

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** is made and entered this ____ day of _____, 2022 (the "Effective Date"), by and among the **COUNTY OF SPOTSYLVANIA, VIRGINIA** (the "County") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **KALAHARI VA, LLC** (the "Company"), a Delaware limited liability company authorized to transact business in the Commonwealth, and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE COUNTY OF SPOTSYLVANIA, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth. Each of the County, Company and Authority are sometimes referred to herein as a "Party" and, collectively, they are sometimes referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the Company has been formed to develop, own and operate a Kalahari Resort (as defined below) in Thornburg, Spotsylvania County, Virginia on approximately 135 acres of land on U.S. Highway 1, just south of Mudd Tavern Road more specifically identified in the County's records as Tax Map Number (TM) 76-A-58 addressed as 6135 Patriot Highway, TM 76-A-56, TM 76-A-56A addressed as 6117 Patriot Highway, TM 76-A-56B addressed as 6109 Patriot Highway, TM 76-A-58C, TM 76-A-56D, and TM 76-A-56C hereinafter referred to in total as the "Property"; and

WHEREAS, the Company will incur significant costs associated with purchasing the Property, developing, constructing, and equipping the Kalahari Resort; and

WHEREAS, the Property is now substantially unimproved; and

WHEREAS, the County has determined that the promotion of commercial expansion and improvement of business, including but not limited to job creation and retention, results in significant direct and indirect economic, physical and social benefits to the County, is consistent with the Authority's objectives, and is in the best interest of the citizens of Spotsylvania County; and

WHEREAS, the Authority desires to provide to the Company economic incentives to induce the Company to locate the Kalahari Resort in the County which will in turn create numerous jobs and stimulate appropriate commercial growth near the Thornburg Interchange and along the U.S. Highway 1 corridor in the County; and

WHEREAS, the County is willing to appropriate and provide funds to the Authority, in support of a grant, with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company meets certain criteria and commitments described herein; and

WHEREAS, the County is authorized by Section 15.2-953 of the Code of Virginia and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Chapter 49, Title 15.2 of the Code of Virginia and other laws to perform the activities contemplated in this Agreement; and

WHEREAS, the Parties desire to set forth their understanding and agreement as to the terms of the Grants (as defined below) and the obligations of the Company regarding the Company's Commitments (as defined below).

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

Section 1. Incorporation of Preamble.

The Preamble above and the statements made therein are fully incorporated herein by reference thereto and are hereby made part of this Agreement.

Section 2. Definitions.

For the purposes of this Agreement, the following terms shall have the following definitions:

"Affiliates" means any entity that controls, is controlled by, or is under common control with Company. "Control" means the direct or indirect ownership of more than fifty percent (50%) of the voting securities of an entity or possession of the right to vote more than fifty percent (50%) of the voting interest in the ordinary direction of the entity's affairs

"Capital Investment" means the capital expenditure by or on behalf of the Company and/or its Affiliates in taxable real property, taxable tangible personal property, or both at the Property and shall include the expenditures for or in connection with the purchase of real property or easements or other interests in land, for the Kalahari Resort itself, or for infrastructure to support the Kalahari Resort together with the design and "soft" costs associated with the construction of the Kalahari Resort, including expenditures for the purchase or lease of tangible personal property, including but not limited to furniture, fixtures, machinery and equipment. Capital Investment shall not include the "soft" costs of administrative fees taken by, or paid to, the Company

"Incentive Period" means the period of time commencing on the date that the Company receives a certificate of occupancy for the Kalahari Resort from the County and ending on the first day of the month following the twentieth anniversary of the date that the Company receives a certificate of occupancy for the Kalahari Resort from the County.

"Kalahari Resort" means a waterpark resort located upon the Property including at least the following: 770 guest room hotel, one full-service restaurant, additional food and beverage outlets, valet parking, bell and concierge service, a convention center, an indoor waterpark, entertainment and retail facilities and a spa or exercise facility or comparable facilities to the foregoing.

"Maintain" means to keep and operate the Kalahari Resort as a functional waterpark resort open to the public, and in keeping and operating the Kalahari Resort as a functional waterpark, doing so in a state and manner substantially similar to the other "Kalahari Resort" properties operated in North America, taking into account the sizes of each such resort.

“Permit Fees” means any local fees paid by or on behalf of the Company to the County for the purposes identified on the County’s unified fee schedule (as it may be amended, changed or supplemented from time to time) for local building; zoning; planning; GIS; permit center; transportation; utilities; fire and other public safety matters; environmental; stormwater management; and Chesapeake Bay reviews, tests and inspections related to the construction or development of the Kalahari Resort. “Permit Fees” does not include any fees identified on the County’s unified fee schedule related to enforcement actions by the County, does not include the actual bonds required (although bond reviews and inspections are included) and does not include fees paid by the County or by, or on behalf of, the Company to third parties.

“Repayment Event of Default” means an uncured (within the time required by Section 5.2) Event of Default set forth in:

- (i) Section 5.2(a),
- (ii) Section 5.2(b) or
- (iii) Section 5.2(c), but only if such Section 5.2(c) Event of Default is triggered by a failure of the Company to meet its commitments in Section 3.1(a), 3.1(b) or 3.1(c) (as this last commitment is modified by Section 5.2).

“Virginia Code” means the Code of Virginia of 1950, as amended.

“Water and Sewer Fees” means any fees paid by or on behalf of the Company to the County or County utilities to connect the Kalahari Resort to water, sewer, either, or both including meter, connection, and availability fees. “Water and Sewer Fees” does not include any fees related to enforcement actions by the County, does not include fees paid by the County or by, or on behalf of, the Company to third parties, and does not include any monthly service fees for water and sewer service. “Water and Sewer Fees” does not include any costs of the development or construction of infrastructure which is necessary for the Kalahari Resort to connect to water and sewer service.

Section 3. Company Commitments.

3.1 In exchange for the Grants (as defined below), the Company will fully comply with each and every one of the following commitments under the schedules set forth below, which shall collectively be referred to as the “Company Commitments”:

- (a) The Company will purchase the Property;
- (b) The Company will open the Kalahari Resort prior to June 30, 2028 and Maintain the Kalahari Resort for the duration of the Incentive Period;
- (c) The Company will make a Capital Investment of at least Four Hundred Seventy-Five Million Dollars (\$475,000,000.00) prior to June 30, 2029 and shall provide evidence of the Capital Investment to the Authority and the County promptly after the opening of the Kalahari Resort as required herein;

- (d) The Company will pay all taxes and fees owed to the County promptly and on time as required by the County or by applicable law or regulation, subject to the Company's right to review, dispute or appeal any assessments made by the County;
- (e) The Company will provide to the Authority and the County copies of all records related to: the value of its taxable property, the assessment of its taxable property by the County, the payment of taxes and fees to the County;
- (f) The Company will cooperate with the promotional programs of the County and the Authority that highlight Spotsylvania County as a place to do business and as a tourism destination. The Company will identify the location of the Kalahari Resort as being located in Spotsylvania or Virginia on its website and in other selected advertising materials. The Company will not identify the location of the Kalahari Resort as being located in any political subdivision of Virginia (other than Spotsylvania) on its website or in other advertising materials;
- (g) Upon written request, the Company will certify to the Authority and the County that it has made the Capital Investments required by this Agreement. Further, upon written request, the Company shall provide information, consistent with that it provides its lender, with evidence that such Capital Investment meet the requirements of this Agreement. Upon request, the Company shall provide the County with other related items.

3.2 Unless otherwise expressly stated herein, the Company will fully comply with each and every one of the Company Commitments at no cost or expense to the County or the Authority.

3.3 Unless otherwise expressly stated herein, the Company agrees that the Company's Commitments shall apply to the Company's Affiliates which are involved in the operation of the Kalahari Resort.

Section 4. Grants and Other Incentives.

