, maintain horse and hiking trails, or improve sightlines from permitted structures.
- (c) Construction of trail and road crossings in accordance with plans approved by the Landlord and maintenance thereof.

Should any of the watercourses meander or change course naturally, the Riparian Buffers shall remain the same width, but move relative to the movement of the watercourse. In such event, any buildings or structures that were outside of the original buffer strip and are determined to be within the new buffer strip shall not be considered in violation of these restrictions and may be maintained at such locations.

**6. IMPERVIOUS COVER; FORESTAL COVER.** Landlord shall not permit Tenant to construct impervious cover over more than five percent (5%) of the total acreage leased to Tenant hereunder. Tenant agrees that, consistent with the Landlord's management policies for its state parks, Tenant shall maintain at least eighty percent (80%) of the acreage leased to it hereunder in forestal cover.

**7. RECREATIONAL USE RESTRICTIONS.** Tenant agrees that it shall not construct, as part of any improvements of the Premises, a golf course or any permanent spectator seating (e.g., any type of

sports stadium). Tenant may install temporary, movable seating for sports fields in locations mutually agreed upon by Tenant and Landlord.

**8. INVASIVE SPECIES.** No plant species that is listed as a "Highly Invasive Alien Plant Species" by the Virginia Department of Conservation and Recreation, Division of Natural Heritage (or as a highly invasive alien plant species on any successor list promulgated by the Commonwealth of Virginia) shall be purposely introduced onto the Premises. Tenant agrees that its management of the Premises shall include identification and inventorying of any existing invasive species, as well as reasonable recommendations for removing or preventing the establishment of such invasive species.

**9. NATURAL HERITAGE RESOURCES.** Tenant agrees that it shall not, as part of its activities under this Lease, disturb or otherwise injure any documented natural heritage resources located upon the Premises. Tenant and Landlord agree that as of the date of this Lease, the documented natural heritage resources known to the parties are those set forth in the attached Exhibit C. Tenant acknowledges that future discoveries of natural heritage resources may result in additional areas of the Premises being restricted from development or public access.

**10. ROADWAYS.** Tenant agrees to maintain the established roadways and ingress and egress routes leading into and upon the Premises in a reasonable, usable condition (including, without limitation, Landlord's obligations under that certain Roadway Maintenance Agreement dated December 13, 2000, of record in Book 1976, Page 287, in the Office of the Circuit Court Clerk of Albemarle County) and does further agree to repair any damage caused to said roadway or routes by reason of occupancy. Tenant shall create no new roadways or ingress or egress without prior written consent of Landlord. Nothing in this Lease shall prohibit the Virginia Department of Transportation from maintaining a roadway or ingress or egress that is a public right-of-way.

**11. COMPLIANCE WITH LAWS.** Tenant shall comply with all federal, state, and local laws, regulations, and ordinances in connection with the Tenant's use of and activities on the Premises.

**12. IMPROVEMENTS; PLANNING SUPPORT.** Tenant shall not make, erect, or install any improvement or alteration on the Premises without the Landlord's prior written permission, which permission, subject to the restrictions of this Lease, shall not be unreasonably withheld or denied. This permission includes Landlord granting easements in accordance with Va. Code § 2.2-1151, upon request by Tenant, to allow utilities to be constructed and maintained including, but not limited to, easements for water, sewer, natural gas, electricity, and other services, as may be necessary to serve improvements constructed by Tenant on the Premises. Tenant agrees it shall maintain existing improvements in good working order, and it shall not undertake any actions which might cause damage or waste to the existing improvements. Landlord agrees that it shall provide staffing support for Tenant's efforts in planning and designing any improvements or alterations of the Premises, with Tenant or its contractors to take the lead in planning, designing and completing such activities. Tenant shall be responsible for the cost of any permitted improvements or alterations initiated by Tenant. Tenant shall conform its improvements to the requirements of the Uniform Statewide Building Code (and any successor provision of the Code of Virginia), with Albemarle County's Building Official to act as the permitting authority, but shall not be required to meet any additional requirements that may be otherwise binding on Landlord. Upon request, the Tenant shall provide the Landlord with documentation evidencing that payment has been made in full and there are no outstanding liens arising out of work performed, materials furnished, or obligation incurred by Tenant. Upon termination or expiration of this Lease, any improvements or alterations shall become the property of the Commonwealth of Virginia, Department of Conservation and Recreation.

