

# MEMORANDUM OF UNDERSTANDING

between the

**Virginia Horse Center Foundation**

and

**the Commonwealth of Virginia**

This Memorandum of Understanding (“Memorandum”) is made and entered into by and between the parties.

## I. PURPOSE

The purpose of this Memorandum is to establish a formal commitment between the parties to implement a certain loan (the “Loan”) by the United State Department of Agriculture (“USDA”) to the Virginia Horse Center Foundation, a § 501(c)(3) charitable organization.

## II. BACKGROUND

Item 87(A) of the Appropriations Act adopted by the General Assembly as Chapter 3 of the Acts of Assembly 2006, Special Session 1, charges the “Secretary of Agriculture [and Forestry], in coordination with the Secretary of Finance to develop a plan to implement the requirements of any loan received by the Virginia Horse Center Foundation from the United States Department of Agriculture.” The plan is required to assure the continuing operation of the Virginia Horse Center (the “Center”), located in Rockbridge County, Virginia, as a statewide center devoted to the promotion of the horse industry in Virginia.

Item 87(A) also makes available a \$4.5 million appropriation to the Virginia Horse Center Foundation to use in coordination with the Loan to restructure the Virginia the Center’s debt. Item 87(A) required a plan of implementation be submitted to the Chairman of the House Appropriations and Senate Finance Committees no later than August 15, 2006. Item 87(A) also required the Governor to review such plan for approval prior to September 1, 2006.

This Memorandum is a result of the Governor’s approval of disbursing the \$4.5 million on behalf of the Commonwealth to effectuate the Loan, \$783,080 of which having already been received by the Foundation on or about July 15, 2006 for a debt service payment due under an existing obligation.

The terms of the Loan require property currently titled in the name of the Virginia Equine Center Foundation be transferred to the Virginia Horse Center Foundation. The

proceeds of the Loan and the \$4.5 million state appropriation are to be used to restructure the Virginia Horse Center's outstanding debt obligations.

### III. RECITALS

The Center is a unique economic and cultural asset that exists for the benefit of the Commonwealth and its citizens.

The ability of the Center to continue its operations is important for the local and state economy, as well as Virginia's equine industry.

The Virginia Horse Center Foundation is a § 501(c)(3) charitable organization (the "Foundation").

The Commonwealth of Virginia has invested \$20,707,957 million in the Center including the \$4.5 million appropriation pursuant to Item 87(A) of the 2006 Appropriations Act.

Private donors have invested \$13,253,612 million in the Center through monetary contributions, property donated to the Center and improvements made on such property.

The Virginia Horse Center Foundation's articles of incorporation provide:

- one purpose for its existence, such purpose being "[t]o construct, operate, and maintain, or cause to be constructed, operated and maintained, in the County of Rockbridge of the Commonwealth of Virginia a 'Virginia Horse Center' as authorized by the Commonwealth of Virginia or for the benefit of the Commonwealth of Virginia."
- that none of the net earnings of the Foundation shall inure to the benefit of the board members and no individual on the board shall be entitled to share in the distribution of any of the Foundation assets upon dissolution of the Foundation.
- that should the Foundation be dissolved the assets of the Foundation must be distributed to a charitable, religious, scientific, testing for public safety, literary, or education organization" that qualifies as a §501(c)(3) organization under the federal tax code.
- that "[a]ll the property of this [Foundation] and the accumulations thereof shall be held and administered to effectuate its purpose and to serve the general welfare of the people of the United States."

The current Mission Statement of the Virginia Horse Center is to:

“Make available a world-class facility to attract local, national, and international competitions and sales of all breeds and disciplines of show horses.

Establish and maintain a professional and safe environment for the use of scheduled users of the Virginia Horse Center.

Develop a schedule of events which will expand and benefit the many facets of the state horse industry, and which will provide recreational, educational, and demonstrational opportunities for all people living and traveling in Virginia.

Provide professional service to all user groups, ensuring a quality time of competition and recreation.”

The USDA Loan documents provide certain limitations on the use and disposal of the Center property. Such limitations, include, but are not limited to:

- The USDA Security Agreement provides that disposal of property covered by the security agreement must be with the consent of the USDA.
- The USDA Deed of Trust provides i) that the loan must be used solely for the purposes authorized by the USDA; (ii) the Center may not cut or remove any timber or other natural resources; (iii) the Center may not sell or lease or otherwise encumber the property without the prior written consent of the USDA (a normal course of business exception is provided - ex. annual leases for grazing of fields by cattle farmer); and (iv) the USDA may in its sole discretion release portions of the encumbered property from the lien.
- The USDA Loan Resolution Security Agreement provides that the Foundation: i) will not cause or permit the voluntary dissolution of the corporation or merger with another without the written consent of the USDA; ii) will not dispose or transfer title to the property without obtaining prior written consent of the USDA; and iii) will not modify or amend its by-laws without the written consent of the USDA.
- The USDA Loan documents require prior approval by the USDA before any additional non-equine activity may be undertaken by use of the Horse Center property. Any activities on the property financed by the USDA loan must be not-for-profit activities.

