

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

FOREST LODGE, LLC, A VIRGINIA )  
LIMITED LIABILITY COMPANY, )

Applicant, )

v. )

Law No. CU-1054

COMMONWEALTH OF VIRGINIA, )  
DEPARTMENT OF TAXATION, )

Defendant. )

SERVE: Craig M. Burns )  
Tax Commissioner )  
Department of Taxation )  
600 E. Main Street )  
Main Street Center, 23<sup>rd</sup> Fl. )  
Richmond, VA 23219 )

FILED

2011 OCT 12 AM 11:49

CLERK  
D.C.

APPLICATION FOR CORRECTION OF ERRONEOUS  
ACTION WITH RESPECT TO A TAX ATTRIBUTE

Forest Lodge, LLC, of Virginia ("Forest Lodge"), by counsel, states the following in support of its Application for Correction of Erroneous Action with Respect to a Tax Attribute:

1. Forest Lodge is a limited liability company organized under the laws of Virginia and qualified to do business in Virginia.
2. Forest Lodge's headquarters is located at 1900 Arlington Boulevard, Charlottesville, Virginia 22905.
3. In 2009 Forest Lodge owned a tract of land (known as "Biscuit Run") spanning the area between SR 631 (Old Lynchburg Road) and SR 20 (Scottsville Road) in Albemarle County, Virginia.

---

4. The Defendant is the Virginia Department of Taxation ("Department"), the state agency whose action with respect to a tax attribute is complained of in this action.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction of this action pursuant to § 58.1-1825, Code of Virginia (1950) ("Virginia Code").

6. Venue is proper in this Court by virtue of Virginia Code § 8.01-261(13)(b)(3).

#### **RELEVANT TAX STATUTES AND FORMS**

7. Virginia Code § 58.1-512(A) allows a land preservation tax credit ("Credit") against the tax liability imposed by either Virginia Code §§ 58.1-320 or 58.1-400. The Credit is equal to 40 percent of the fair market value of any land or interest in land located in Virginia which is conveyed for the purpose of open space as an unconditional donation by the landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes.

8. Virginia Code § 58.1-512(B) provides the requirements for determining the fair market value of qualified donations made under Virginia Code § 58.1-512(A).

9. According to Virginia Code § 58.1-512(B), fair market value is determined in accordance with § 58.1-512.1 and with substantiation by a "qualified appraisal" prepared by a "qualified appraiser," as those terms are defined under applicable federal law and regulations governing charitable contributions.

10. Virginia Code § 58.1-512(B) requires the "qualified appraisal" to be signed by the "qualified appraiser"; the "qualified appraiser" to be licensed in Virginia; and a copy of the appraisal to be submitted to the Department.

---

11. Virginia Code § 58.1-512(B) also prescribes the actions the Department can take against an appraiser who “falsely or fraudulently” overstates the value of the contributed property.

12. Virginia Code § 58.1-512(B) subjects the value of the donation to the restrictions established under section 170(e) of the Internal Revenue Code.

13. Virginia Code § 58.1-512(B) states that the Department may disregard an appraisal when the appraisal is determined to be false or fraudulent.

14. Virginia Code § 58.1-512(D) sets out the criteria for donations made after January 1, 2007 and allows the Department to establish “procedures and deadlines” for the issuance of the Credit.

15. The Department has not adopted any additional procedures regarding the approval or denial of Credits permitted under Virginia Code § 58.1-512(A).

16. Virginia Code § 58.1-512(D) requires that all applications for a Credit that exceed \$1 million must be verified by the Virginia Department of Conservation and Recreation.

17. Per Virginia Code § 58.1-512(D), all applications to the Virginia Department of Conservation and Recreation must include:

a. A description of the conservation purpose or purposes being served by the donation;

b. The fair market value of land being donated in the absence of any easement or other restriction;

c. The public benefit derived from the donation;

d. The extent to which water quality best management practices will be implemented on the property; and

e. Whether the property is fully or partially forested and a forest management plan is included in the terms of the donation.

