

LONG TERM LEASE
BETWEEN THE CITY OF CHARLOTTESVILLE
AND
THE DOGWOOD VIETNAM MEMORIAL FOUNDATION, INC.

1. **Parties.** The City of Charlottesville, Virginia (the “City”) owns certain real estate commonly known as McIntire Park and intends to lease a portion thereof to the Dogwood Vietnam Memorial Foundation, Inc. (“DVMF”), a charitable, non-profit corporation authorized to do business in the Commonwealth of Virginia.

2. **City Authority.** The City has the authority to enter into this Lease pursuant to Virginia Code §§ 15.2-953, 15.2-1800, and 15.2-2100.

3. **Leased Premises.** The City hereby leases and demises to DVMF, and DVMF hereby leases from City, certain real property in the southeast corner of McIntire Park, nearest to the intersection of State Route 250 and the John Warner Parkway, which property is more particularly identified on Exhibit A attached hereto (the “Leased Premises”).

4. **Suitability of Leased Premises.** The City makes no representation or warranty as to the condition or suitability of the Leased Premises for DVMF’s intended purposes. DVMF accepts the Leased Premises in its “as is” condition subject to all existing utilities and all easements of record.

5. **Term.** The term of this Lease is forty (40) years beginning on the date this Lease is executed by both the City Manager and a duly authorized agent of DVMF.

6. **Rent.** The rent for this Lease is the nominal fee of One Dollar (\$1) per year, for a total of forty dollars (\$40) prepaid, the receipt of which is hereby acknowledged.

7. **Use.**

a. **Memorial.** DVMF will use and occupy the Leased Premises for the sole purpose of constructing, improving, operating, and maintaining a memorial (the “Memorial”) to honor and perpetuate the lasting memory of all persons who served in the United States Military and to hold meetings or events concerning or relating to the Memorial or the DVMF, subject to the DVMF complying with all applicable local, state and federal rules, regulations and laws.

b. **Reservation.** The City reserves the right to install, operate, repair, and maintain water, sewer, gas, stormwater, or other utilities (“Public Facilities”) within the Leased Premises. Upon completion of any such work the City will reasonably repair any damage to the Leased Premises proximately caused by the City’s installation, operations, repairs, or maintenance of its Public Facilities.

c. **Open to public.** The Leased Premises will remain open to the general public except during hours specified within Section 18-1 of the Charlottesville City Code (as may be amended) for McIntire Park. When McIntire Park is open to the general public, DVMF must not exclude members of the public from the Leased Premises *subject to the following exceptions:*

i. Private Events. DVMF may use and occupy the Leased Premises for ceremonies, meetings, or other private events, during which time the Leased Premises will not be open to the general public. DVMF is hereby granted the right and privilege to conduct up to 10 private events per calendar year which advance DVMF's mission during which DVMF and its guests will have the privilege of exclusive use of the entire Leased Premises, provided, however, that all such private events must comply with all applicable local, state and federal governmental rules, regulations and laws. For each such private event, upon prior approval from the City, which approval will not be unreasonably withheld, vehicular access will be allowed through the existing gated entrance to the skate park to allow for vehicle parking near the Memorial site.

ii. Construction. DVMF may temporarily restrict or prohibit public access to any portion of the Leased Premises that is a work zone for construction or land disturbing activities being conducted by DVMF, the City, or the contractors of either. Any construction or land disturbing activities conducted by DVMF must be performed in accordance with all local, state and federal rules, regulations and laws. No improvements, other than the expansion of the Memorial plaza and the Pedestrian Bridge Access thereto (subject to approval from the City), may be installed on the Leased Premises without the consent of the City. DVMF will take all reasonable measures to prevent any mechanic's liens, materialmen's liens or other statutory liens to attach to the Leased Premises as a result of any alterations, improvements, additions or repairs performed by DVMF or at DVMF's direction. If any such lien or notice of lien rights is filed with respect to the Leased Premises by a contractor hired or engaged directly by DVMF (including any subcontractor hired or engaged by such contractor), then DVMF shall upon notice of same promptly take all reasonable measures to have such lien released or bond over the lien if release is not accomplished within thirty (30) days, and shall permit no further work to be performed on the Leased Premises until such release or bond has been accomplished, unless otherwise agreed to by the City in writing.