For purposes of implementing and interpreting the clause "permission shall not be unreasonably withheld or denied": (a) permission will not be deemed to be unreasonably withheld or denied if (i) Landlord reasonably determines that the improvements proposed by Tenant would violate the Conservation Purposes expressed in that Deed of Bargain and Sale dated December 28, 2009 between Forest Lodge, LLC and the Commonwealth of Virginia, Department of Conservation and Recreation, recorded in the Office of the Circuit Court Clerk of Albemarle County, Virginia at Deed Book 3835, Page 706 (the "Deed of Bargain and Sale"); (ii) if Landlord reasonably determines that the improvements proposed by Tenant would violate the restrictions imposed on the Premises by virtue of the federal funding used to acquire the same; or (iii) or if the Governor of Virginia does not grant his or her approval when statutorily required; and (b) permission will be deemed to be unreasonably withheld or denied if Landlord imposes conditions on its permission that materially increases the costs of the proposed improvement unless the purpose of the condition is to ensure compliance with the Conservation Purposes of the Deed of Bargain and Sale, ensure compliance with the federal grant restrictions associated with the Premises; provided, however, that (a) and (b) are not the sole circumstances under which permission is or is not being unreasonably withheld or denied. Landlord's written permission shall be deemed to include a determination by Landlord that the improvement or related utility easement, and the use thereof, is in compliance with the Conservation Purposes of the Deed of Bargain and Sale and the federal grant funding associated with the Premises.

**13. OPERATIONAL AGREEMENT.** Landlord and Tenant shall enter into a separate Memorandum of Agreement simultaneously with this Lease, which Memorandum of Agreement shall address specific operational issues associated with use of the Premises by the Tenant. Landlord and Tenant may update the Memorandum of Agreement from time to time during the Term of this Lease to address evolving uses of the Premises by the Tenant. In the event of any conflict between the Memorandum of Agreement and this Lease, the terms of this Lease shall control.

**14. QUIET ENJOYMENT.** So long as Tenant observes and keeps all the covenants, agreements and conditions of this Lease, the Landlord covenants that Tenant shall have quiet and peaceful

use and enjoyment of the Premises throughout the term of this Lease, subject, however, to the exceptions, reservations and conditions of this Lease.

**15. PERSONAL PROPERTY.** All personal property placed in or kept on the Premises shall be at the sole risk of Tenant or the owner of such personal property and Landlord shall have no liability for loss, damage or deterioration of same for any reason.

**16. ACCEPTANCE OF CONDITION OF PREMISES.** Tenant covenants that it has inspected the Premises and accepts the Premises "as is" without any representations or warranties by Landlord as to the safety, condition, suitability, or usefulness of the Premises for any purpose.

The foregoing to the contrary notwithstanding, the Landlord has provided to Tenant copies of all environmental and engineering studies in its possession concerning the Premises, including, without limitation, the December 1, 2009, Phase I Environmental Impact Report and the December 4, 2009, Phase I Environmental Site Assessment prepared for the Landlord. The Landlord represents that, to the best of its knowledge, no adverse changes to the condition of the Premises outlined in these reports have occurred since the issuance of the reports.

**17. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign or transfer this Lease, nor sublet any part of the Premises, without the prior written consent of Landlord, which consent Landlord may withhold in its sole discretion. Landlord reserves the right to assign any of Landlord's rights under this Lease at any time. The foregoing to the contrary notwithstanding, Tenant may assign or transfer this Lease, or sublet any part of the Premises, to (i) the City of Charlottesville, Virginia; (ii) any public or quasi-public authority or other legal entity created by and subject to control and oversight by either the Tenant, the City of Charlottesville, the University of Virginia, or any combination thereof; or (iii) any public recreational facilities authority established pursuant to Section 15.2-5600 *et seq.* of the Code of Virginia (1950), as amended, or any successor Virginia law.

**18. ACCESS BY LANDLORD.** Landlord and its representatives may enter the Premises at any time to make emergency repairs, preserve the Premises or to prevent or abate any nuisance, hazard, or unlawful conditions. Landlord reserves the right for itself, its agents, its employees, or its assigns to enter the Premises at any time for purposes of (a) consultation with Tenant or (b) making repairs, improvements and inspections.

**19. INDEMNIFICATION; INSURANCE.**

(a) To the extent that it is authorized by Virginia law, Tenant shall indemnify, defend and hold harmless the Commonwealth of Virginia, Landlord, and its agents and employees, from any and all claims, actions at law, suits in equity, damages, costs of defense, liability, injury or loss of every kind and nature, whether relating to person or property, arising on or within the Premises or incident to the Tenant's use of the Premises. This provision shall survive termination of this Lease.

(b) The Tenant acknowledges that the Landlord has not agreed to provide any indemnification, insurance coverage, or save harmless agreements running to the Tenant; provided, however, that the foregoing shall not serve to waive any remedies that the Tenant may have available to it under applicable law, including, but not limited to, the Virginia Tort Claims Act.