18. Virginia Code § 58.1-512(D)(6) affirms the Department's ability to audit the Credit when the Credit is claimed by a taxpayer on a Virginia tax return filed with the Department.

19. The Department disseminated Form LPC-1 to collect all information required by Virginia Code § 58.1-512, including all information that is required to be submitted to the Virginia Department of Conservation and Recreation for Credits in excess of \$1 million.

#### FACTS

##### **Background Information on Forest Lodge and Biscuit Run**

20. Forest Lodge was formed in 2005 for the purpose of acquiring Biscuit Run and developing the property into a large scale mixed use development.

21. Biscuit Run is comprised of approximately 1,194 acres of land, located in the Scottsville Magisterial District in central Albemarle County.

22. In 2005 the former owners of Biscuit Run decided to sell the property in a closed bid auction.

23. The 2005 closed bid auction for Biscuit Run received a number of bids from multiple prospective purchasers, including the bid submitted by Forest Lodge.

24. Forest Lodge's submitted bid of \$46,200,000 was accepted and Forest Lodge closed on the Biscuit Run property at that price on October 25, 2005.

25. Forest Lodge's purchase price was considered market rate at the time of the October 25, 2005 sale.

- 
26. At the time Forest Lodge acquired Biscuit Run in 2005, the property was zoned RA, R-1, and R-2 which permitted a development of up to 1,024 dwelling units by right on the property.
  27. Subsequent to the purchase of Biscuit Run, Forest Lodge applied for and pursued a rezoning of Biscuit Run to Neighborhood Model District (NMD) which would increase the number of allowable dwelling units from 1,024 to 3,000 plus 150,000 square feet of commercial building area.
  28. On May 29, 2007, the Planning Commission of the Department of Community Development for Albemarle County recommended the approval of the rezoning request.
  29. On September 12, 2007, the Board of Supervisors of Albemarle County approved the rezoning request.
  30. The rezoning substantially increased the fair market value of Biscuit Run.
  31. According to a study by the Newland Companies after the rezoning, Biscuit Run was suitable, from both an approval and engineering standpoint, for 1,400 single-family detached residences, 1,200 single-family attached units, and 400 multi-family units.
  32. On December 30, 2009, Forest Lodge sold Biscuit Run to the Commonwealth of Virginia, Department of Conservation and Recreation.
  33. The consideration paid by the Commonwealth of Virginia for Biscuit Run was \$9,800,000.
  34. The sale of Biscuit Run to the Commonwealth of Virginia, Department of Conservation and Recreation was a bargain sale for U.S. and Virginia income tax purposes and did not represent the fair market value of Biscuit Run.
  35. On December 30, 2009, the fair market value of Biscuit Run was \$87,700,000.

---

### Application for Credits by Forest Lodge

36. On December 31, 2009, Forest Lodge LLC submitted Form LPC-1 to the Department to apply for \$31,160,000 in Credits, which is an amount equal to forty percent (40%) of the difference between Biscuit Run's Fair Market Value of \$87,700,000.00 and its sale price of \$9,800,000.00. A copy of Form LPC-1 and all accompanying documents are attached hereto as Exhibit A.

37. Included with Forest Lodge's submitted Form LPC-1 were:

- a. A copy of the appraisal report prepared by Piedmont Appraisal Company (hereinafter the "Piedmont Appraisal"), dated December 30, 2009;
- b. A copy of a letter from Dr. James Boykin, Ph.D., MAI, to Forest Lodge LLC dated December 26, 2009 stating his concurrence with the appraisal report prepared by Piedmont Appraisal Company;
- c. A copy of the recorded Deed of Bargain and Sale;
- d. A copy of the completed IRS Form 8283;
- e. A statement from Forest Lodge that it intends to retain the Credits for sale and transfer; and,
- f. A copy of a letter from the Virginia Department of Conservation and recreation dated December 22, 2009.

38. The information submitted with Form LPC-1 by Forest Lodge satisfied the requirements of Virginia Code § 58.1-512(D) regarding the verification of conservation value by the Virginia Department of Conservation and Recreation.