4.1 To induce the Company to locate the Kalahari Resort in Spotsylvania County the Authority agrees to provide the Company with the following incentive grants ("Grants", or individually "Grant") during the Incentive Period, subject to the terms herein and the appropriation of sufficient funds to the Authority by the County for the purpose of funding the Authority's obligations under this agreement:

- (a) Tangible Personal Property Incentive Grant. For each full or partial year after the start of the Incentive Period, the Authority agrees to provide a grant equal to one hundred percent (100%) of the tangible personal property tax paid by the Company each year to the County (the "Tangible Personal Property Incentive Grant") for tangible personal property owned or leased by the Company located at the Property, and if leased only for the tangible personal property tax for which the Company is liable for under the terms of the lease. The Authority will disburse this Tangible Personal Property

Incentive Grant payment to the Company within thirty (30) days after the tangible personal property tax is paid by the Company provided that (i) the Company provides evidence satisfactory to the Authority and the County that the Company's tangible personal property taxes for the applicable tax year have been paid and trued up to the County and (ii) the Company has met the Company Commitments. *For example, the Tangible Personal Property Incentive Grant payment based upon the taxes paid on June 5, 2026 will be paid by July 5, 2026; the Tangible Personal Property Incentive Grant payment based upon the taxes paid on December 5, 2026 will be paid by January 4, 2027.*

- (b) Meals Tax Incentive Grant. For each full or partial year after the start of the Incentive Period, the Authority agrees to provide a grant equal to three (3) percentage points of the then current meals tax rate collected by the Company and turned over by the Company to the County from any and all local taxable sales of meals made by the Company and occurring on the Property for which an incentive grant has not already been paid (the "Meals Tax Incentive Grant"). *For example, the current meals tax rate levied by the County is 4.5% so the Meals Tax Incentive Grant will be equal to the amount at 3% with County "retaining" the amount equal to the remaining 1.5%. Should the meals tax rate increase to 5.5% during the Incentive Period, the Company will continue to receive the Meals Tax Incentive Grant equal to the amount at 3% with the County "retaining" 2.5%.* The Meals Tax Incentive Grant will be disbursed by the Authority within sixty (60) days after each quarter provided that (i) the Company provides evidence satisfactory to the Authority and the County that the meals tax taxes for the applicable quarter have been paid, collected, turned over, and trued up to the County and (ii) the Company has met the Company Commitments. *For example, if the Kalahari Resort is opened on February 1, 2025, the Authority will provide the Meals Tax Incentive Grant by May 30, 2025 (sixty (60) days after the end of the first quarter) for all any and all meals tax collected by the County from any and all taxable sale of meals made by the Company and occurring on the Property beginning on February 1, 2025 and ending on March 31, 2025.* The intent of this Meals Tax Incentive Grant is to provide the grant based upon every month the County collects the meals tax from any and all local taxable sales of meals made by the Company and occurring on the Property during the Incentive Period, but to not pay twice (allowing the Company to "double-dip") on any given month. Should the Board of Supervisors of Spotsylvania County (the "Board") reduce the County's meals tax rate to 3% or below, the Meals Tax Incentive Grant shall be equal to one hundred percent (100%) of the meals tax collected by the Company and turned over by the Company to the County from any and all local taxable sales of meals made by the Company and occurring on the Property for which an incentive grant has not already been paid.

- (c) Transient Occupancy Tax Incentive Grant. For each full or partial year after the start of the Incentive Period, the Authority agrees to provide a grant equal to five (5) percentage points of the then current transient occupancy tax rate collected by the Company and turned over by the Company to the County from any and all local taxable sales of occupancy made by the Company and occurring on the Property for which an incentive grant has not already been paid (the "Transient Occupancy Tax Incentive Grant"). *For example, the current transient occupancy tax rate levied by the County is 7% so the Transient Occupancy Tax Incentive Grant will be equal to the amount at 5% with County "retaining" the amount equal to the remaining 2%. Should the transient occupancy tax rate increase to 8% during the Incentive Period, the Company will continue to receive the Transient Occupancy Tax Incentive Grant equal to the amount at 5% with the County "retaining" 3%.* The Transient Occupancy Tax Incentive Grant will be disbursed by the Authority within sixty (60) days after each quarter provided that (i) the Company provides evidence satisfactory to the Authority and the County that the transient occupancy taxes for the applicable tax year have been paid, collected, turned over, and trued up to the County and (ii) the Company has met the Company Commitments. *For example, if the Kalahari Resort is opened on February 1, 2025, the Authority will provide the Transient Occupancy Tax Incentive Grant by May 30, 2025 (sixty (60) days after the end of the first quarter) for any and all occupancy tax collected by the County from any and all sales of taxable occupancy made by the Company and occurring on the Property beginning on February 1, 2025 and ending on March 31, 2025.* The intent of this Transient Occupancy Tax Incentive Grant is to provide the grant based upon every month the County collects the local transient occupancy tax from any and all taxable sales of occupancy made by the Company occurring on the Property during the Incentive Period, but to not pay twice (allowing the Company to "double-dip") on any given month. Should the Board reduce the County's transient occupancy tax rate to 5% or below, the Transient Occupancy Tax Incentive Grant shall be equal to one hundred percent (100%) of the transient occupancy tax collected by the Company and turned over by the Company to the County from any and all local taxable sales of occupancy made by the Company and occurring on the Property for which an incentive grant has not already been paid. Should any additional incentive program, financing program, or agreement offered by the Commonwealth to the Company require the County or the Authority to contribute a local match in excess of a one percentage point (1%) of the local sales tax rate, the amount of the local match will be deducted from the annual payments made to the Company as part of this Transient Occupancy Tax Incentive Grant. If such a program, finance program or agreement offered by the Commonwealth requires a local match equal to or less than a one percentage point (1%) of the local sales tax rate, the amount of the local match will not be deducted from any annual payments made to the Company as otherwise set forth herein.

- (d) Newly Adopted Taxes Incentive Grant. After the Effective Date of this Agreement, one or more new taxes, fees or similar payment requirements, not currently set forth in the County's ordinances, and uniquely applicable to the Company or its Affiliates, the Kalahari Resort, its employees, guests and customers at the Kalahari Resort, and no other company, its employees, guests, and customers, may be implemented by the County in the future, including a potential admissions tax ("Newly Adopted Taxes"). "Newly Adopted Taxes" shall not include service district taxes. For each full or partial year after the start of the Incentive Period, unless prohibited by applicable law, the Authority agrees to provide a grant equal to one hundred percent (100%) of any Newly Adopted Taxes collected by the Company and paid to the County (the "Newly Adopted Taxes Incentive Grant"). The Newly Adopted Taxes Incentive Grant will be disbursed by the Authority within sixty (60) days after each quarter provided that (i) the Company provides evidence satisfactory to the Authority and the County that the Newly Adopted Taxes for the applicable tax year have been paid, collected, turned over, and trued up to the County and (ii) the Company has met the Company Commitments. *For example, if the Kalahari Resort is opened on February 1, 2025, the Authority will provide the Newly Adopted Taxes Incentive Grant by May 30, 2025 (sixty (60) days after the end of the first quarter) for any and all Newly Adopted Taxes collected from any and all taxable sales of Newly Adopted Taxes made by the Company and occurring on the Property beginning on February 1, 2025 through March 31, 2025.* The intent of this Newly Adopted Taxes Incentive Grant is to provide the grant based upon every month the County collects the Newly Adopted Taxes made by the Company and occurring on the Property during the Incentive Period, but to not pay twice (allowing the Company to "double-dip") on any given month. The Parties acknowledge and agree that this Agreement shall in no way require the County to levy any Newly Adopted Taxes. The Parties acknowledge and agree that for as long as the County does not adopt any Newly Adopted Taxes, there will remain no Newly Adopted Taxes Incentive Grant owed to the Company.
- (e) Business, Professional and Occupational License Incentive Grant. For each of the tax years beginning with the first full tax year after the start of the Incentive Period, the Authority agrees to provide a grant equal to one hundred percent (100%) of the business, professional and occupational license ("BPOL") tax paid by the Company each year to the County upon gross receipts earned by the Company and attributable to the Property (the "BPOL Tax Incentive Grant"). The Authority will disburse this BPOL Tax Incentive Grant payment to the Company by June 30th of the year following the applicable tax year provided that (i) the Company provides evidence satisfactory to the Authority and the County that the Company's BPOL taxes for the applicable tax year have been paid and trued up to the County and (ii) the Company has met the Company Commitments. *For example, the BPOL Tax Incentive Grant payment for the taxes paid for the 2026 tax year will be disbursed by June 30, 2027.*

- (f) Permit Fees and Water and Sewer Fees Incentive Grant. Upon the opening of the Kalahari Resort, the Authority agrees to provide the Company a grant equal to the Permit Fees and Water and Sewer Fees. Such payment shall be made within thirty (30) days of the opening of the Kalahari Resort and be accompanied by an itemized list of the Permit Fees and Water and Sewer Fees.