(c) During the Term, including any renewal or extension thereof, the Tenant, at the Tenant's expense, shall keep in force, with an insurance company authorized to transact business in Virginia, or through a risk management plan or other form of self-insurance reasonably acceptable to Landlord, and in a form reasonably acceptable to the Landlord, the following insurance:

i. To the extent required by the Code of Virginia and other applicable Virginia laws and regulations, Workers' Compensation and Employers' Liability Insurance covering the Tenant's employees engaged in activity on the Premises and in amounts not less than the minimum required by the Code of Virginia and other applicable laws and regulations;

ii. Commercial General Liability occurrence-based (not claims-made) insurance to include broad form personal injury and property damage liability coverage insuring against claims for personal injury, including death, as well as against claims for property damage, which may arise from use of the Premises by the Tenant, its employees, agents, contractors and invitees. The amount of such Commercial General Liability insurance shall be not less than Five Million Dollars (\$5,000,000.00) per occurrence, which coverage amount may be provided through a combination of the Commercial General Liability Insurance Policy and additional coverage available under one or more "Umbrella" policies of the Tenant. The Commercial General Liability Policy shall be endorsed to name Landlord, its officers, employees and agents as an additional insured party in such policy with respect to all of the Tenant's activities on the Premises; and

iii. Automobile Liability insurance, in the amount of One Million Dollars (\$1,000,000.00) combined single limit, including property damage, covering all owned, non-owned borrowed, leased, or rented motor vehicles operated by the Tenant. In addition, all motorized equipment operated or used by Tenant will be insured under either a standard Automobile Liability policy, or a Comprehensive General Liability policy. The

Tenant warrants and represents that all such Tenant vehicles brought onto the Premises will be covered under said automobile liability policy, and the Tenant will not permit any such Tenant vehicle or motorized equipment that is not covered pursuant to this provision to enter the Premises. The foregoing provisions relating to automobile insurance shall not apply to privately-owned or leased motor vehicles of the Tenant's employees or business invitees.

On or before the Commencement Date, the Tenant shall deliver to the Landlord one or more certificates of insurance, or other satisfactory evidence of insurance, showing the foregoing coverage to be in force and effect and a copy of the additional insured endorsement(s). The policies shall not be subject to cancellation except upon thirty (30) days' written notice to the Landlord. The Landlord's receipt of these items shall be a condition precedent to the commencement of this Lease.

In the event that Tenant fails to obtain and maintain the insurance required by this section, Landlord may, at its option, cause the required insurance to be issued and maintained and Tenant shall pay the premiums for such insurance as additional Rent. Landlord may increase the amounts of coverage required under this Section 19 once every five (5) years during the term of this Lease by providing written notice to Tenant. Such an increase may not exceed the rate of inflation over the previous five (5) years as measured by the Consumer Price Index (or a successor measure provided by the federal government).

**20. MECHANICS' AND MATERIALMEN'S LIENS.** Tenant shall not create, place, or suffer the creation or filing of any mechanics' or materialmen's lien against the Premises by reason of labor or materials provided for or at the request or order of the Tenant, or of Tenant's agents or contractors. Tenant shall discharge any such lien within twenty (20) days after the date the same was filed. Should Tenant fail to do so, Landlord may bond or discharge the same by paying the amount claimed to be due and the amount so paid by Landlord, together with reasonable costs and expenses, shall be due and payable by Tenant to Landlord as additional Rent.

**21. MAINTENANCE, REPAIRS, UTILITIES AND OTHER COSTS.** All costs relating to the possession, operation and maintenance of the Premises shall be the responsibility of Tenant.

- (a) Tenant shall pay all charges for utility services to the Premises, including, but not limited to, service charges, connection and disconnection charges, use charges and taxes.
- (b) Tenant shall pay all charges and other levies of any nature against the Premises and improvements thereon, whether ordinary or extraordinary, foreseen or unforeseen, including, without limitation, all applicable real estate taxes and any payments or use charges in lieu thereof, and assessments.
- (c) If Tenant fails to make any payment or perform any act required by Tenant under this Lease, Landlord may (but shall be under no obligation to) make such payment or perform such act. All amounts so paid by Landlord and all costs, fees and expenses incurred by Landlord regarding such payment or performance shall be paid by Tenant as additional Rent.

**22. ENVIRONMENTAL CONTAMINATION.**

- (a) Tenant shall not engage in or allow any activity on the Premises involving: (i) the handling of any toxic or hazardous substances, (ii) the discharge of toxic or hazardous substances to the air, soil, surface water or groundwater, (iii) the storage, treatment or disposal of any toxic or hazardous substances (for purposes of this Lease, "hazardous substance(s)" shall have the meaning of "hazardous substance" set forth in 42 U.S.C. Section 9601(14), as amended, and of "regulated substance" at 42 U.S.C. Section 6991(2), as amended), or (iv) any other substances which may be the subject of liability pursuant to any environmental law of the United States or the Commonwealth of Virginia.
- (b) To the extent that it is authorized by Virginia law, Tenant shall indemnify, defend and hold harmless the Commonwealth of Virginia, Landlord, and its agents and employees from any and all claims, suits, judgments, damages, fines, penalties, liability, costs and expenses (including reasonable fees for costs and expenses for any required attorneys, consultants and experts) resulting or arising from the discovery of any toxic or hazardous substance on, in or arising from, or contamination of, the Premises which is a result of any activity of Tenant, its agents, employees, contractors or repairmen. This provision shall survive termination of this Lease.