8. Financial Assurances. Prior to the commencement of any construction or land disturbing activity in or upon the Leased Premises DVMF must provide to the City:

a. Financial Plan. A written financial plan demonstrating DVMF's ability to adequately finance the cost thereof.

b. Contractors. Evidence that DVMF has entered into a written contract with one or more licensed and bonded Class A contractor(s) and has secured performance and payment bonds for the entire amount of the contract(s).

c. Insurance. Evidence that said contractor(s) will have in effect commercial general liability insurance throughout any period in which work is being performed by said contractor(s).

9. Maintenance, operation, and repair.

a. DVMF duties and obligations.

i. Keep clean. DVMF must keep the Leased Premises in a clean, attractive condition and not commit or allow any waste or damage to be committed to any portion of the Leased Premises.

ii. Pedestrian Bridge Access. DVMF will engage with the City in good faith and take all reasonable action to allow and assist the City in the planning, construction, development, and approval of a pedestrian bridge, multi-use trail, and associated parking lot to provide improved/handicap public access to the Leased Premises (and McIntire Park generally).

iii. Employees, Agents, Invitees. DVMF shall be responsible for the well-being and safety of its employees, agents and invitees present on and/or performing activities while on the Leased Property and shall, at all times, provide reasonable and customary supervision of all such persons while on the Leased Premises.

b. City duties and obligations.

i. Landscaping. The City is solely responsible for all reasonable and necessary landscaping services on and for the Leased Premises, provided that the City must not unreasonably interfere with DVMF's private events (*see supra* ¶ 7.c.i) of which the City has notice.

ii. Pedestrian Bridge Access. The City will engage with DVMF in good faith and take all reasonable action to allow and assist DVMF in the planning, construction, development, and approval of a pedestrian bridge, multi-use trail, and associated parking lot to provide improved/handicap public access to the Leased Premises (and McIntire Park generally).

10. Legal interests.

a. Real estate. Title to the Leased Premises is now, and upon the expiration or earlier termination of this Lease will remain with, the City. DVMF must promptly and in good faith execute any written instruments or documents the City presents to DVMF that is reasonably necessary to confirm such ownership interest(s) of the City.

b. Other property. All improvements, fixtures, or other property DVMF places, constructs, or installs in, on, or upon the Leased Premises is, and upon expiration or earlier termination of this Lease will remain, owned by DVMF and may be removed by DVMF at any time. This includes but is not limited to, all flags, flag poles, plaques, stanchions, kiosks, temporary decorations (bunting, banners, etc.), and inscribed bricks. This does not include any concrete or asphalt paths, stairs, or walls (except the inscribed bricks).

11. Damage; destruction.

a. Notice. DVMF must give the City prompt written notice of any damage or destruction of any portion of the Leased Premises.

b. Repair. In the event that some portion of the Leased Premises is damaged by fire or other casualty, and such damage is covered by DVMF's insurance, DVMF agrees to make a claim under said insurance and to repair such damage as much as can reasonably be done with the amount of any insurance proceeds from that claim.

c. DVMF's property. The City is not required to repair any damage to or replacement of any of DVMF's property on or upon the Leased Premises (as defined in paragraph 10.b above) unless such damage was caused (in whole or in part) by the negligence or willful misconduct of the City or its employees and/or agents or otherwise provided by law.

12. Indemnification.

a. Generally. Subject to paragraph 12.b below, DVMF must indemnify and hold the City (including its officers, officials, and employees) harmless from and against any and all liability, loss, claim, suit, damage, charge, or expense suffered, sustained, incurred or in any way to be subjected to, on account of death of or injury to any person and for damages to, loss of, and destruction of any property whatsoever which arises out of, results from, or is in any way connected with (i) DVMF's use of the Leased Premises during a private event under this Lease (*see supra* ¶ 7.c.i) or (ii) which occurs as a consequence of any negligence or misconduct of DVMF (including its members, contractors, and subcontractors) in the exercise of DVMF's rights, privileges, or performance of DVMF's obligations under this Lease.

b. Exceptions. Notwithstanding paragraph 12.a above, DVMF has no indemnity obligation for the negligent acts, omissions, or misconduct of the City's officers, officials, employees, and other agents, in their capacity as an officer, official, employee or agent, to the extent provided by law.