4.2 Grants Associated with Affiliates and Third Parties.

- (a) Excluded. The Grants herein are not intended to incentivize investments by third parties that are not Affiliates if such investments are not associated with the Kalahari Resort. In recognition of this, no Grants will be paid to the Company if a third party that is not an Affiliate pays the tax or similar charge underlying the applicable Grant and the business giving rise to the tax or similar charge is not associated with the Kalahari Resort. *For example, should the Company sell a portion of the Property to a non-Affiliate third party that builds a chain restaurant or retail establishment that is not in, attached to or otherwise associated with an attraction or amenity of the Kalahari Resort, the taxes paid and collected for sales at such business shall not be included in the taxes on which the Grants are measured and based.*
- (b) Included. The Grants herein are intended to incentivize the investments associated with the Kalahari Resort at the Property as measured by the taxes paid above. In recognition of this and the fact that the Company does not make all such investments itself, except as set forth in Section 4.2(a), all Grants will be paid to the Company regardless of whether it, an Affiliate or a third party pays the tax or similar charge underlying the applicable Grant. *For example, should the Company allow a third party to own or operate a restaurant on the Property and that restaurant is associated with the Kalahari Resort (i.e., in it or outside it near one of the Kalahari Resort's amenities or attractions while still on the Property) (the "Restaurant Location"), the meals taxes paid and collected for the sale of meals at the Restaurant Location, the BPOL tax paid upon gross receipts attributed to the Restaurant Location, the tangible personal property tax paid for tangible personal property at the Restaurant Location, and any Newly Adopted Taxes paid and collected at the Restaurant Location shall be included in the taxes on which the Grants are measured and based. The Company shall identify to the County and Authority, in writing, all Affiliates and third parties that the Company believes this Section 4.2(b) applies to and cause such Affiliate or third party to cooperate with the County and Authority. The Parties shall cooperate to identify and calculate all such amounts.*

4.3 Should the Board repeal any of the local taxes identified above upon which a Grant is measured and based, then the corresponding Grant will thereafter not be owed to the Company for the corresponding tax year or years. If any amount of taxes upon which a Grant is measured

and based is subject to an ongoing statutorily provided appeal contesting the amount of taxes owed, the Authority will disburse the corresponding Grant based upon the amount of taxes which have been paid to the County pursuant to the schedule set forth herein and will not withhold the Grant due to the appeal. Should any taxes upon which a Grant is measured and based be refunded by the County to the Company as required by law after the corresponding Grant has been paid, the corresponding Grant for the next scheduled payment of the corresponding Grant after the refund, or the cumulative Grants, if necessary, will be reduced by the amount of the previous Grant corresponding to the tax refund. Should there, for any reason, be no future Grant or Grants to allow for a reduction corresponding to the tax refund, the Company will repay the amount of the previous Grant corresponding to the tax refund to the Authority pursuant to the terms of Section 6. This repayment requirement will survive any termination of this Agreement.

4.4 The Authority's obligation to undertake the activities herein is specially conditioned upon the County providing funding on a timely basis; provided, however, that any and all County financial obligations herein are subject to and conditioned upon appropriation by the Board and availability of funds,

4.5 The County agrees to require the County Administrator to include the Authority's financial obligation herein in the County Administrator's proposed budget for the Board's consideration each County budget year during the Incentive Period, and the County Administrator is hereby directed to do so without further direction needed. Should the County Administrator fail to include the Authority's financial obligation herein in any proposed budget, but the Board approves a budget to include the Authority's financial obligation herein, then the County shall have met this requirement. Subject to the terms and conditions herein, the County agrees to transfer to the Authority any and all funds appropriated by the Board for the purpose of meeting the Authority's obligations under this Agreement.

4.6 The Authority will use all funds transferred by the County to the Authority for the Grants only and exclusively to satisfy the obligations contained in this Agreement related to the Grants.

4.7 To induce the Company to locate the Kalahari Resort in Spotsylvania County the Authority agrees to provide the Company with the following incentive grant: upon the execution of this Agreement, as an incentive the Authority, the County, and the Company agree to execute the assignment and license attached hereto as "Exhibit A" for the right to paint and maintain the Thornburg Water Tower with the Company's signage subject to the terms and conditions therein.

4.8 The Grants will not be based upon or include any amounts paid or owed to the County by the Company for penalties, interest, either or both, on any amount of delinquent taxes. The County will retain all payments for penalties, interest, either or both. The County has the right apply funds intended for the Grants to any delinquent taxes, penalties, or interest owed to the County by the Company instead of disbursing those amounts to the Authority. Should the County apply funds intended for the Grants to any delinquent taxes, penalties, or interest owed to the County by the Company, the amount of the Grants owed to the Company will be reduced by the same amount.

Section 5. Reductions, Events of Default, Termination.

5.1 Reduction. Should the Company fail to make the Capital Investment committed to in Subsection 3.1 (c) herein, but make a Capital Investment of at least three hundred and fifty million dollars (\$350,000,000.00) it shall not be a default hereunder; however, all Grants set forth in Section 4.1 shall be reduced in an amount equal to the percentage reduction between the Capital Investment committed to in Subsection 3.1 (c) herein and the minimum Capital Investment required herein – three hundred and fifty million dollars (\$350,000,000.00). *For example, should the Capital Investment made by the Company be \$462,500,000.00, the total amount of each Grant owed by the Authority to the Company set forth in Section 4.1 shall be reduced by ten percent (10%) pro rata, because the reduction of the Capital Investment was \$12,500,000.00 which is 10% of the difference between the Capital Investment committed to in Section 3.1 (\$475,000,000.00) and the minimum Capital Investment committed to herein (\$350,000,000.00).*

5.2 Events of Default - Company.

Each of the following events shall be a default hereunder by the Company if occurring at any time prior to the end of the Incentive Period, as follows:

- (a) Failure by the Company to maintain its corporate existence or the declaration of bankruptcy by the Company;
- (b) Failure by the Company to make a Capital Investment of at least three hundred and fifty million dollars (\$350,000,000.00);
- (c) Failure by the Company to comply with any of the Company's Commitments described in Section 3 of this Agreement, except for Subsection 3.1(c) if the Capital Investment is at least three hundred and fifty million dollars (\$350,000,000.00), and, further, except for the right to cure such default within thirty (30) days after receiving written notice from the Authority or the County.

5.3 Events of Default –Authority.

Each of the following events shall be a default hereunder by the Authority as follows:

- (a) Failure to comply with any of the commitments described in Section 4 and to cure such default within thirty (30) days after receiving written notice from the Company or the County.
- (b) Failure to comply with any of the commitments in Section 7 and to cure such default within thirty (30) days after receiving written notice from the County.

5.4 Events of Default –County.

Each of the following events shall be a default hereunder by the County as follows:

- (a) Failure to comply with any of the commitments described in Section 4 and to cure such noncompliance within thirty (30) days after receiving written notice from the Company or the Authority.

5.5 Termination: Assumption – County and Authority.

The County and the Authority have the rights of termination and assumption as follows:

- (a) In the case of an occurrence of default by the Company under Subsection 5.2, the County or the Authority may terminate this Agreement by giving written notice to the other Parties. Any termination of this Agreement by the Authority or the County will not release the Company from, or otherwise void, the repayment obligations of the Company set forth in Section 6.
- (b) In the case of an occurrence of default by the Authority under Subsection 5.3, the County may, by giving written notice to the other Parties, immediately assume the obligations of the Authority and administer the Grants herein, and the Authority hereby agrees to take all steps requested by the County in order to effectuate this assumption; and the County shall further have any and all other rights available to it under law and equity.

5.6 Termination – Company.

At any time prior to opening the Kalahari Resort, Company may, by giving written notice to the other Parties, abandon such development and terminate this Agreement and the obligations of Company hereunder, if it determines, in its sole discretion, that such development is no longer economically feasible. Upon such termination, neither the County nor the Authority shall have any obligation to make any payments hereunder to Company. In the case of an occurrence of default under Subsections 5.3 (a) or 5.4 (a), the Company may terminate this Agreement in writing and shall thereafter have any and all rights under law and equity. Should the Authority or the County be in default under Subsections 5.3 (a) or 5.4 (a) respectively, and should the Company terminate this Agreement due to said default under those terms, then the Company shall not be subject to the repayment obligations of Section 6 herein and shall not otherwise be required to repay the Grants unless they are subject to reduction or repayment under Section 4.3.

Section 6. Repayment.

Upon any Repayment Event of Default, the Company will repay to the Authority any and all amounts paid up to it up to the time of the Repayment Event of Default pursuant to this Agreement upon written demand by the Authority or the County to the Company for such repayment. Repayment will be due from the Company to the Authority within thirty (30) days of the date of the written demand to the Company from the Authority or the County. The Authority and the County shall be entitled to recover from Company all of the Authority's and County's reasonable attorneys' fees and other costs related to litigation incurred in enforcing any Repayment

Event of Default by the Company. Any moneys repaid by the Company to the Authority hereunder will be repaid by the Authority to the County. The Authority will have no responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company. Any termination of this Agreement by the County or the Authority, other than for a Repayment Event of Default, shall release the Company from any further obligations herein.

Section 7. Other Commitments of the Authority.

