LEASE AGREEMENT
WHITEHALL PARK

This Lease Agreement is entered into this 29th day of May, 2019, by and between Beaufort County ("Lessor") and the City of Beaufort, a South Carolina Municipal Corporation ("Lessee");

WHEREAS, Lessor acquired the Whitehall property ("Property") located in the City of Beaufort, and more fully described on Exhibit A attached hereto, by deed recorded in the Office of the RMC for Beaufort County in Deed Book 3709 at Page 1708; and

WHEREAS, Lessor entered into a long-term Conservation Easement ("Easement") on the Property with the Beaufort County Open Land Trust (BCOLT) on October 23, 2018; and

WHEREAS, the Lessor and Lessee wish to enter into this Agreement, which is subject to all terms and conditions of the Easement set forth herein, to provide for the management, maintenance, and operation of the Property; and

WHEREAS, restrictions and limitations imposed by the Property’s Easement require the Lessor to have a perpetual interest and control over the Property and that the Property be used for passive park and conservation purposes; and

WHEREAS, Lessor and Lessee agree on the definition of passive recreation as recreation requiring little or no physical exertion focusing on the enjoyment of one’s natural surroundings, and that the promotion and development of natural resource-based activities such as fishing, hiking, walking, bicycling, nature studies, etc., shall be the predominate measure for passive park utilization. Lessor and Lessee will mutually agree on the conceptual planning, design, location, and implementation of passive park recreational activities and opportunities on the Property. Lessee agrees to maintain the condition of the Property, and any assets and facilities (including custodial services) that are agreed to be placed in the park, in the condition that they are in at the time the park is open to the public. All other improvements will need to have a funding source provided, that may or may not come from the Lessee and will be based on the planned improvement plan as described in Section 4.

NOW THEREFORE, for and in consideration of the annual payment of One Dollar ($1.00), the sufficiency of which consideration is hereby acknowledged and approved, LESSOR does hereby lease to LESSEE, the Property, more particularly described in Exhibit A attached hereto, under the terms and conditions set forth below:

1. TERM: The initial term of this lease shall be thirty (30) years commencing from the date of execution of this Lease Agreement. Thereafter, this Lease Agreement will automatically renew annually, unless terminated as described in Section 8 or by mutual agreement of the parties.

2. ASSIGNMENT OR SUB-LEASE: Lessee shall not assign or sublet the leased
premises without the prior written approval of Lessor. This will not prevent Lessee from renting some or all of the Property for special events as discussed in Section 5.

3. ACCESSIBILITY: The Property shall be available and open to the public upon completion of installation of infrastructure as mutually agreed to by the parties. Thereafter, the park hours of operation shall be from dawn to dusk Monday through Sunday. Exceptions may be approved by the Lessee. There will be no fees for access or for parking and parking shall be limited to park users only during park open hours.

4. IMPROVEMENTS: Lessor and Lessee shall participate in the development of a conceptual master plan. The process will include at least one public workshop hosted by the Lessor and the Lessee. Lessor and Lessee shall, thereafter, agree upon an improvement plan for the Property and the necessary funding of said plan. The improvement plan may be phased. The plan may be amended by mutual agreement of the parties. Lessee shall not build, erect or construct any permanent improvement upon the leased premises without the prior written approval of the Lessor. All improvements shall become the property of Lessor upon termination of lease.

5. USE: Lessee shall at all times during the term of this Agreement or any renewal or extension thereof, shall maintain (other than tree maintenance as set forth below) manage, and use the leased premises as a public passive park only, and shall not provide, promote, or otherwise facilitate any programs or activities, or allow any person, entities, groups or organizations to use the leased premises to provide, promote or otherwise facilitate the use of the leased premises for non-passive park purposes (i.e. special events) without providing advanced notice to the Lessor. Any special event fee, charge, assessment, or admission cost which is required for access or attendance shall be for park maintenance, management, and operations purposes only (including costs incurred by hosting the event). Lessee shall not, during the term of this Agreement, allow any person, group, entities or organizations, public or private, to have exclusive use of the entire leased premises without the prior written approval of Lessor. It is clearly understood by the Lessee and the Lessor that events like weddings, birthday parties, and other normal events similar to the events held in the Henry Chambers Park, excluding major community festivals, will be handled by the Lessee without advising or obtaining approval from the Lessor and will be properly managed to protect the assets of the park.

Lessor agrees to provide consulting services of the staff arborist (Natural Resource Planner). These services are limited to tree inspection, recommendation of regularly planned tree maintenance/removal and recommendation on needed maintenance to preserve diseased trees or resolve safety issues. This does not include tree trimming and pruning services.

BCOLT agrees to provide tree maintenance services on the Property, as per the recommendations of the Beaufort County Natural Resource Planner and in accordance with generally recognized standards of the profession.
6. UTILITIES: The cost of all utilities, equipment, maintenance for grounds and facilities, assessments and fees shall be the sole responsibility of the Lessee, unless otherwise agreed to by Lessor by an amended lease.

7. INSURANCE: The Lessee shall carry and pay the premium for premises liability insurance in the same amount, and of the same nature and type as if it carries and pays for on all other public parks and recreational facilities which it leases or has an ownership interest in.

8. DEFAULT: Failure of Lessee to maintain and use the Property as a public passive park shall constitute default of this Agreement. Upon default has occurred, Lessor shall give Lessee written notice of default, delivered by hand delivery or certified mail, to the City Manager. Lessee shall have thirty (30) days from the date of receipt of the notice of default to cure the default. The failure by Lessee to cure the default within said period shall give Lessor the right to terminate this Agreement, and the Property shall revert to the Lessor.

In the event of termination, Lessor shall have the right to any funds, improvements, or other non-fixtures on or related to the Property which is not otherwise titled to the Lessee.

WITNESS our hands and seals this 29th day of May, 2019.

SIGNED AND SEALED IN THE PRESENCE OF:

BY: Ashley M. Jacobs  
Name: Ashley M. Jacobs  
Title: County Administrator

BEAUFORT COUNTY

THE CITY OF BEAUFORT

BY: William Prokop  
Name: William Prokop  
Title: City Manager
STATE OF SOUTH CAROLINA            )
COUNTY OF BEAUFORT                ) PROBATE

Personally appeared before me the undersigned witness and made oath that s/he saw the
within named Ashley M. Jacobs, appearing and acting as the County Administrator of
Beaufort County, sign, seal and as her/his act and deed, deliver the within written Lease
Agreement, and that s/he with the other witness witnessed the execution thereof.

                                      Ashley M. Jacobs

SWORN to before me this 29th Day of May, 2019

                                      Cheryl H. Harris
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES:             

STATE OF SOUTH CAROLINA            )
COUNTY OF BEAUFORT                ) PROBATE

Personally appeared before me the undersigned witness and made oath that s/he saw the
within named Ashley Jacobs, appearing and acting as the Bill Prokop of the City of Beaufort, sign, seal and as her/his act and deed, deliver the within written Lease Agreement, and that s/he with the other witness witnessed the execution thereof.

                                      _____________________________

SWORN to before me this 4th Day of July, 2019

                                      Julie Bachelet
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES:             

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