**23. EVENTS OF DEFAULT; LANDLORD'S REMEDIES UPON DEFAULT.**

- (a) The following events shall be deemed to be an event of default ("Event of Default") by the Tenant under this Lease:
  - i. Failure of Tenant to provide Landlord any payment required to be made by Tenant under this Lease and the failure to cure such default within ten (10) days after written notice thereof to Tenant.
  - ii. Failure of Tenant to comply with any term, provision, promise or covenant of this Lease (other than the payment of Rent or any other payment required to be made

by Tenant hereunder) and the failure to cure such non-compliance within thirty (30) days after written notice of an Event of Default to Tenant.

iii. A petition in bankruptcy or an application of any other relief under any provision of the Bankruptcy Code is filed by Tenant, or if Tenant shall make an assignment for the benefit of creditors, or if a receiver is appointed for the assets or affairs of Tenant, or if Tenant should commit any other act of bankruptcy.

- (b) If Landlord gives written notice to Tenant of an Event of Default pursuant to Section 26 of this Lease and Tenant does not cure such default within the specified period following the notification, then at the expiration of said period, this Lease shall automatically terminate as completely as if the deadline for curing the default were the date specified as the Termination Date in this Lease, and Tenant shall then surrender the Premises to Landlord. If this Lease shall be so terminated, Landlord may, at its option, without formal demand or notice of any kind, re-enter the Premises by any unlawful detainer action or by any other means and remove Tenant, or any other person who may be occupying the Premises, from the Premises without being liable for any damages therefor. Upon Landlord's exercise of such termination, Tenant shall pay the Landlord's costs and expenses incurred in fulfilling Tenant's obligations under this Lease, including, without limitation, Landlord's reasonable attorneys' and other expert fees and court cost. This provision shall survive termination of this Lease.
- (c) The failure of Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any permitted right or remedy upon an Event of Default, and/or acceptance of payment of full or partial Rent or other payment required to be made by Tenant during the continuance of any such Event of Default shall not constitute a waiver of such Event of Default or of any covenant, agreement, term or condition of this Lease.
- (d) No right or remedy herein conferred upon or reserved to Landlord shall be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law.

**24. TERMINATION OF LEASE.** This Lease may be terminated by either party any time as follows:

- (a) By Landlord. By providing at least twenty-four (24) months' written notice to Tenant and reimbursing Tenant for the greater of (i) the then-current value of any improvements upon the Premises constructed by the Tenant as determined by a third party appraiser jointly selected by Landlord and Tenant or (ii) the then-outstanding amount of any debt obligations (whether bond(s), loan(s), or other forms of financing) issued by the Tenant and its assigns for construction or maintenance of improvements located upon the Premises. For purposes of this Section 24(a), the date for measurement of the value of the improvements and outstanding financial obligations shall be the date of the notice issued by the Landlord.
- (b) By Tenant. By providing at least six (6) months' written notice to Landlord.
- (c) At the termination or expiration of this Lease, Tenant shall remove all of its personal property and shall deliver peacefully the Premises in as good order and repair as the same were on the Commencement Date, reasonable wear and tear excepted. Tenant shall not be obligated to remove any improvements that are not its personal property.

**25. BINDING EFFECT; AMENDMENTS.** The covenants, agreements, and rights contained in this Lease shall bind and inure to the respective successors and assigns of Landlord and Tenant. This Lease constitutes the entire, full and complete understanding and agreement between Landlord and Tenant, and all representations, statements, warranties, covenants, promises or agreements previously made or given by either party to the other are expressly merged into this Lease and shall be null, void and without legal effect. Neither party, nor any agent of either party, has any authority to alter, amend or modify any of the terms of this Lease, unless the amendment is in writing and executed by all parties to this Lease with the same formality as this Lease. This Lease and any amendments hereto shall not be effective or binding unless and until signed by all parties and Landlord obtains the recommendation of the Virginia Department of General Services and the approval of the Governor of Virginia, or his designee, as required by Section 2.2-1150(A)(1) of the Code of Virginia (1950), as amended.