The Authority will provide the County Administrator, or the designee thereof, with copies of all documents related to this Agreement, including, but not limited to, documents related to the administration of this Agreement, and will keep the County Administrator or his designee fully and timely informed in writing of all matters related to the Agreement. If litigation involving the Grants is initiated or expected to be filed against the Authority, the Authority will immediately notify the County Attorney and County Administrator. The Authority will keep records of its financial transactions, if any, related to the Agreement in accordance with generally accepted accounting principles. The Authority will also retain any and all records related to this Agreement for the period of time required by the applicable retention schedules set by the Library of Virginia pursuant to the Virginia Public Records Act (VPR). In any event, the Authority shall retain any and all records related to this Agreement for three (3) years beyond the last day of the last year of the Incentive Period.

Section 8. Other Limitations of Liability.

In addition to the other limits set forth herein, the Parties' liability hereunder will be limited as follows:

8.1 Limitation of Liability – Authority.

Notwithstanding anything to the contrary in this Agreement, it is the intent of the Parties not to impose upon the Authority any responsibility, duty or obligation other than what may be required to implement the Grants. Accordingly, the Authority does not assume any responsibility or liability whatsoever except as specifically stated herein. All payments and other performances by the Authority under this Agreement are subject to, conditioned upon, and limited by, the appropriation of funds by the Board. It is understood and agreed among the Parties that the Authority will be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. Under no circumstances will the Authority's total liability under this Agreement exceed the total amount of funds appropriated by the Board for the payments hereunder for the performance of this Agreement.

8.2 Limitation of Liability – County.

Notwithstanding anything to the contrary in this Agreement, all payments and other performances by the County under this Agreement are subject to, conditioned upon, and limited by, the appropriation of funds by the Board. It is understood and agreed among the Parties that the County will be bound hereunder only to the extent of the funds appropriated by the Board for the purposes of this Agreement. Under no circumstances will the County's total liability under this Agreement exceed the total amount of funds appropriated by the Board for the payments hereunder

for the performance of this Agreement. Nothing shall be construed in this Agreement as requiring the Board to appropriate funds hereunder.

8.3 Limitation of Liability – Company.

Notwithstanding anything to the contrary in this Agreement, the Company's total liability to repay the Authority or the County hereunder will in no event exceed the total amount of funds actually received by the Company from the Authority or the County.

Section 9. Representations and Warranties.

Each Party hereby represents and warrants to the other Parties as follows: it is empowered and able to enter into this Agreement, to be bound hereby, and to perform according to the terms hereof; any and all actions necessary to enable it to enter into this Agreement, and to be bound hereby, have been duly taken; the person or persons executing or attesting the execution of this Agreement on behalf of it has or have been duly authorized and empowered to so execute or attest; the execution of this Agreement on behalf of it will bind and obligate it to the extent provided by the terms hereof; and as of the date of this Agreement, there exists no litigation pending against it which if determined adversely, would materially and adversely affect its ability to carry out its obligations under this Agreement or the transactions contemplated hereunder.

Section 10. Public Disclosure.

10.1 Applicable Law.

The Parties acknowledge that records maintained by or in the custody of the County and the Authority are subject to the provisions of the VPRA and the Virginia Freedom of Information Act (FOIA) and thus are subject to the records retention and public disclosure requirements set forth in those statutes. The County and the Authority shall, within two (2) business days, notify Company, in writing, of any disclosure requests under such statutes or other similar statutes. Such written notice shall be given even if the disclosure requests do not comply with applicable laws or are exempt from disclosure under FOIA.

10.2 Challenges to Nondisclosure.

If the Company submits records to the County or the Authority related to, or required by, this Agreement, and requests that those records not be disclosed under applicable law and the County or the Authority consequently denies a request for disclosure of such records based on the Company's request, and the County's or the Authority's denial of a request for disclosure of records is challenged in court, the Company will indemnify, hold harmless and defend the County and the Authority, their respective officers and employees from any and all costs, damages, fees and penalties relating thereto including, but not limited to, reasonable attorneys' fees and other costs related to litigation.

Section 11. Notices.

Formal notices and communications among the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date

and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery if sent by facsimile, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient with confirmation only required if sent by facsimile. Such written notices and communications shall be addressed to:

if to the Company, to:

Kalahari VA, LLC
William Otto
P.O. Box 590
Wisconsin Dells, Wisconsin 53965
Email: botto@kalahariresorts.com

with a copy to:

Kalahari VA, LLC
Ralph Gundrum
P.O. Box 590
Wisconsin Dells, Wisconsin 53965
Email: rgundrum@kalahariresorts.com

and to:

McGuireWoods LLP
Gateway Plaza
800 E. Canal Street
Richmond, Virginia 23219
Attn: Chris Lloyd

Troutman Pepper, LLP
222 Central Park Avenue,
Suite 2000
Virginia Beach, Virginia 23462
Attn: RJ Nutter, II and Hannah Dowd
McPhelin

if to the County, to:

County of Spotsylvania, Virginia
P. O. Box 99
Spotsylvania, Virginia 22553
Facsimile: 540.507.7019
Email: coadmin@spotsylvania.va.us
Attention: County Administrator

with a copy to:

County of Spotsylvania, Virginia
P. O. Box 308
Spotsylvania, Virginia 22553
Facsimile: 540.507.7028
Email: attorney@spotsylvania.va.us
Attention: County Attorney

if to the Authority, to:

Economic Development Authority of
the County of Spotsylvania, Virginia
9019 Old Battlefield Boulevard
Suite 310
Spotsylvania, Virginia 22553
Facsimile: 540.710.7207
Email: dsanders@spotsylvania.va.us

with a copy to:

Economic Development Authority c/o
Hefty Wiley & Gore
100 West Franklin Street
Suite 310
Richmond, Virginia 23220
Facsimile: 804.225.8356
Email: brendan@heftywiley.com

Attention: EDA Chair

Attention: Brendan Hefty

Section 12. Miscellaneous.

12.1 Entire Agreement; Amendments; Assignment.

This Agreement constitutes the entire agreement among the Parties and may not be amended or modified, except in writing, signed by each of the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement to a non-Affiliate third party without the prior written consent of the County and the Authority. For avoidance of doubt, a change of control of Company is not an assignment of its rights and obligations under this Agreement.

12.2 Governing Law; Venue.

This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Spotsylvania, and such litigation shall be brought only in such court.

12.3 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

12.4 Severability.

If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the Parties as nearly as possible in accordance with applicable law. However, if all payment obligations of the County or Authority are found to be invalid and/or unenforceable, then the Company shall have no further obligation to the County or Authority.

12.5 Attorney's Fees.

Attorney's fees shall be paid by the Party incurring such fees.

12.6 No Partnership or Joint Venture.

It is mutually understood and agreed that nothing contained in this Agreement is intended or will be construed in any manner or under any circumstance whatsoever as creating and establishing the relationship of copartners or creating or establishing a joint venture between or among any of the Parties or as designating any Party to the Agreement as the agent or representative of any other Party to the Agreement for any purpose.

12.7 No Third Party Beneficiaries.

Notwithstanding any other provision of this Agreement, the Parties agree that (i) no individual or entity will be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the County, the Authority, or the Company; (iii) no other individual or entity will obtain any right to make any claim against the County, the Authority, or the Company under the provisions of this Agreement; and (iv) no provision of this Agreement will be construed or interpreted to confer third-party beneficiary status on any individual or entity.

12.8 No Pledge of Credit.

Notwithstanding anything herein to the contrary, nothing herein will be interpreted or operate as a pledge of the full faith and credit of the County, or will bind the County to appropriate funds for expenditures related to this agreement. The Authority cannot expend funds unless appropriated by the Board, and one Board cannot obligate a future Board. Therefore, notwithstanding any provision of this Agreement to the contrary, if the Board fails to appropriate funds for the continuance of this Agreement, all obligations hereunder will be automatically suspended upon depletion to the then currently appropriated or allocated funds until a subsequent Board appropriates additional funds or this Agreement is terminated. The Parties hereby agree that a subsequent Board will not be obligated in any way to appropriate funds hereunder. Notwithstanding the foregoing, the provisions of Section 6 above will survive the suspension of obligations hereunder and the termination of this Agreement until all of the Company's obligations have been satisfied.

12.9 Not Binding on Land Use Decisions.

Notwithstanding anything herein to the contrary, nothing herein will require or otherwise bind the County or the Board to make any land use decision related to the Company or the Property including, but not limited to, any decision on an application for rezoning or special use permit.