---

**Virginia Department of Conservation and Recreation**

39. By letter dated January 11, 2010, the Department of Conservation and Recreation verified to the Department that the donation of Biscuit Run has conservation value based on the Conservation Value Criteria adopted by the Virginia Land Conservation Foundation. A copy of this letter is attached hereto as Exhibit B.

40. Included in this letter was a statement that the Secretary of Natural Resources, L. Preston Bryant Jr., concurred with the finding that the donation of Biscuit Run has conservation value.

**Piedmont Appraisal Company Appraisal**

41. The Piedmont Appraisal determined the value of Biscuit Run to be \$87,700,000 as of December 31, 2009.

42. To arrive at the appraised value, the Piedmont Appraisal used both the Sales Comparison Approach and the Income/Subdivision Development Approach to determine the fair market value of Biscuit Run as of the date of the donation by Forest Lodge to the Commonwealth of Virginia.

43. The Piedmont Appraisal determined the fair market value of Biscuit Run in accordance with Virginia Code § 58.1-512.1 as required by Virginia Code § 58.1-512(B).

44. The Piedmont Appraisal is a "qualified appraisal" as required by Virginia Code § 58.1-512(B).

45. The Piedmont Appraisal was written and signed by Patricia A. O. Filer, MAI who is a "qualified appraiser" and licensed in Virginia as required by Virginia Code § 58.1-512(B).

46. The Piedmont Appraisal is not false pursuant to Virginia Code § 58.1-512(B).

---

47. The Piedmont Appraisal is not fraudulent pursuant to Virginia Code § 58.1-512(B).

48. Larry Durbin, Assistant Commissioner for the Office of Customer Services for the Department is responsible for the review and issuance of credits by the Department.

49. During a September 21, 2010 meeting concerning the valuation of Biscuit Run, Assistant Tax Commissioner Larry Durbin stated to Forest Lodge representatives and their valuation experts that he did not believe the Piedmont Appraisal was either false or fraudulent.

50. Assistant Tax Commissioner Durbin stated at this same meeting that he felt that the appraised value as determined by the Piedmont Appraisal Company was simply "too high" in his opinion and questioned why a landowner would "give away" such a high valued parcel of land.

51. Assistant Tax Commissioner Durbin is not a qualified appraiser.

**Piedmont Appraisal- Sales Comparison Approach**

52. The Piedmont Appraisal analyzed the fair market value of Biscuit Run using the Sales Comparison Approach.

53. The Piedmont Appraisal contains five comparable sales to Biscuit Run.

54. The five comparable sales in the Piedmont Appraisal are located in Albemarle County, Virginia; Culpeper County, Virginia; Stafford County, Virginia; Caroline County, Virginia; and Montgomery County, Maryland.

55. The dates of the five comparable sales in the Piedmont Appraisal range from January 2005 to September 2008, which are between approximately one to four years before the December 30, 2009 valuation date.



---

### **Piedmont Appraisal – Income/Subdivision Development Approach**

56. The Piedmont Appraisal also analyzed the fair market value of Biscuit Run using the income/subdivision development approach.

57. Based on interviews with local developers and the Fourth Quarter 2009 *Korpacz Real Estate Investor Survey*, the Piedmont Appraisal used a discount rate of 19.67%, which includes a 3% development profit rate, to determine the fair market value of Biscuit Run.

58. Based on a study of new residential home absorption in Albemarle County, the Piedmont Appraisal estimated Biscuit Run to be sold out in ten to eleven years.

59. The Piedmont Appraisal determined that approximately 300 units, 50 of which are affordable units, would be sold each year.

### **Issuance of Credits by the Department**

60. On November 29, 2010, Forest Lodge LLC received in the mail a letter dated November 19, 2010, wherein the Department issued \$11,680,000.00 in Credits, which is \$19,480,000 less than the amount of Credits requested by Forest Lodge based on the Piedmont Appraisal. A copy of this letter is attached hereto as Exhibit C.