13. Assignment. DVMF has no right to assign or sublease, in any manner or fashion, any of its rights, privileges, or interests accruing to it under this Lease to any other individual or entity without the prior written consent of the City. *Provided, however,* that the City cannot unreasonably withhold its consent if DVMF proposes to assign or sublease to an alternative or successor charitable organization that is capable of performing DVMF's obligations hereunder and the use of the Leased Premises will remain one for the public good, in the sole discretion of the City, not to be unreasonably withheld, conditioned or delayed.

14. Nondiscrimination. DVMF must not discriminate against any person in its membership, programs, or events relating to the use or occupancy of the Leased Premises on the grounds of race, religion, color, gender, sexual orientation, national origin, disability, or any other basis prohibited by law.

15. Insurance.

a. Types of Insurance. DVMF will, at its sole cost and expense, secure and maintain throughout the term of this Lease, the following types of insurance coverage and policy limits:

- i.** \$1,000,000 for commercial general liability coverage;
- ii.** \$1,000,000 for bodily injury and property damage;
- iii.** \$1,000,000 for products and non-owned and hired automobile liability;
- iv.** \$1,000,000 for personal and advertising injury; and
- v.** \$5,000 medical expense benefit (any one person).

b. Special Requirements. Each insurance policy required by this paragraph must be written or endorsed so as to preclude the exercise of the right of subrogation against the City and must name the City as an additional insured. Each insurance policy required by this paragraph also must be endorsed to include the following clause: "Should any of the insurance policies be cancelled before the expiration date thereof, the issuing insurance company will endeavor to mail written notice of such cancellation to the City at least 10 days in advance." Upon receipt of any notice, verbal or written, that the said insurance is subject to cancellation, DVMF must notify the City within five (5) business days. In the event DVMF fails to comply with the requirements of this section, the City will have the right to require DVMF to suspend use of the Leased Premises until such time as the requirements of this paragraph are met.

c. Evidence of Insurance. DVMF must provide the City with one or more certificate(s) of insurance confirming the insurance required by this Lease.

d. Amendment. The required insurance coverages, and the required limits of the insurance, may be reviewed by the parties and amended from time to time by mutual agreement.

16. Default. If at any time during the term of this Lease the City contends that DVMF is in violation of any material provision of this Lease, then the City must provide DVMF written notice thereof. Such notice must specifically identify the provision(s) of the Lease allegedly violated and the facts to support the City's assertion. Upon receipt of such notice, DVMF will have 90 days to remedy the alleged violation(s). Notwithstanding the foregoing, the City shall have the right to correct any such violation, if in the sole discretion of the City, such violation creates a danger to the public or otherwise requires immediate attention and if the City so elects, all reasonable costs of such correction shall be recoverable from DVMF, within thirty (30) days of receipt of an invoice from the City.

17. Expiration or Termination of Lease. Upon the expiration or earlier termination of this Lease under paragraph 16 above, DVMF must surrender the Leased Premises to the City as provided in paragraph 18 (entitled "Surrender") of this Lease. If this Lease has not been earlier terminated, the parties must meet and confer in Year 38 of the term of this Lease to negotiate in good faith the terms of a new or extended lease.

18. Surrender. Upon the expiration or earlier termination of this Lease, DVMF will:

a. Quit and peaceably surrender to the City possession of the Leased Premises in good order and condition, except for ordinary wear and tear. The surrender of this Lease will, at the option of the City, terminate any and all existing subleases or may, at the option of the City, operate as an assignment to it of any and all such subleases.

b. Remove its property from the Leased Premises and any property which has not been removed prior to the date of termination will become the property of the City, and the City will have the right to dispose of such property in its sole discretion.

19. Eminent Domain. In the event of any taking by eminent domain of the Leased Premises, whether partial or total, the City will be entitled to receive the condemnation award or compensation; *provided, however*, that if any structures and/or improvements created or installed by DVMF are taken, then DVMF will be entitled to receive that portion of the condemnation award or compensation for such structures and/or improvements. If the taking is such that sufficient area remains for DVMF to continue its normal operations, then the Lease will terminate only as to the part of the Leased Premises so taken but will remain in effect with respect to that part not taken.