**26. NOTICES.**

- (a) All notices to Tenant required or permitted under this Lease shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, addressed to:  
  
County of Albemarle  
Attn: County Executive  
401 McIntire Road  
Charlottesville, Virginia 22902
- (b) All notices to Landlord required or permitted under this Lease shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, addressed to:

Director  
Department of Conservation and Recreation  
600 East Main, 24<sup>th</sup> Floor  
Richmond, Virginia 23219

- (c) Wherever a notice is required under this Lease, notice shall be deemed to have been duly given if in writing and either: (i) personally served; (ii) delivered by prepaid nationally recognized overnight courier service; or (iii) forwarded by Registered or Certified mail, return receipt requested, postage prepaid.
- (d) Each such notice shall be deemed to have been given to or served upon the party to which addressed on the date the same is received by the party or delivery is refused. Each party to this Lease shall notify the other party of a new address at which to mail notices, which notice shall be given in the manner provided above, and unless and until such notice of new address is given, notices to a party hereto shall be sufficient if mailed to such party's address as specified in this Section.
- (e) Where notice is sent by an alternative method, the notice shall be effective if actually received by the party, or its appointed agent, to whom the notice is addressed.

**27. CHOICE OF LAW; NON-WAIVER.** This Lease shall be governed by, and construed according to, the laws of the Commonwealth of Virginia. The parties choose the City of Richmond, Virginia, as the venue for any action instituted with respect to this Lease. By execution of this Lease, the Landlord and Tenant irrevocably consent to the jurisdiction of such court and waive, to the extent otherwise available, now or in the future, any defense of inconvenience of forum. No provision, covenant or agreement contained in this Lease shall be deemed to be a waiver of the sovereign immunity of the Commonwealth of Virginia or Landlord from tort or other liability.

**28. PRESUMPTIONS; SEVERABILITY.** No presumption shall be created in favor of or against any of the parties to this Lease with respect to the interpretation of any term or provision of this Lease due to the fact that this Lease, or any part hereof, was prepared by or on behalf of one of the parties hereto, as may be evidenced by the disclosure on the face of this Deed of Lease made pursuant to Virginia Code § 17.1-223. If any provision of this Lease or portion of such provision or the application thereof to any person or circumstance is held invalid, the remainder of the Lease (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby. Time is of the essence in the performance of the Tenant's obligations hereunder.

**29. HEADINGS.** The heading of the sections of this Lease are inserted for convenience only and do not alter or amend the provisions that follow such headings.

**30. BANKRUPTCY.** Subject to the requirements of the Bankruptcy Act, in the event Tenant is adjudicated a bankrupt (or makes an assignment, voluntary or involuntary, for the benefit of creditors), this Lease, at the option of the Landlord, shall terminate upon thirty (30) days' written notice and the Premises peaceably surrendered to Landlord, who reserves the right to repossess the Premises subject to the applicable provisions of law.

**31. APPROPRIATIONS.** Agencies of the Commonwealth of Virginia cannot expend funds unless appropriated by the Virginia General Assembly and may not obligate a future session of the Virginia General Assembly. Therefore, notwithstanding any provision in this Lease to the contrary, if the Virginia General Assembly fails to appropriate funds for the affirmative obligations of the Landlord hereunder, such obligations shall terminate upon depletion of the then currently appropriated or allocated funds.

**32. AUTHORIZATION OF TENANT.** Tenant, by resolution of its Board of Supervisors dated January 4, 2018, authorized the execution of this Lease by its County Executive, as evidenced by such resolution, a certified copy of which is appended hereto as Exhibit B.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals.

LANDLORD:

COMMONWEALTH OF VIRGINIA,  
DEPARTMENT OF CONSERVATION AND RECREATION  
By: \_\_\_\_\_  
Clyde E. Cristman, Director

TENANT:

COUNTY OF ALBEMARLE, VIRGINIA  
By: \_\_\_\_\_  
Jeffrey B. Richardson, County Executive



OFFICE OF THE ATTORNEY GENERAL  
Approved as to form:

By: \_\_\_\_\_  
J. Duncan Pitchford, Assistant Attorney General

RECOMMEND APPROVAL:  
DEPARTMENT OF GENERAL SERVICES

By: \_\_\_\_\_  
Director

**APPROVED BY THE GOVERNOR:**

Pursuant to Section 2.2-1150(A)(1) of the Code of Virginia (1950), as amended, I hereby approve this Lease on behalf of the Commonwealth of Virginia.