61. The November 19, 2010 letter granting \$11,680,000.00 in Credits mentions an appraisal prepared for the Virginia Department of Transportation that indicated that Biscuit Run had a fair market value of \$12,000,000.

62. Both Assistant Tax Commissioner Larry Durbin and its retained consultant appraiser Larry Salzman agreed and stated to Forest Lodge representatives during a September 21, 2010 meeting that the Virginia Department of Transportation appraisal was not a qualified appraisal and could not be considered in determining the fair market value of Biscuit Run.

---

### **Salzman Appraisal Prepared for the Department**

63. The Department based its decision to issue \$11,680,000.00 in Credits on an appraisal report (hereinafter referred to as the "Salzman Appraisal") issued by Larry Salzman of Salzman Real Estate Services dated August 9, 2010.

64. Salzman Real Estate Services is located in Richmond, Virginia and primarily appraises real property in the Richmond market.

65. In addition to being a real estate appraiser, Larry Salzman is also an attorney licensed in Virginia and the managing director of New Town Associates LLC, a land development company.

66. Mr. Salzman has previously represented the Department as an attorney and taken the role as an advocate for the Department on other Credit disputes and audits of Virginia taxpayers who claim Credits.

67. The Salzman Appraisal report determined that the fair market value of Biscuit Run was \$39,000,000 as of December 30, 2009.

68. The Salzman Appraisal estimated the fair market value of Biscuit Run based on the Sales Comparison approach and the Income/Subdivision Development Approach.

#### **Salzman Appraisal – Sales Comparison Approach**

69. The Salzman Appraisal contains eight comparable sales to Biscuit Run, seven of which are flawed.

70. The first flawed comparable sale is the 2005 sale of Biscuit Run prior to the 2007 rezoning of Biscuit Run.

---

71. The Salzman appraisal did not make any adjustments to reflect the change in value of Biscuit Run due to the rezoning of Biscuit Run to a higher density of authorized development.

72. The remaining six flawed comparable sales in the Salzman Appraisal are all located in Southern Chesterfield and Eastern Henrico counties in the greater Richmond, Virginia market.

73. The dates of these seven flawed comparable sales in the Salzman Appraisal range from March 2002 to December 2006, which are between three to seven years before the December 30, 2009 valuation date upon which the award of Credits is based.

74. Prior to the issuance of the Credits on November 19, 2010, Forest Lodge provided data to the Department showing how unreasonable it was for the Salzman Appraisal to use sales in the Richmond market to determine the value of Biscuit Run.

75. This data included a number of objective factors that show that the Richmond and Charlottesville/Albemarle markets are not comparable.

76. The objective factors demonstrating the differences between the Richmond and Charlottesville/Albemarle markets were (1) the differences in wages and income; (2) the differences in employment; (3) the differences in time-distance relationships relative to where residents of each region live and how far they travel to work; (4) the differences in topography; (5) the differences in median house value; and (6) the differences in non-business bankruptcy filings.

77. The greater Richmond, Virginia market is not comparable to the Charlottesville-Albemarle County, Virginia market.

---

78. The Salzman Appraisal ignored these objective differences between the Richmond and Charlottesville/Albemarle markets and used the comparable sales in the Richmond market to determine the fair market value of Biscuit Run.

**Salzman Appraisal – Discount rate**

79. The Salzman Appraisal also analyzed the fair market value of Biscuit Run using the subdivision development approach.

80. The subdivision development analysis in the Salzman Appraisal also contained two major flaws: (1) the use and reliance on incorrect information in its determination of the discount rate, and (2) the use and reliance on inaccurate information in its determination of the absorption rate and subsequent use of this erroneous absorption rate when analyzing the subdivision development methodology to determine fair market value for Biscuit Run.

81. In determining the proper discount rate for Biscuit Run, Mr. Salzman interviewed Nate Van Epp, Project Manager for Newland Communities.

82. Newland Communities issued a contract to purchase Biscuit Run in 2006 for \$120,000,000.

83. Mr. Salzman identified himself to Mr. Van Epp as a fellow land developer and did not disclose that he was engaged by the Department to determine the fair market value of Biscuit Run.