12.10 Force Majeure.

Notwithstanding anything to the contrary under this Agreement, no Party shall be liable to the others in any case for failure to perform any of its obligations under this Agreement due to any cause not within its control including without limitation, wars (whether declared or not), acts of terrorism, rebellion, civil commotion, strikes, lock-outs and industrial disputes, fire or explosion not caused by the Company, earthquake, acts of God, pandemics, outbreaks of infectious diseases or any other public health crisis, including quarantine, floods, droughts, or bad weather, discontinuation of public or private transportation or supply of energy, the unavailability of material or adequate personnel, or any acts or order of any other government or governmental authority or body, including but not limited to acts or orders taken or issues in response to the COVID-19 pandemic a ("Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the Party affected by the Force Majeure Event shall notify the other of its occurrence, its nature and its anticipated duration and shall use its commercially reasonable efforts to mitigate the effects of that Force Majeure Event. If notwithstanding such efforts the affected Party is unable to mitigate the effects of the Force Majeure Event within a reasonable time, it may terminate this Agreement

provided that said Party provides at least thirty (30) days prior written notice of termination to the other Parties.

[Remainder of Page Intentionally Left Blank. Separate Signature Pages to Follow.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

COUNTY OF SPOTSYLVANIA,
VIRGINIA

By: _____
Print Name: _____
Title: _____
Date: _____


COMMONWEALTH OF VIRGINIA
COUNTY OF SPOTSYLVANIA, to-wit:

The foregoing instrument was acknowledged before me this the ____ day of _____, 20 ____, by _____, County Administrator of Spotsylvania County.

Notary Public

My Commission Expires: _____
My Registration No.: _____

Approved as to Form:



County Attorney

ECONOMIC DEVELOPMENT
AUTHORITY OF THE COUNTY OF
SPOTSYLVANIA, VIRGINIA

By: [Signature]
Print Name: David S. Goosman
Title: Vice Chairman
Date: 4-27-2022

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Spotsylvania, to-wit:

The foregoing instrument was acknowledged before me this the 27th day of April, 20 22, by David S. Goosman (name), Vice Chairman (title) of the Economic Development Authority of Spotsylvania County.

[Signature]
Notary Public

My Commission Expires: 2-28-2023
My Registration No.: 171073



Approved as to Form:

[Signature]
Counsel for the Economic
Development Authority of
Spotsylvania, Virginia

KALAHARI VA, LLC

By: Todd R Nelson
Print Name: Todd B. Nelson
Title: Member/President
Date: 5/20/2022

STATE OF Wisconsin
CITY/COUNTY OF Sauk, to-wit:

The foregoing instrument was acknowledged before me this the 20th day of May, 20 22, by Mary Bonte Spath (name), _____ (title) of Kalahari VA, LLC.

Mary Bonte Spath
Notary Public

My Commission Expires: 9/4/2024
My Registration No.: 10470

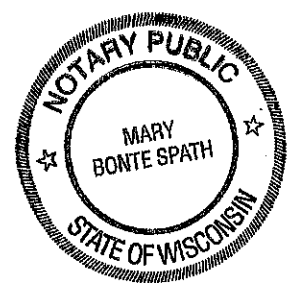


EXHIBIT A

TRI-PARTY ASSIGNMENT AND LICENSE AGREEMENT

THIS TRI-PARTY ASSIGNMENT AND LICENSE AGREEMENT ("Agreement") is made this ____ day of _____, 20____ (the "Effective Date"), by and among the **COUNTY OF SPOTSYLVANIA, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, having a mailing address of 9104 Courthouse Road, PO Box 99, Spotsylvania, Virginia 22553 ("County"); the **ECONOMIC DEVELOPMENT AUTHORITY OF SPOTSYLVANIA COUNTY**, a political subdivision of the Commonwealth of Virginia created pursuant to Virginia Code § 15.2-4900, *et seq.*, and Spotsylvania County Code § 2-81, *et seq.*, having a mailing address of 9019 Old Battlefield Boulevard, Suite 310, Spotsylvania, Virginia, 22553 ("EDA"), and **KALAHARI VA, LLC**, a Delaware Limited Liability Company, having a mailing address of P.O. Box 590, Wisconsin Dells, WI 53965. ("Licensee").

WHEREAS, County is the owner of certain real estate, commonly known as the Thornburg Water Tank, with a physical address of 5118 Mudd Tavern Drive, Thornburg, Virginia, real estate tax map number 63-A-43D in Spotsylvania, Virginia (the "Parcel"); and

WHEREAS, County owns and operates on the Property a water tank structure which includes the portions of the structure designed to hold water and the portions of the structure which support the structure both physically and through operational needs (the "Water Tank") (Parcel and Water Tank collectively referred to as the "Property"); and

WHEREAS, the Water Tank is critical County infrastructure in itself and serves as the platform for communications equipment utilized in County operations; and

WHEREAS, the height of the Water Tank renders it appropriate for use as water storage, as a location for transmission equipment, such as telecommunications antenna arrays ("Transmission Equipment"), and for conveying visual information for promotional purposes; and

WHEREAS, New Cingular Wireless PCS, LLC has Transmission Equipment on the Water Tank as of the time of signing this Agreement; and

WHEREAS, the County wishes to assign to the EDA the right to license the exterior surface of the Water Tank for the purpose of conveying visual information for promotional purposes (the "Promotional Area"), exclusive of the right to use the Water Tank for any other purpose, including but not limited to the right to access the Water Tank in the immediate vicinity of the Promotional Area, the right to use the Water Tank for water storage, and the right to lease, license or use space on the Water Tank or Property for Transmission Equipment; and

WHEREAS, the EDA wishes to receive the assigned right to license the Promotional Area on the Water Tank, exclusive of the right to use the Property for any other purpose; and

WHEREAS, County and EDA intend to license the Promotional Area on the Water Tank upon the understanding and so long as Signage on the Promotional Area is applied, maintained, and removed without interference with or interruption to third party Transmission Equipment on the Water Tank; and

WHEREAS, Licensee is the developer, owner, and operator of a theme-based amusement attraction located in Spotsylvania County (the "Attraction" or the "Kalahari Resort"); and

WHEREAS, Licensee's decision to locate its Attraction in Spotsylvania County was based, in part, on economic incentives offered by County and EDA (the "Incentives"); and

WHEREAS, County and EDA have offered Incentives to promote economic development in the County, including, but not limited to, promoting Spotsylvania County as a tourism destination; and

WHEREAS, Licensee wishes to license the use of the Promotional Area on the Water Tank to display its signage or other promotional words, colors, and images ("Signage"), exclusive of the right to use the Property for any other purpose; and

WHEREAS, the revocable license granted herein is exchanged for adequate consideration as part of the scope of Incentives;

WHEREAS, County plans to replace the Water Tank with another water tank (the "Replacement Water Tank"), possibly within the next five (5) to eight (8) years in an as-yet undetermined location, but which may, if approved by Licensee in its sole discretion, be located on Licensee's property, and the parties intend to negotiate in good faith in the hopes of entering into a new Tri-Party Assignment and License Agreement regarding the Replacement Water Tank as set forth in Section 2.3.w; and

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions, County, EDA, and Licensee agree as follows:

SECTION 1 – COUNTY ASSIGNMENT TO EDA

1.1. AGREEMENT DOCUMENTS

The provisions set forth in the preamble and the attached Exhibit 1, the site plan of the Property, are incorporated into and made part of this Assignment.

1.2. ASSIGNMENT OF RIGHT TO LICENSE

County hereby assigns to EDA the right to license the Promotional Area to Licensee for the sole purpose of displaying Signage for promoting or advertising the Attraction ("Signage License"). County's assignment to EDA of the right to grant the Signage License is exclusive, except as provided herein. Except for the right to grant the Signage License, County specifically reserves all rights with respect to the Property, including the right to work in the immediate vicinity of the Signage License, to conduct work that could result in damage to the Signage, and the right to locate Telecommunications Equipment in the immediate vicinity of the Signage.

County further assigns EDA the right to license ingress and egress to the Property to Licensee to allow the Licensee to paint the Promotional Area to cover existing visual images and otherwise prepare the Water Tank as necessary to receive the Signage, to apply the Signage, to maintain or repair the Signage as necessary during the duration of the License, and to remove the

Signage upon the revocation or termination of the license (“Ingress Egress License”). County’s assignment to EDA of right to grant the Ingress Egress License is non-exclusive.

County’s assignment to EDA of the right to grant a Signage License and an Ingress Egress License does not include the right to move, modify, or otherwise interfere with Telecommunications Equipment or other equipment, antennas, or devices on the Property, or to affect the function of the Water Tank or other equipment, structure, or utility on the Parcel. County specifically reserves the right to use the Property, as well as to lease, license or otherwise allow the Water Tank or Parcel to be used by other parties for purposes other than visual promotion or advertising.

1.3 TERMS OF ASSIGNMENT

a. County’s assignment to EDA of the right to grant the Signage License and Ingress Egress License are revocable at will. Section 2.1.g. addresses the implications of the revocation of the Signage License and Ingress Egress License.

b. County’s assignment to EDA is for economic development purposes and entails no charge or fee from EDA to County.

c. County’s assignment to EDA is premised upon EDA’s license to Licensee in accordance with the terms and conditions set forth in this Agreement.