\_\_\_\_\_  
Terrance R. McAuliffe, Governor

\_\_\_\_\_  
Date

**EXHIBIT A**

**TRACT ONE:**

ALL those certain tracts or parcels of land situated in Albemarle County, Virginia fronting on State Route 631 and State Route 20, approximately three miles south of the City of Charlottesville, Virginia, being more particularly shown and described on "Plat Showing Boundary Survey of Tax Map 90, Parcels 5, 6D, 15A and 17D, Tax Map 90A, Parcels 1 A, 1 B, 1 C and 3, Tax Map 90A1, Parcels 1 and 1E" prepared by Thomas B. Lincoln Land Surveyor, Inc. dated October 9, 2004, revised October 13, 2005, recorded in the Clerk's Office, Circuit Court, Albemarle County, Virginia in Deed Book 3092, page 316 ("Survey"), as follows:

PARCEL ONE: TM 09000-00-00-00500, consisting of 195.879 acres, more or less, LESS AND EXCEPT 36.005 acres, more or less, more particularly described as Block 11 in Deed of Confirmation, Boundary Agreement and Deeds of Conveyance dated March 12, 2008, recorded in Deed Book 3569, page 551, and shown on plats attached thereto and;

SUBJECT TO the easement for the "New 30' Private Street" and 12' gravel drive for ingress and egress both as more particularly described in the aforesaid Deed of Confirmation, Boundary Agreement and Deeds of Conveyance and shown on said plats attached thereto.

LESS AND EXCEPT 21.954 acres, more or less, more particularly described as Parcel X on that certain plat of survey made by Roudabush, Gale & Associates, Inc. entitled "PLAT SHOWING A BOUNDARY LINE ADJUSTMENT OF PARCEL 'X,' 21.954 AC. A PORTION OF PARCEL 5 OF TAX AMP 90 ADDED TO PARCEL 1E OF TAX MAP 90 LOCATED ON STATE ROUTE 631, OLD LYNCHBURG ROAD BISCUIT RUN STATE PARK, SCOTTSVILLE MAGISTERIAL DISTRICT, ALBEMARLE COUNTY, VIRGINIA" dated June 24, 2015, last revised July 22, 2015, appended to that certain Deed of Exchange in favor of Southwood Charlottesville, LLC, dated May 11, 2016, of record in Deed Book 4773, Page 328, in the Office of the Circuit Court Clerk of Albemarle County Virginia.

PARCEL TWO: TM 09000-00-00-006DO, consisting of 891.004 acres, more or less; the said parcel shown on the Survey as TM 90-6D;

PARCEL THREE: TM 09000-00-00-015AO, consisting of 0.230 acre, more or less;

PARCEL FOUR: TM 09000-00-00-017DO consisting of 2.592 acres, more or less; provided however that Grantor does not warrant title to that portion of Parcel Four consisting of 0.016 acre, more or less, (depicted as an overlap in Detail A on the Survey);

PARCEL FIVE: TM 090A0-00-00-001AO, consisting of 0.709 acre, more or less;

PARCEL SIX: TM 090A0-00-00-001BO, consisting of 0.229 acre, more or less;

PARCEL SEVEN: TM 090A0-00-00-00300, consisting of 130.385 acres, more or less; and

PARCEL EIGHT: TM 090AI-00-00-00100, consisting of 7.881 acres, more or less.

Tract One being a portion of that same property conveyed to the Commonwealth of Virginia, Department of Conservation and Recreation, by Deed of Bargain and Sale dated December 28, 2009, of record in Deed Book 3835, Page 706, in the Office of the Circuit Court Clerk of Albemarle County.

**TRACT TWO**

ALL that certain piece or parcel of land, together with any improvements thereon and all appurtenances thereunto appertaining, situate, lying, and being in the Scottsville Magisterial District, Albemarle County, Virginia, containing 18.357 acres according to survey, be the same ever so much more or less, and more particularly described on that certain plat of survey made by Roudabush, Gale & Associates, Inc., dated

June 24, 2015, last revised July 20, 2015, entitled "PLAT SHOWING PARCEL 'Y', 18.357 AC., A PORTION OF PARCEL 6C AND THE NEW 30' ACCESS EASEMENT LOCATED ON STATE ROUTE 631, OLD LYNCHBURG ROAD FOREST LODGE, SCOTTSVILLE MAGISTERIAL [sic] DISTRICT [sic], ALBEMARLE COUNTY, VIRGINIA", which appears attached to the Deed of Gift dated August 4, 2015, of record in Deed Book 4658, Page 211, in the Office of the Circuit Court Clerk of Albemarle County. Reference to said plat is hereby made for a more particular description of the property herein conveyed.

Tract Two being the same property conveyed to the Commonwealth of Virginia, Department of Conservation and Recreation, by Deed of Exchange dated May 11, 2016, of record in Deed Book 4773, Page 322, in the Office of the Circuit Court Clerk of Albemarle County.