84. According to the Salzman Appraisal, Mr. Van Epp stated that Newland Communities is using internal rates of return (“discount rates”) of 20% in some markets and 25% in other markets to determine how much to pay for a parcel of land to develop.

---

85. As discount rates are used to determine the net present value of future cash flows derived from a parcel or development, the use of an arbitrarily higher discount rate will significantly reduce the appraised value of a parcel.

86. Applying the information received from Mr. Van Epp, the Salzman Appraisal used a discount rate of 23% to determine the fair market value of Biscuit Run.

87. At the September 21, 2010 meeting, Mr. Salzman and multiple representatives from the Department were presented with a statement from Mr. Van Epp in which he confirmed that Mr. Salzman misrepresented himself as a developer during the previous telephone call by Mr. Salzman and that Mr. Salzman failed to state that he was engaged by the Department to determine the fair market value of Biscuit Run.

88. Mr. Van Epp stated that because Mr. Salzman described himself as a developer to Mr. Van Epp, he was reluctant to disclose any competitive numbers, such as discount rate, in case Newland Communities were to compete with Mr. Salzman on the purchase of land for development in the future. Therefore, Mr. Van Epp stated he inflated the range of discount rates to 20% to 25% that he provided to Mr. Salzman.

89. Despite the knowledge of the inflated discount rates provided by Mr. Van Epp, at the September 21, 2010 meeting with Assistant Tax Commissioner Larry Durbin, Mr. Salzman refused to update his appraisal to account for the impact caused by the use of the overstated discount rate.

#### **Salzman Appraisal – Absorption Rate**

90. In determining the appropriate absorption rate, the Salzman Appraisal stated that the subject area has approximately 7,000 zoned units, either proposed or in place, available for development.

---

91. The usage of 7,000 zoned units available for development represents a serious flaw in the Salzman Appraisal as this number of available lots in Albemarle County is grossly overestimated.

92. According to a market study analysis conducted by Appraisal Group, Inc., there were only 234 units, not 7,000 units, available for development in Albemarle County as of December 31, 2009.

93. In its study, the Appraisal Group, Inc. gathered data on approved subdivisions with over 100 units, as of December, 2009, and counted the lots that were pad-ready or under construction and available within a few months of December, 2009.

94. By using the grossly higher and inaccurate number of available lots, the Salzman Appraisal erroneously estimated that it would take 16 years for all of the Biscuit Run lots to be sold.

95. The Salzman Appraisal estimated that after a year of construction and preparation, 120 units would be sold in year one, 180 units in year two, 240 units in years three through seven, 200 units in years 8 through 14, and the remaining 100 units in year 15.

96. Using the actual number of available lots, the Appraisal Group, Inc. determined that 290 Biscuit Run lots would be sold annually and Biscuit Run units would be sold out in just over 10 years.

#### **The Department's Errors**

97. The Department committed a manifest error by not issuing the full amount of credits requested by Forest Lodge in violation of Virginia Code § 58.1-512(B).

---

98. The Department's error was two-fold: (1) refusing to issue Credits based on an appraisal that was neither false nor fraudulent and (2) relying on the unquestionably flawed Salzman Appraisal.

99. The Department erred by conducting an audit in contravention of Code of Virginia § 58.1-512(B) prior to issuing the Credits.

100. As the Credit decision maker of the Department, Assistant Tax Commissioner Larry Durbin confirmed that the Piedmont Appraisal is neither false nor fraudulent, and the Department's denial is solely based on a difference of opinion regarding the value of Biscuit Run as of December 30, 2009.

101. To date, the Department has never alleged to Forest Lodge or its representatives that the Piedmont Appraisal is either false or fraudulent.

102. The Department has never identified any major flaws in the Piedmont Appraisal such as the major flaws identified in the Salzman Appraisal that were brought to the Department's attention several months before it made its award of Credits to Forest Lodge on November 19, 2010.