#### IV. AGREEMENT

NOW THEREFORE, IT IS **AGREED** that in exchange for the Commonwealth authorizing the disbursement of funds pursuant to Item 87(A) of the Appropriations Act, Chapter 3 of the Acts of Assembly 2006, Special Session 1, the Foundation shall implement the following actions prior to the closing date of the Loan:

1. **Conveyance of all property:** The Foundation shall amend its articles of incorporation and by-laws to provide that in the event of dissolution of the Foundation or the conveyance of all interest in real estate or assets owned by the Foundation, the Commonwealth shall be given a first right of refusal to purchase such property for payment of all outstanding financial liabilities.

Such amendment shall also provide that in the event the Commonwealth chooses not to exercise its option to purchase the Horse Center assets in their entirety through its first right of refusal, the Commonwealth shall be entitled to the net proceeds of any sale of the Center up to an amount equal to its investment in the Center valued as of the Effective Date of this Memorandum at \$20,707,957 million (which includes the funds being disbursed pursuant to Item 87(A) of the Appropriations Act, Chapter 3 Acts of the Assembly 2006, Special Session I) with any excess proceeds thereafter going to the Foundation. For the purposes of such amendment "net proceeds" shall be defined as meaning the amount of funds available after paying all outstanding financial obligations and fulfilling any grant conditions by the United States Department of Agriculture or any other applicable organization.

2. **Other conveyances of property:** The Foundation shall amend its articles of incorporation to provide that in the event of the conveyance of any interest in real estate or assets less than the entirety of such property owned by the Foundation, the Commonwealth shall be given a first right of refusal to purchase such property for fair market value. Such amendment shall also provide that the first right of refusal to purchase for fair market value in this instance does not apply to a maximum of thirty (30) acres determined by the Foundation's Board of Directors to not be essential to the operation of the Center and which may be sold by the Foundation.
3. **Escrow deposit:** The Foundation shall deposit into a debt service escrow account to be maintained until the Loan is satisfied an amount equal to one annual principal and interest payment of the Loan.
4. **Change in Board of Directors membership:** The Foundation shall amend its by-laws to designate as a member of the Board of Directors the Secretary of Agriculture and Forestry, or his designee, as a permanent member of the Board of Directors until agreed otherwise by a 3/4 (75%) affirmative vote of the Board of Directors and the Commonwealth through the amendment process detailed in this Memorandum.

5. **Change of purpose:** The Foundation shall amend its by-laws to provide that any vote to change the purpose language of the Foundation's articles of incorporation must be by 3/4 (75%) affirmative vote of the Board of Directors. Such affirmative vote must include the Secretary of Agriculture and Forestry, or his designee voting in favor of any proposed change in order for it to be effective.
6. **Vote to convey property:** The Foundation shall amend its by-laws to provide that any vote to convey any interest in real property of the Foundation must be by 2/3 (66%) affirmative vote and further, that such affirmative vote must include the Secretary of Agriculture and Forestry, or his designee, voting in favor of any proposed conveyance in order for it to be effective. Such amendment shall further provide that the requirement of the Secretary's affirmative vote in this instance shall expire 15 years from the adoption of the by-laws amendment.

Such amendment shall also provide that the increased vote requirement to convey an interest in real property and the concurrence of the Secretary of Agriculture and Forestry does not apply to a maximum of thirty (30) acres determined by the Board of Directors to not be essential to the operation of the Center and which may be sold by the Foundation under its normal voting procedures.

7. **Mission statement:** The Foundation shall amend its by-laws to include the Horse Center's current mission statement as its mission statement and amend such statement by adding the following language:

"Preserve the Virginia Horse Center as a unique open space asset to the greatest extent practical and consistent with the purposes of the Center."

8. **Future changes in Mission Statement:** The Foundation shall amend its by-laws to provide that the Secretary of Agriculture and Forestry, or his designee, as a member of the Board of Directors must consent in any change to the Foundation's Mission Statement.
9. **Debt Limitation:** The Foundation shall amend its articles of incorporation to prohibit it from incurring any debt beyond the Loan except as herein provided. The Foundation may incur "short-term" debt for operational working capital payable in full no more than 180 days from its incurrence in an amount no greater than \$250,000. The total outstanding "short-term" debt at any time shall not exceed \$250,000. The Foundation may incur "long-term" debt (defined as any debt that is not "short-term" as referenced above) in an amount no greater than \$250,000. The total outstanding "long-term" debt at any time shall not exceed \$250,000.

Such debt limitation provisions in the articles of incorporation shall terminate upon (i) payment in full of the USDA loan obligation, or any refinancing of that loan obligation, or (ii) if at any time after ten (10) years from the date of the amendment's being effective, the Foundation has met the debt service coverage test described below in each of the preceding three fiscal years.