SECTION 2 – EDA GRANT OF LICENSES

The provisions set forth in the preamble and Exhibit 1 are incorporated into and made part of hereof. All terms defined in Section 1 have the same definition herein.

2.1 SIGNAGE LICENSE

EDA hereby grants Licensee an exclusive Signage License, pursuant to the reservations and exceptions set forth in Section 1.2, and the terms and conditions in this Section 2.

a. Signage is prohibited from containing words or images that are not acceptable as commercial speech displayed on a County facility (“Prohibited Advertising Content”), including words or images not discernable from ground level without visual aid or magnification. To promote Spotsylvania as a tourism destination, any Signage reference to a geographical area of Virginia must be to Spotsylvania, to Virginia, or to both. Signage cannot refer to “Fredericksburg.” Any reference to Fredericksburg constitutes Prohibited Advertising Content.

EDA must approve Signage before Licensee begins process of applying it to the Promotional Area. EDA’s exercise of control over the content of the Signage is limited to its determination that proposed Signage is free of Prohibited Advertising Content. EDA has no authority to fail or refuse to approve proposed Signage that is free of Prohibited Advertising Content.

Licensee must submit to EDA in hard copy a scaled color rendering of the proposed Signage in a size and format that enables the EDA to discern without visual aid or magnification the entire content, which includes the overall image as well as the smallest individual detail. EDA must act upon submission within 60 days of receiving it.

County is not involved in the process of reviewing and approving the Signage, but as the owner of the Property reserves the right to compel Licensee to remove Signage or any element of Signage that, in its view, contains Prohibited Advertising Content.

b. Licensee, at its sole discretion, selects between paint and vinyl wrap as the medium to apply Signage to the Water Tank. Regardless of the chosen medium, Licensee must obtain from the County Director of Utilities specifications for cleaning and disinfecting the Water Tank prior to Signage application.

(i) If Licensee elects to apply Signage with paint, Licensee must obtain from the County Director of Utilities specifications for applying, protecting, maintaining, repairing, and removing paint to the Promotional Area, before performing any work. The Director of Utilities shall provide the required specifications within thirty (30) days after he receives Licensee's details of the desired scope and request for specifications. Licensee must pay all reasonable and customary engineering or inspection costs generated or incurred as result of the work related to the Signage. All work related to the Signage shall conform to specifications provided by the Director of Utilities.

(ii) If Licensee elects to apply Signage with a vinyl wrap, Licensee must obtain from County Director of Utilities specifications for applying, protecting, maintaining, repairing and removing the vinyl wrap before performing any work. Such specifications include, but are not limited to the following:

- (1) Vinyl wrap must be manufactured for large format exterior applications and utilized for at least three (3) years on liquid holding tanks over 100,000 gallons. County and EDA prefer 3M to be the manufacturer. Manufacturer must provide to County Director of Utilities a letter stating that it approves the selected material for installation on elevated liquid holding tanks in the proposed site's geographic location.
- (2) Installer must be certified by the vinyl wrap material manufacturer to install the selected material on an elevated liquid holding tank. County and EDA prefer a 3M Certified installer;
- (3) Installer must have a minimum of 3 years' experience in large outdoor applications with at least 5 projects on elevated storage tanks that each hold more than 100,000 gallons;
- (4) Installer must provide manufacturer's installation recommendations to the County for review and approval prior to start of installation and must strictly conform to manufacture's installation recommendations during the application, maintenance or repair, and removal of the Signage;
- (5) Licensee must verify that vinyl wrap does not void any tank coating warranty held by the County that covers the underlying surfaces of the Water Tank.

c. Licensee must comply with all local, state, and federal laws, ordinances, and regulations, including federal Occupational Safety and Health Administration ("OSHA") regulations as they apply to any aspect of this Agreement.

d. Licensee must at all times maintain Signage in good repair. When Signage is damaged, obscured, or modified from the approved content due to any cause, Licensee must repair damage within thirty (30) days; provided, however, this period shall be automatically extended, as needed, if the Licensee is diligently pursuing such repair but unable to complete it due to weather or other issues beyond its control. If Signage is damaged, obscured, or modified in such a manner as to cause it to display Prohibited Advertising Content, Licensee must cover or obscure so much of the damaged Signage as necessary to render the Prohibited Advertising Content not visible as soon as practical, but in no event later than seventy-two (72) hours, and must repair the Signage within thirty (30) days; provided, however, this period shall be automatically extended, as needed, if the Licensee is diligently pursuing such repair but unable to complete it due to weather or other issues beyond its control.

Licensee understands that County work from time to time requires County personnel to access the Water Tank in the vicinity of the Signage. Should the County work consist of non-invasive inspection work and the like whereby County personnel should, through care and diligence of the industry standard, be able to protect the Signage, and should the County personnel cause damage to the signage through an act of negligence related to said work, unless Licensee notifies County, in writing, that it wants to undertake such repairs at its own cost, County is responsible at its expense to repair any such damage in accordance with all terms and conditions of this Agreement within thirty (30) days of such damage; provided, however, this period shall be automatically extended, as needed, if the County is diligently pursuing such repair but unable to complete it due to weather or other issues beyond its control. Should the County work, pursuant to the industry standard, require that the Signage be damaged to the extent that it must be replaced in its entirety to continue to operate as intended (for example, cutting away or altering a portion of the Water Tank displaying Signage to access the interior of the Water Tank, or to otherwise repair the exterior of the Water Tank) then the Licensee is responsible at its expense to repair any such damage in accordance with all terms and conditions of this Agreement within thirty (30) days of the completion of the County's work as determined by the County; provided, however, this period shall be automatically extended, as needed, if the Licensee is diligently pursuing such repair but unable to complete it due to weather or other issues beyond its control. Should the County work consist of work beyond inspection and the like, and should the County work, pursuant to the industry standard and at reasonable cost, reasonable cost to be determined solely by the County, allow the Signage to be maintained without necessary replacement in its entirety (possibly, for example, bolting on a piece of equipment to the Water Tank) then the County shall include in its contract with its vendor for the work, a requirement that the vendor maintain and protect the Signage, and if the County includes that requirement in the contract, then the Licensee will release the County from any and all claims related to any and all damage caused to the Signage by the vendor and shall seek damages solely against the vendor.

Licensee understands that County has and in the future may lease, license, or otherwise permit third parties to access the Property for reasons not related to the Signage, but which may result in damage to the Signage. Licensee is responsible to repair any such damage in accordance with all terms and conditions of this Agreement within thirty (30) days of such damage; provided, however, this period shall be automatically extended, as needed, if the Licensee is diligently pursuing such repair but unable to complete it due to weather or other issues beyond its control. The third party whose access resulted in damage bears financial responsibility for such repair. The County shall fully cooperate with Licensee's efforts to collect from such third party.

e. Licensee has no obligation to pay EDA or County a fee for the Signage License.

f. Licensee cannot assign or transfer the Signage License to a third party without the EDA's prior written approval, except that Licensee can transfer the Signage License to a third party as part of Licensee's sale, conveyance, or transfer of ownership or operation of the Attraction, whether in whole or part, to a third party. Licensee is prohibited from using the Promotional Area to promote any other business or enterprise other than the Attraction, even if such other business or enterprise is owned or operated by the owners or operators of the Attraction, or part of the same franchise or brand.

g. The Signage License is revocable at will. Within thirty (30) days after EDA provides written notice to Licensee of the revocation of the Signage License for any reason except the removal of the Water Tank which is at the sole discretion of the County, the destruction of the Water Tank, or a material breach of the Signage License by Licensee that remains uncured after the time permitted by this the Signage License (an "Uncured Breach"), it shall pay Licensee an amount equal to \$1,000,000 as liquidated damages for such revocation. This amount of liquidated damages will be reduced by \$50,000 for every year this the Signage License is in effect. The parties hereto acknowledge and agree that the sums payable under this Section 2.1g. shall constitute liquidated damages and not penalties and are in addition to all other rights of the Licensee. The parties further acknowledge that (i) the amount of loss or damages likely to be incurred by Licensee upon a termination of the Signage License is incapable or is difficult to precisely estimate, (ii) the amounts specified in this Section 2.1g. bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred in connection with a termination of the Signage License, (iii) one of the reasons for the parties reaching an agreement as to such amounts was the uncertainty and cost of litigation regarding the question of actual damages, and (iv) the parties are sophisticated business parties and have been represented by sophisticated and able legal counsel and negotiated the Signage License at arm's length. Notwithstanding anything above, or anything herein, to the contrary, the parties specifically agree that the revocation of the Signage License, the Ingress Egress License, either, or both, is not, and shall not be interpreted as, a breach of the Signage License, the Ingress Egress License, or this Agreement and the payment described above is intended to provide an economic incentive to the Licensee. If the Signage License is terminated as a result of an Uncured Breach, Licensee must remove the Signage in a manner appropriate for the medium used to match the paint of the rest of the tank in condition, substance, and color (and only the Signage). To satisfy the foregoing, Licensee shall match the color as closely as practical; it shall not be required to repaint the entire Water Tank. In all other cases, Licensee shall have no such obligations.