20. Right of Entry. The City or its agents may enter upon the Leased Premises at all reasonable times to examine the condition and use so long as that right is exercised during regular business hours in a manner that does not unreasonably interfere with DVMF's conduct of its lawful and authorized activities within the Leased Premises.

21. Non-waiver. No failure on the part of either party to enforce any of the terms or conditions set forth in this Lease will be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver of a breach of this Lease will be construed as a waiver of any succeeding breach of the same provision. No delay or failure by either party to exercise any right under this Lease, and no partial or single exercise of that right, will constitute a waiver of that or any other right, unless otherwise expressly provided herein.

22. Notices. All notices given in connection with this Lease must be communicated in writing either by (a) U.S. Mail first class postage prepaid or (b) prepaid express delivery service and in either event addressed as follows:

To the City:
City Manager
P.O. Box 911
Charlottesville, VA 22902

To DVMF:
DVMF President
P.O. Box 6193
Charlottesville, VA 22906

With a copy to:
City Attorney
P.O. Box 911
Charlottesville, VA 22902

Either party may change its designated representative or mailing address by giving written notice to the other party as provided herein.

23. Modifications. No modification, amendment, release, or discharge of any provision of this Lease will be of any force or effect except by the written consent of both parties hereto. Notwithstanding the foregoing, the City Manager is hereby authorized to act as City Council's agent for purposes of approving modifications of the provisions of this Lease.

24. Time of Essence. In all instances in which a party is required by this Lease to do any act on or within a specific time period, the parties expressly declare that time is of the essence as to such action.

25. Persons Bound. The terms, provisions, and conditions of this Lease will bind and inure to the benefit of the respective parties hereto and to their respective representatives, successors, and assigns.

26. Entire Agreement. This Lease contains the entire agreement between the parties and it supersedes all prior agreements and understandings of the parties, whether verbal or written, as to matters that are set forth in this Lease. There are no collateral agreements, stipulations, or promises whatsoever in any way touching the subject matter of this Lease. The execution of this Lease was not induced by any representations, promises, or understandings other than those expressly set forth herein.

27. Recordation. The terms and conditions set forth herein will be signed by the parties' duly authorized agents and suitable for recordation among the land records of the Charlottesville Circuit Court in accordance with Virginia Code § 17.1-227. Alternatively, in lieu of recordation, a memorandum of lease may be recorded as provided in Virginia Code § 55.1-1601.

28. Headings. The headings or captions used in this Lease are for convenience only and are not to be used in the interpretation or construction of its provisions.

29. Interpretation. In the event of any conflict, discrepancy, or inconsistency between this Lease and any other documents which have been incorporated into this Lease by reference or made exhibits or attachments hereto, then the provisions set forth within this Lease will govern the parties' intent. The terms of this Lease have been negotiated at arm's length and with the opportunity to seek respective legal counsel and thus neither party alone "drafted" the terms hereof for purposes of construing any ambiguities herein.

30. Severability. In the event that any term or provision of this Lease, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, and the application of any term or provision to any person or circumstance other than those to which it has been held invalid or unenforceable, will not be affected thereby.

31. Governing Law. This Lease is governed, construed, and enforced by and in accordance with the laws of the Commonwealth of Virginia. Any suit or controversy arising under this Lease must be brought in the General District or Circuit Court for the City of Charlottesville, Virginia.

32. Authorized Signatures. The City of Charlottesville City Council authorizes the Charlottesville City Manager as its agent to execute the Lease on behalf of the City of Charlottesville and to bind the City hereto. The Dogwood Vietnam Memorial Foundation, Inc. authorizes its President as its agent to execute the Lease on behalf of the DVMF and to bind the DVMF hereto.

33. Execution in Counterparts. This Lease may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same instrument.

WITNESS THE FOLLOWING SIGNATURES:

City of Charlottesville, VA

Dogwood Vietnam Memorial Foundation, Inc.

By: _____
City Manager

By: _____
President

Printed Name: _____

Printed Name: _____

Date: _____

Date: _____

EXHIBIT A