103. By relying on the unquestionably flawed Salzman Appraisal, the Department's decision not to issue all of the Credits requested by Forest Lodge was erroneous, arbitrary and capricious in violation of Virginia Code § 58.1-512(B).

104. The Salzman Appraisal relied on non-comparable sales of real property that cannot legitimately be used to determine the value of Biscuit Run.

105. The Salzman Appraisal used a discount rate based on incorrect information.

106. The Salzman Appraisal used an absorption rate based on an estimated number of available units that is over 2,900% higher than the actual number of available units in Albemarle as of December 30, 2009.

107. The Department's decision not to issue all of the Credits requested by Forest Lodge was based on the fatally flawed Salzman Appraisal.

#### **Administrative Proceedings Before the Department**

108. By letter dated December 2, 2010, Forest Lodge filed an administrative appeal with the Virginia Tax Commissioner pursuant to Virginia Code § 58.1-1821 challenging the Department's action with respect to a tax attribute, namely the unilateral decision not to grant \$31,160,000 in Credits and instead grant \$11,680,000.00 in Credits. A copy of this letter is attached hereto as Exhibit D.

109. As of the date of this filing, the Department has not rendered its decision on the administrative appeal.

#### **Long Appraisal**

110. After receiving the Virginia Code § 58.1-1821 administrative appeal, the Department commissioned Samuel A. Long of Miller, Long, & Associates, Inc. of Roanoke, Virginia to determine the fair market value of Biscuit Run as of December 31, 2009, in accordance with Virginia Code § 58.1-512 *et seq.*

111. Samuel A. Long delivered an appraisal report (hereinafter referred to as the "Long Appraisal") dated July 29, 2011, to the Department in which he determined that the fair market value of Biscuit Run as of December 31, 2009 was \$32,200,000.

112. The fair market value arrived upon in the Long Appraisal is based solely on the Sales Comparison Approach.



---

113. The Long Appraisal did not contain an analysis of the fair market value of Biscuit Run by either the Cost Approach or the Income Capitalization Approach.

114. The Long Appraisal used ten comparable sales to determine the value of Biscuit Run as of December 30, 2009.

115. Of the ten comparable sales used in the Long Appraisal, six of the sales occurred in the Richmond Metropolitan market area.

116. The remaining four comparable sales used in the Long Appraisal occurred in Bedford County, Virginia; Botetourt County, Virginia; Culpeper County, Virginia; and Orange County, Virginia.

117. The Long Appraisal did not contain any comparable sales located in either Albemarle County or the City of Charlottesville.

118. In adjusting the conditions of each comparable sale to match the conditions of Biscuit Run, Mr. Long determined that no adjustment was necessary to account for the differences in location for five of the six Richmond comparable sales.

119. In preparing the Long Appraisal, Mr. Long made no attempt to contact or interview anyone associated with Forest Lodge to learn any background associated with Forest Lodge's development plans for Biscuit Run after the property had been rezoned to Neighborhood Model District (NMD).

**Appraisal Group, Inc., Appraisal**

120. Subsequent to the filing of the administrative appeal pursuant to Code of Virginia § 58.1-1821, Forest Lodge commissioned the Appraisal Group, Inc. of Charlottesville, Virginia to determine the fair market value of Biscuit Run as of December 30, 2009 in accordance with Code of Virginia § 58.1-512.

---

121. The Appraisal Group, Inc. Appraisal (hereinafter referred to as the “AGI Appraisal”) was written and signed by Ivo Romenesko, MAI, SRA, CCIM who is a “qualified appraiser” and licensed in Virginia as required by Virginia Code § 58.1-512(B).

122. The AGI Appraisal determined the fair market value of Biscuit Run in accordance with Virginia Code § 58.1-512.1 as required by Virginia Code § 58.1-512(B).

123. The AGI Appraisal is a “qualified appraisal” as required by Virginia Code § 58.1-512(B).

124. The AGI Appraisal concluded that the fair market value of Biscuit Run as of December 30, 2009 was \$86,500,000.

125. The AGI Appraisal relied on the Sales Comparison Approach and the Income/Subdivision Development Approach in determining the value of Biscuit Run.