2.2 INGRESS EGRESS LICENSE

EDA hereby grants Licensee a non-exclusive Ingress Egress License over the Property, pursuant to the reservations and exceptions set forth in Section 1.2, and the terms and conditions in this Section 2.

a. This Ingress Egress License allows Licensee's employees and duly authorized agents or contractors ("Authorized Persons") the right to access the Property. It does not grant, and Authorized Persons are hereby prohibited with respect to, access to any portion of the Parcel or Water Tank not necessary to carry out the purposes of the Signage License. It does not include,

and Authorized Persons are hereby specifically prohibited from, accessing, moving, modifying, or otherwise interfering with equipment, antenna, or other devices on the Property, or affecting the function of the Water Tank.

b. Licensee has no obligation to pay EDA or County a fee for the Ingress Egress License.

c. The Ingress Egress License is revocable at will. Section 2.1.g. addresses the implications of the revocation of the Signage License and Ingress Egress License.

2.3 GENERAL TERMS AND CONDITIONS

The Signage License and the Ingress Egress License (collectively the "Licenses") are also subject to and granted in accordance with the following terms and conditions.

a. The Licenses are contingent upon Licensee receiving its building permit (the "Permit") for the Kalahari Resort.

b. Prior to accessing the Property and Water Tank, Licensee must request such access from the Director of Utilities for the County. The Director of Utilities will issue access to the site by the Licensee or its agents at his discretion within ten (10) business days of the request, unless County work at the Water Tank is incompatible with preparation or painting of the Promotional Area. The Director of Utilities will assign a County employee or employees to provide access to the gated Property, to escort the Licensee or its contractor at all times, and to secure the gate each day after the Licensee's or its contractor's departure. While on the Property or Water Tank, Licensee must comply with all reasonable instructions regarding specific conditions or matters at the Property or Water Tank issued by the Director of Utilities. Neither the Director of Utilities, the County, or the EDA controls the activities of the Licensee or its contractor, except to provide specific instructions for the purpose of safeguarding County infrastructure and third party Transmission Equipment. Any dispute between the Licensee or its contractor and the Director of Utilities is resolved by the County Administrator.

c. When Licensee performs any work on or affecting the Property, either directly or through a contractor, it must, at its own expense, restore the Property to as good a condition as existed before the work was undertaken, reasonable wear and tear and damage from the elements excepted, unless otherwise directed by EDA. If Licensee fails to restore the Property, EDA may, after notice to Licensee and County and after affording Licensee thirty (30) days to correct the situation, restore the Property. Licensee must reimburse EDA the cost of such restoration within forty-five (45) days after receiving from EDA a reasonably detailed bill evidencing such work.

d. In the event EDA or County incurs any fee, cost, or charge to maintain the Property as a result of either of the Licenses, then upon notice from EDA, Licensee must pay all such fees, costs, or expenses within forty-five (45) days after receiving notice and a reasonably detailed invoice of such actual expenses, whether or not such expenses have been paid.

e. Subject to the conditions and allowances herein, the County will maintain the Property, including the painting of the Water Tank (other than the Signage) and the structural elements of the Water Tank, in compliance with all applicable laws, regulations, ordinances,

covenants, easements, zoning and land use regulations, restrictions of record, permits, building codes, and industry standards in effect. County's failure to maintain the Property or Water Tank (including the paint that it is responsible for) as set out and conditioned above in a manner that prevents interference with Signage or Promotional Area after written notification of said failure by the Licensee and after a reasonable time to cure constitutes its termination of the Licenses, in which case the payment contemplated by Section 2.1.g. shall be payable to Licensee.

f. Licensee understands that there is or may be County or third party Transmission Equipment installed on the Water Tank or the Property. Licensee must not operate equipment that causes harmful interference, measurable in accordance with then-existing industry standards, with any equipment of County or third parties with Transmission Equipment existing on the Property prior to the date Licensee commences work on the Signage. In the event Licensee installs any equipment which causes interference with existing equipment, and after EDA, County, or such third party has notified Licensee in writing of such interference, Licensee will take all steps necessary to correct and eliminate the interference.

g. Licensee must, at its expense, obtain and maintain during the life of the Licenses, insurance and security required herein. Any required insurance and security must be effective prior to the beginning of any work at the Property.

(1) Commercial General Liability: Licensee must maintain Commercial General Liability insurance coverage on an occurrence basis insuring against claims, loss, cost, damage, expense or liability from loss of life or damage or injury to persons or property arising out of any of the work or activity under or by virtue of the Licenses or arising out of the Licenses. The limits of liability for this coverage is \$2,000,000 combined single limit for any one occurrence and \$2,000,000 aggregate.

(2) Contractual Liability: Licensee must maintain Contractual Liability insurance consistent with the general liability insurance coverage.

(3) Workers' Compensation: Licensee must maintain Workers' Compensation insurance covering Licensee's statutory obligation under the laws of the Commonwealth of Virginia and Employer's Liability insurance for all its employees engaged in work under the Licenses. Limits of liability for Employer's Liability are \$100,000 bodily injury each occurrence; \$500,000 bodily injury by disease (Policy limit); and \$100,000 bodily injury by disease (each employee). With respect to the Workers' Compensation and Employer's Liability coverage, Licensee's insurance companies must waive rights of subrogation against EDA, County, their respective officers, employees and volunteers.

(4) Automobile Liability: Licensee must maintain Automobile Liability insurance. The limit of liability for such insurance is \$2,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under the Licenses.

(5) Evidence of Insurance: All insurance must meet the following requirements:

1. Licensee must furnish EDA with a certificate or certificates of insurance showing the type, amount, effective dates and date of expiration of the policies.

2. Upon receipt of notice from its insurers, Licensee must use commercially reasonable efforts to provide EDA with thirty (30) days prior written notice of cancellation.

3. Except for Workers' Compensation coverage and Employer's Liability coverage, the required certificate or certificates of insurance must include the EDA, County, their respective officers, employees and volunteers as additional insureds as their interest may appear under this agreement, in connection with the Licenses.

4. Insurance coverage must be with an insurance company rated at least A Minus by AM Best (or its equivalent if AM Best is no longer in existence). Any insurance company providing coverage relevant to the Licenses that is underwritten by a company or companies authorized to do business in the Commonwealth of Virginia must be reasonably satisfactory to EDA and County.

h. While on or near the Property or in its performance pursuant to the Licenses, Licensee, its employees, contractors and agents, must not dispose of or release any hazardous substance, material, or waste, in performance of Licensee's work under the Licenses. Licensee, its employees, contractors and agents, must comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, solid wastes, and other pollution, and relating to the storage, transport, release, or disposal of hazardous material, substances or waste on or near the Property.

Licensee indemnifies and holds EDA, County, and their respective officers, agents, employees and volunteers, harmless from all costs, claims, damages, causes of action, liabilities, fines or penalties, including reasonable attorney's fees, resulting from Licensee's, its employees', contractors' and agents' violation of this condition 2.3(h) (except to the extent caused by the negligence or willful misconduct of EDA or County) and agrees to reimburse EDA or County for all costs and expenses incurred by either of them in eliminating or remedying such violations by Licensee, its employees, contractors and agents except to the extent such violation is caused by EDA or County. Licensee also agrees to reimburse and hold EDA, County, and their respective officers, agents, employees and volunteers, harmless from any and all costs, expenses, fines, attorney's fees and all penalties or civil judgments incurred by or obtained against any of them as a result of Licensee's, its employees', contractors' and agents' use or release of any hazardous material, substance or waste (each as specified by federal, state, and/or local laws, rules, regulations, and ordinances) onto the ground or otherwise, or into the water or air from the Property or the property adjacent thereto, except to the extent caused by EDA or County. The indemnity, liabilities and responsibilities herein survives the expiration or termination of this Agreement.