*Required Debt Service Coverage:* The required coverage shall be 110 percent, which shall be defined as the operating surplus (not including any revenues generated from the sale of long-term assets) plus depreciation expense plus interest expense divided by the total debt service (principal and interest payments) on all existing debt and all debt projected to be incurred. Debt means bonds, notes, capital leases, and other financing arrangements.

Such amendment shall allow the debt limitations described above to be exceeded by a 2/3 (66%) affirmative vote of the Board of Directors and further, that such affirmative vote must include the Secretary of Agriculture and Forestry, or his designee, voting in favor of exceeding the debt limitation in order for it to be effective.

Such amendment shall also provide an exception to the debt limitations described above in the event the USDA requests the Foundation to refinance the loan, and such refinancing does not exceed the amount necessary to refinance the USDA loan.

10. **Change of Debt Limitation Provision:** The Foundation shall amend its by-laws to require any vote by the Board of Directors to change the new language in the articles of incorporation regarding the debt limitation detailed in Item Number 9 above must be by a 3/4 (75%) affirmative vote, and further, that such affirmative vote must include the Secretary of Agriculture and Forestry, or his designee, voting in favor of any proposed change in order for it to be effective.
11. **Financial audits:** The Foundation shall amend its by-laws to require the Board of Directors to send a copy of all final yearly financial audits along with a report detailing the financial activities of the Foundation for that fiscal year to the Secretary of Agriculture and Forestry, Secretary of Finance and Chairman of the House Appropriations and Senate Finance committees. Such report shall summarize the financial condition of the Center's operations for period covered in the audit and shall include a report on fundraising activities for that period.
12. **Interim financial reporting:** The Foundation shall amend its by-laws to require the Foundation to make semi-annual unaudited reports on the financial condition of the Foundation to the Secretary of Agriculture and Forestry, Secretary of Finance and Chairman of the House Appropriations and Senate Finance committees. Such reports being due by January 30<sup>th</sup> of each year with a final report transmitted on January 30, 2010.
13. **Debt reduction:** The Foundation shall adopt a resolution requiring the net proceeds from the sale of any of the Foundation's real property holdings shall be used to pay any outstanding principal remaining on the Loan until such obligation is satisfied.

## **V. REVIEW BY SECRETARY OF AGRICULTURE AND FORESTRY**

The Foundation shall submit all proposed changes to its articles of incorporation, by-laws and resolutions required by this Memorandum to the Secretary of Agriculture and Forestry for review within fifteen (15) days of the Memorandum's Effective Date.

## **VI. AMENDMENT**

This Memorandum may be amended. Any amendment shall be documented in writing, signed and dated by the parties to this Memorandum or their successors in office or position and attached to the original Memorandum.

## **VII. TERMINATION**

This Memorandum shall continue in force until terminated. This Memorandum may be terminated upon the mutual agreement in writing of all parties to this Memorandum or their successors in office or position.

## **VIII. SUCCESSOR OFFICES**

During the term of this Memorandum, should any of the offices or positions that are signatories to this Memorandum be renamed or reorganized, the office or position's successor office or position shall substitute for the original office or position for the purposes of this Memorandum. Such substitution having the same effect as the successor office or position having been an original signatory to this Memorandum. If such office or position is abolished during the term of this Memorandum, the remaining parties shall agree on a successor office or position to replace the abolished office or position and amend this Memorandum according to the procedures provided herein.

## **IX. MISCELLANEOUS**

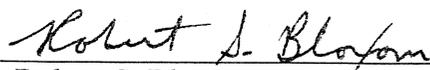
This Memorandum is neither a fiscal nor a funds-obligation document and creates no liability or financial responsibility on behalf of the Commonwealth.

**X. EFFECTIVE DATE**

IN WITNESS WHEREOF, the parties hereto have entered into this Memorandum as evidenced by their signatures below. The Memorandum is effective upon the date of the final signature.

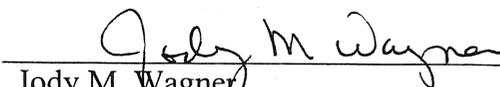
**FOR THE COMMONWEALTH:**

**SECRETARY OF AGRICULTURE AND FORESTRY**

  
\_\_\_\_\_  
Robert S. Bloxom

Oct. 3, 2006  
Date

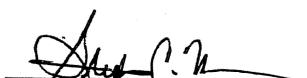
**SECRETARY OF FINANCE**

  
\_\_\_\_\_  
Jody M. Wagner

Oct. 3, 2006  
Date

**FOR THE VIRGINIA HORSE CENTER FOUNDATION:**

**PRESIDENT OF THE BOARD OF DIRECTORS**

  
\_\_\_\_\_  
Stephen C. McBroom

29 September 2006  
Date