**EXHIBIT B**  
[BOARD OF SUPERVISORS RESOLUTION]

**EXHIBIT C**  
LIST OF DOCUMENTED NATURAL HERITAGE RESOURCES  
Central Appalachian Low Elevation Acidic Seepage Swamp

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Mr. Randolph **moved** that the Board adopt the proposed Resolution to Approve a Memorandum of Agreement Between the Commonwealth of Virginia, Department of Conservation and Recreation and the County of Albemarle, Virginia. Ms. Mallek **seconded** the motion.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.  
NAYS: None.

Ms. Palmer thanked Mr. Randolph for all the work he put into this project and the attention to detail, which helped the Board in their review.

**RESOLUTION TO APPROVE A MEMORANDUM OF AGREEMENT  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA,  
DEPARTMENT OF CONSERVATION AND RECREATION  
AND THE COUNTY OF ALBEMARLE, VIRGINIA**

**WHEREAS**, the Board finds that it is in the best interest of the County to enter into a deed of lease and a related memorandum of agreement with the Commonwealth of Virginia, Department of Conservation and Recreation for the lands in Albemarle County commonly known as Biscuit Run for use as a public park.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Albemarle County, Virginia hereby approves the Memorandum of Agreement between the Commonwealth of Virginia, Department of Conservation and Recreation and the County, which is related to the County's lease of Biscuit Run, and authorizes the County Executive to execute the Memorandum of Agreement on behalf of the County once it has been approved as to substance and form by the County Attorney.

\*\*\*\*\*

**MEMORANDUM OF AGREEMENT**

THIS MEMORANDUM OF AGREEMENT ("MOA") is made and entered into this 4th day of January, 2018, by and between the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF CONSERVATION AND RECREATION (the "Landlord") and the COUNTY OF ALBEMARLE, a Virginia political subdivision (the "Tenant").

**WITNESSETH**

WHEREAS, the Landlord and Tenant have entered into that certain Deed of Lease ("Lease") of even date herewith, pursuant to the terms of which the Landlord has leased certain property (the "Premises") to the Tenant for development of a regional park;

WHEREAS, the Lease provides for the basic framework of the parties' relationship over a term of ninety-nine years; and

WHEREAS, the Lease provides for the parties to enter into this separate MOA to further spell out the parties' relationship concerning ongoing operations of the Premises.

NOW, THEREFORE, in consideration of the foregoing recitals and as further set forth herein, the parties agree as follows:

**1. PUBLIC ACCESS.** Tenant agrees that it shall, as may be reasonably accomplished in accordance with available resources and subject to reasonable date and hour restrictions consistent with Tenant's other public parks, ensure the Premises are open to outdoor recreational use by members of the general public.

**2. INVASIVE SPECIES CONTROL.** As set forth in Section 8, the Tenant shall catalog existing invasive species located on the Premises and take reasonable steps to prevent the introduction of any invasive species onto the Premises. Tenant shall work with Landlord to develop an invasive species control plan, which plan shall be agreed to within six (6) months of the date of this MOA, to address removal and control of invasive species identified on the Premises. The final control plan shall be appended to, and made a part of, this MOA. Tenant and Landlord agree to revisit invasive species control measures no less than once every two years and make any adjustments to the invasive species control plan as may be reasonably required to address changing conditions on the Premises.

**3. HUNTING.** Landlord agrees that Tenant may, as part of its management of the Premises, allow managed hunts for purposes of population control. Any managed hunt must be conducted in accordance with a plan approved by the Landlord (whose approval shall not be unreasonably withheld) and only during applicable seasons authorized by the Department of Game and Inland Fisheries.

**4. EQUESTRIAN USAGE.** Landlord agrees that Tenant's usage of the Premises, and improvements thereof, may include equestrian uses. Tenant agrees that it shall design any trails or other riding areas for equestrian uses specifically for such use, precluding equestrian areas and facilities from use by others (such as mountain bikers or other similar users).

**5. PLANNING AND IMPROVEMENTS.** The parties acknowledge the Premises are subject to an existing Master Plan developed by the Landlord in conjunction with the possible Biscuit Run State Park. Tenant and Landlord agree to cooperate in development of modifications to the Master Plan to accommodate the Tenant's use of the Premises. As set forth in Section 12 of the Lease, Landlord will provide support, through its planning staff, for the Tenant's efforts to revise the Master Plan. Tenant agrees that it, or its contractors, shall be responsible for development of revisions to the Master Plan, with Landlord to provide secondary assistance and input during the process. The parties agree that once Tenant has updated the Master Plan, the location of proposed improvements (including, without limitation, roads, trails, or sports facilities) shall not be subject to further review by the Landlord. Final design of proposed improvements will require further review and approval of the Landlord, with approval subject to the terms of the Lease.