**Appraisal Group, Inc., Appraisal - Sales Comparison Approach**

126. The AGI Appraisal uses six comparable sales to Biscuit Run to determine its fair market value under the Sales Comparison Approach.

127. Of the six comparable sales relied upon in the AGI Appraisal, three are located in Albemarle County, Virginia; one is located in Caroline County, Virginia; one is located in Culpeper County, Virginia; and one is located in Stafford County, Virginia.

128. The AGI Appraisal did not use any comparable sales from the Richmond area.

129. The dates of these six comparable sales range from October 2004 to June 2007, which are approximately between two and five years before the December 30, 2009 valuation date.

---

**Appraisal Group, Inc., Appraisal – Income/Subdivision Development Method**

130. The AGI Appraisal also analyzed the fair market value of Biscuit Run using the Income/Subdivision Development Approach.

131. In preparing the AGI Appraisal, the Appraisal Group, Inc. performed a substantial amount of research of the Albemarle real property market to ensure its opinion was accurate.

132. First, the Appraisal Group, Inc. assembled and analyzed nine attached lot comparable lot sales, seven detached lot comparable lot sales, and three non-residential comparable lot sales to derive the gross retail value and absorption period for each subject's approved residential lots. All of these comparable lot sales were located in Albemarle County.

133. The Appraisal Group, Inc. conducted a market study analysis and determined that there were 234 units available for development in Albemarle County as of December 31, 2009.

134. Based on the 234 units available, the Appraisal Group, Inc. determined that 290 Biscuit Run lots would be sold annually and that all of the Biscuit Run units would be sold out in just over 10 years.

135. To determine the appropriate discount rate, the Appraisal Group, Inc. surveyed the discount rates used by developers who are active in the Albemarle market.

136. The developers indicated that for projects containing over 1,000 units, coupled with a limited amount of commercial space, they would use a discount range of between 15% and 20% for approved properties.

137. Using this information, the Appraisal Group, Inc. used a 20% discount rate, which rate includes the developer's profit and inflated lot prices and expenses over the entire period until all of the lots would be completely sold out.

138. The analysis performed in the AGI appraisal confirms that the Piedmont Appraisal used appropriate discount and absorption rates to arrive at the fair market value of Biscuit Run whereas the Salzman Appraisal used inaccurate and incorrect discount and absorption rates when it failed to accurately appraise Biscuit Run.


139. The analysis performed in the AGI appraisal, along with the analysis in the Piedmont Appraisal, also confirms that it is possible to use Income/Subdivision Development Method in determining the fair market value of Biscuit Run. Therefore, the Long Appraisal's perceived difficulties in using this approach are erroneous.

#### **PRAYER**

**WHEREFORE**, Forest Lodge is aggrieved by this erroneous action with respect to a tax attribute and prays that this Court:

1. Enter an Order requiring the Department to issue all Credits based on the fair market value determined by the Piedmont Appraisal that accompanied the Form LPC-1 duly filed with the Department;
2. Enter an Order declaring that the fair market value of Biscuit Run as of December 31, 2009, as determined in accordance with Virginia Code § 58.1-512 *et seq.*, was \$87,700,000;
3. Grant Forest Lodge such additional and further relief as the Court deems appropriate.

Forest Lodge, LLC.

By:   
Its Counsel

Craig D. Bell  
Virginia State Bar No. 30909

William G. Broaddus  
Virginia State Bar No. 05284

J. Christian Tennant  
Virginia State Bar No. 70323

McGuireWoods LLP  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219-4030  
(804) 775-1179 Direct  
(804) 698-2160 Facsimile  
Counsel for Forest Lodge LLC

James F. Neale  
Virginia State Bar No. 43060  
McGuireWoods LLP  
Post Office Box 1288  
310 Fourth St., N.E., Suite 300  
Charlottesville, VA 22902-1288

DATED: October 12, 2011