Except as set forth in the previous paragraph, and only to the extent the same directly affects Licensee's access to or use of the Property, or directly affects Licensee's obligations under this Agreement, County will ensure that its actions undertaken upon the Property comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, solid wastes, and other pollution, and relating to the storage, transport, release, or disposal of hazardous material, substances or waste on the Property. If, during Licensee's performance of work at the Property and except to the extent attributable to or caused by Licensee so as to violate the provisions herein, Licensee encounters contaminated groundwater, soil or other materials on or under the Property existing prior to Licensee's construction (a "Pre-Existing Environmental Condition") that must be disposed off-site pursuant to applicable federal or state laws controlling air, water, solid and hazardous waste, and other pollution, Licensee must cease work and no longer access the Property except as specifically authorized by EDA. Should Licensee encounter a Pre-Existing Environmental Condition set forth above, EDA or County may terminate this Agreement, and County may, at its sole discretion, agree to remediate the Pre-Existing Environmental

Condition. This does not, without more, impose any liability upon Licensee for a Pre-Existing Environmental Condition.

i. Licensee agrees and binds itself to indemnify, keep, and hold EDA, County, and their respective officers, employees, contractors and volunteers free and harmless from any and all claims, causes of action, damages, costs (including reasonable attorneys' fees), or any liability on account of injury or damage of any type to any persons or property to the extent growing out of or directly or indirectly related resulting from any act or omission of Licensee, including but not limited to: (1) Licensee's use of the public ways or other areas of the County in connection with the Licenses; (2) any work related to the Signage; (3) Licensee's exercise of any right or privilege granted by or under the Licenses; or (4) the failure, refusal, or neglect of Licensee to perform any duty imposed upon or assumed by Licensee by or under this Agreement. In the event that any suit or proceedings is brought against EDA or County, either independently or jointly with Licensee on account of anything set forth above, Licensee, upon written notice given to it by County or EDA, will defend (in consultation with the County Attorney) County and EDA in any such action or proceeding, at the Licensee's cost; and in the event of any settlement or final judgment awarded against County or EDA, either independently or jointly with Licensee, Licensee will pay any such settlement or final judgment or will comply with such decree, pay all reasonable costs and expenses of whatsoever nature, and hold EDA, County, and their respective officers, employees, contractors and volunteers free and harmless therefrom.

Licensee must protect, indemnify, and hold harmless EDA and County from any and all demands for fees, claims, suits, actions, causes of action, or judgments based on the alleged infringement or violation of any intellectual right, including but not limited to copyright, arising out of or related to the Signage.

j. Licensee must timely pay any and all taxes assessed upon or charged to Licensee by a taxing authority on or before the due date thereof as a result of this Agreement or the services or facilities provided by Licensee hereunder or that Licensee may be required by law or regulation to collect and pay, whether such tax is assessed or increased. Should County or EDA be assessed or charged by a taxing authority with any tax as a result of its obligations under this Agreement in excess of Ten Thousand Dollars (\$10,000.00) which excess Licensee does not pay within thirty (30) days of County or EDA presenting the tax assessment or charge to Licensee to make payment on behalf of EDA or County as applicable, County or EDA may terminate this Agreement without more and should County or EDA terminate this Agreement for this reason, County and EDA shall be collectively and individually not liable for any damages or liability accruing from this Agreement including, but not limited to, those set out in Section 2.1 (g).

Unless the assessment notices or tax bills are sent directly from the taxing authority to Licensee, EDA or County must promptly provide to Licensee all assessment notices or tax bills EDA or County receives from any taxing authority. Unless the assessment notices or tax bills are sent directly from the taxing authority to EDA or County, Licensee must promptly provide to County all assessment notices or tax bills Licensee receives from any taxing authority which purport to directly assess or charge EDA or County. Licensee, EDA, and County all have the individual right, at their sole options, and at their sole costs and expenses, to appeal, challenge or seek modification of any tax assessment or bill for which they are wholly or partially responsible for payment under this Agreement.

k. Licensee must obtain all required permits and authorizations from County, in accordance with all zoning ordinance regulations governing Licensee's use of the Property, prior to commencing any work under this Agreement. This Agreement must not be interpreted to bind the County hereunder to approve any of the above.

l. Licensee must obtain all required permits and authorizations from the Virginia Department of Transportation ("VDOT"), in accordance with all applicable laws and regulations governing Licensee's use of the Property, including, but not limited to, any permits and authorizations related to signage visible to highways of the Commonwealth, prior to commencing any work under this Agreement. The County shall assist all such efforts of Licensee.

m. All costs connected with the installation, maintenance and repair of the Signage are the sole responsibility of the Licensee. If this Agreement is revoked as a result of an Uncured Breach, Licensee must paint over the Signage (and only the Signage) to match the paint of the rest of the tank in condition, substance, and color. To satisfy the foregoing, Licensee shall match the color as closely as practical; it shall not be required to repaint the entire Water Tank. In all other cases, Licensee shall have no such obligations.

n. Licensee is responsible (i) to obtain the necessary property rights from County to locate and maintain the utilities necessary for serving the Signage; (ii) to obtain and maintain any utility service necessary for the Signage; (iii) for all the costs associated with the installation and maintenance of utilities serving the Signage; and (iv) to place the Signage utilities on a separate meter so as to allow for the utility consumption of Licensee to be measured and be paid by Licensee. Licensee is financially responsible for the utilities provided to Licensee and the Signage, agrees to be billed separately and directly for the utilities, and agrees to pay the utilities promptly upon demand by the utility provider or EDA.

Upon power review request by Licensee, if a service upgrade is required or desired by Licensee, County, if necessary, will submit a request to the appropriate authority or agency for a service upgrade. Licensee must pay the cost of any such upgrade.

o. County acknowledges that County, and not Licensee, is responsible for compliance with all Water Tank marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC. In the event Licensee is cited by either the FAA or FCC because the Water Tank is not in compliance and County fails to cure the conditions of noncompliance within the time frame allowed by the citing agency, Licensee may terminate this Agreement immediately upon written notice to the EDA.

p. Except for indemnification pursuant to Section 2.3(i) and as otherwise set forth in this Agreement, and subject to all immunity, limitations and protections afforded to EDA or County by virtue of the state tort claims act or other act, statute, law or regulation now or in the future, or a violation of law, no Party is liable to the other, or any of their respective agents, representatives, or employees for any lost revenue, lost profits, diminution in value of business, loss of technology, rights or services, loss of data, or interruption or loss of use of service, incidental, punitive, indirect, special, trebled, enhanced or consequential damages, even if advised of the possibility of such damages, whether such damages are claimed for tort (including negligence), strict liability or otherwise, unless applicable law forbids a waiver of such damages.

q. This Agreement is governed by the laws of the Commonwealth of Virginia. The parties agree that the sole proper venue for the hearing and adjudication of any dispute concerning this Agreement is in the Circuit Court of Spotsylvania County.

r. Except where the context otherwise requires, wherever used the singular must include the plural, the plural the singular; the use of any gender must be applicable to all genders; and the word "or" is used in the inclusive sense. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

s. The parties hereto acknowledge that County, as a subdivision of the Commonwealth of Virginia, is a sovereign entity, and, as to tort liability and as to the risk of property loss from casualty or other cause, is either constitutionally immune (or partially immune) from suit, judgment or liability, insured, or covered by a plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices. No covenant, condition or agreement contained in this Agreement is deemed, in any manner, to be a waiver of the sovereign immunity of County from tort or other liability.

t. The financial liability of County herein, if any, is subject to the appropriation of the Spotsylvania County Board of Supervisors on a no less frequent basis than once every fiscal year.

u. The financial liability of EDA herein, if any, is subject to the appropriation of sufficient funds to the EDA made by the Spotsylvania County Board of Supervisors on a no less frequent basis than once every fiscal year.

v. The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in their representative capacities as indicated. The Board of Supervisors of Spotsylvania County authorizes the County Administrator, or his duly-appointed Deputy or Assistant County Administrator, to execute this Agreement. The Board of Supervisors of Spotsylvania County further authorizes the County Administrator or his designee to administer this Agreement, which includes without limitation the authority to send notices, grant extensions, and exercise termination provisions upon the conditions set forth in this Agreement.

w. If the County constructs the Replacement Water Tank, the parties shall in good faith negotiate in the hopes of entering a new Tri-Party Assignment and License Agreement with respect to the Replacement Water Tank.

x. If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

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SIGNATURES ON FOLLOWING PAGES

WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

COUNTY OF SPOTSYLVANIA, VIRGINIA

By: _____
Ed Petrovitch, in his capacity as its
COUNTY ADMINISTRATOR

Date: _____


APPROVED AS TO FORM:



COUNTY ATTORNEY

SIGNATURES CONTINUE ON FOLLOWING PAGES

ECONOMIC DEVELOPMENT AUTHORITY
OF SPOTSYLVANIA COUNTY

By: 
David S. Godman (Name)
in his capacity as its

Vice Chairman
(Title)

Date: 5/23/2022

APPROVED AS TO FORM:


COUNSEL TO THE EDA

SIGNATURES CONTINUE ON FOLLOWING PAGE

LICENSEE:

KALAHARI VA, LLC

By: Todd R. Nelson
Todd R. Nelson (Name)

in his capacity as its

Member/President
(Title)

Date: 5/25/2022