**6. FUNDING COOPERATION.** Landlord agrees that it shall cooperate with Tenant in efforts to raise funds for completion of improvements to the Premises. Landlord will provide letters of support, assistance in completion of grant applications (except for those grant programs administered by Landlord, for which Landlord shall provide only such assistance as available to all grant applicants), and assistance in completing financial projections for proposed improvements akin to those operated by the Landlord at other locations throughout the Commonwealth (e.g., information on the costs and revenues associated with operation of campgrounds at other Virginia state parks). Landlord will provide to Tenant information concerning possible funding opportunities for Premises improvements when the same is received by the Landlord.

**7. NAMING; SIGNAGE.** Tenant agrees that prior to determining a site name for its operation of the Premises, it shall consult with and accept input from the Landlord on the site name. Tenant agrees it shall not use any state park logos or branding, or represent in any way that its operation of the Premises constitutes a Virginia State Park without the prior written consent of the Landlord.

**8. FURTHER REVISIONS TO MOA.** The parties intend this MOA to be a "living," flexible document to allow for changes in the management of the Premises by the Tenant as opportunities or needs may arise. The parties further intend to work cooperatively in the development and ongoing operations of the Premises so the same can serve as a recreational resource for the citizens of Albemarle County and surrounding areas. However, should conditions change such that either party feels that further revisions to this MOA are needed, either party may request a change to the terms of this MOA by providing written notice to the other party together with a proposed amendment to this MOA. The receiving party shall thereafter respond no later than within sixty (60) calendar days by either (a) accepting the proposed changes to the MOA; (b) rejecting the proposed change while proposing an alternative change; or (c) rejecting the proposed changes outright. In the event a proposed change is rejected, the parties shall meet and attempt to resolve the proposed revisions. No change to this MOA shall become effective until executed by both parties.

**9. NOTICES.**

- (a) All notices to Tenant required or permitted under this MOA shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, addressed to:

County of Albemarle  
Attn: County Executive  
401 McIntire Road  
Charlottesville, Virginia 22902

- (b) All notices to Landlord required or permitted under this MOA shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, addressed to:

Director  
Department of Conservation and Recreation  
600 East Main, 24<sup>th</sup> Floor  
Richmond, Virginia 23219

- (c) Wherever a notice is required under this MOA, notice shall be deemed to have been duly given if in writing and either: (i) personally served; (ii) delivered by prepaid nationally recognized overnight courier service; or (iii) forwarded by Registered or Certified mail, return receipt requested, postage prepaid.
- (d) Each such notice shall be deemed to have been given to or served upon the party to which addressed on the date the same is received by the party or delivery is refused. Each party to this MOA shall notify the other party of a new address at which to mail notices, which notice shall be given in the manner provided above, and unless and until such notice of new address is given, notices to a party hereto shall be sufficient if mailed to such party's address as specified in this Section.
- (e) Where notice is sent by an alternative method, the notice shall be effective if actually received by the party, or its appointed agent, to whom the notice is addressed.

**10. CHOICE OF LAW; NON-WAIVER.** This MOA shall be governed by, and construed according to, the laws of the Commonwealth of Virginia. The parties choose the City of Richmond, Virginia, as the venue for any action instituted with respect to this MOA. By execution of this MOA, the Landlord and Tenant irrevocably consent to the jurisdiction of such court and waive, to the extent otherwise available, now or in the future, any defense of inconvenience of forum. No provision, covenant or agreement contained in this MOA shall be deemed to be a waiver of the sovereign immunity of the Commonwealth of Virginia or Landlord from tort or other liability.

**11. APPROPRIATIONS.** Agencies of the Commonwealth of Virginia cannot expend funds unless appropriated by the Virginia General Assembly and may not obligate a future session of the Virginia General Assembly. Therefore, notwithstanding any provision in this MOA to the contrary, if the Virginia General Assembly fails to appropriate funds for the affirmative obligations of the Landlord hereunder, such obligations shall terminate upon depletion of the then currently appropriated or allocated funds.

**12. COUNTERPARTS.** This MOA may be executed in one or more counterparts, more counterpart copies, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same agreement, provided each appears in its original typewritten form without deletions, strike-throughs or modifications of any type. Execution of this MOA at different times and in different places by the parties hereto shall not affect the validity of the MOA. Any signature page of any such counterpart may be attached or appended to any other counterpart to complete a fully executed counterpart of this MOA.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals.

LANDLORD:

COMMONWEALTH OF VIRGINIA,  
DEPARTMENT OF CONSERVATION AND  
RECREATION

By: \_\_\_\_\_  
Clyde E. Cristman, Director

TENANT:

COUNTY OF ALBEMARLE

By: \_\_\_\_\_  
Jeffrey B. Richardson, County Executive

\_\_\_\_\_  
Agenda Item No. 3. Adjourn.

There being no further business to come before the Board, Ms. Mallek adjourned the meeting at 5:05 p.m.

\_\_\_\_\_  
Chairman

Approved by Board

Date 06/06/2018

Initials CKB