

Dated the

day of

2018

DEPARTMENT OF AGRICULTURE ENVIRONMENT AND RURAL AFFAIRS (1)

MID ULSTER DISTRICT COUNCIL (2)

**AGREEMENT FOR
LEASE POMEROY FOREST SITE ENTRANCE & CAR PARK IMPROVEMENT
WORKS**

**THE SOLICITOR
DEPARTMENT OF FINANCE & PERSONNEL
DEPARTMENTAL SOLICITOR'S OFFICE
3RD FLOOR
CENTRE HOUSE
79 CHICHESTER STREET
BELFAST
BT1 4JE**

THIS AGREEMENT made the day of 2018
BETWEEN the **DEPARTMENT OF AGRICULTURE ENVIRONMENT AND RURAL AFFAIRS** of Forest Service Room 23 Dundonald House Upper Newtownards Road Ballymiscaw Belfast BT4 3SB (hereinafter called "the Lessor") of the one part and **MID ULSTER DISTRICT COUNCIL** of 70 Burn Road Cookstown County Tyrone BT80 8DT (hereinafter called "the Lessee") of the other part

Preamble

- 1.1 The Lessor and Lessee have agreed to enter the Lease (as defined in clause 2.4 hereof) on the Completion Date (as defined in Clause 2.2 hereof)
- 1.2 the Lessor's statutory predecessor the Department of Agriculture and Rural Development and the Lessee's statutory predecessor Cookstown District Council entered into a Licence agreement on 1st December 2014 ("the Licence") of an area which includes the Lands (as defined in clause 2.3 hereof). The Lessor and Lessee agree that on the date of completion of the Lease they will complete the agreement annexed in Annex 4 hereto to vary the area demised by the Licence to exclude the Lease demise and to replace the existing Map A in the Licence with the new Map A annexed in Annex 4 hereto..
2. In this Agreement unless the context otherwise requires
- 2.1 the following expressions have the meanings assigned to them in the Lease:
- "Lessor" "Lessee" "Rent" and "Lease term"
- 2.2 "Completion Date" means the date of service by the Lessor's of notice stipulating that the Works have been satisfactorily completed such notice being served in accordance with clause 9.1 below
- 2.3 "Lands" means the lands shown coloured green and outlined in red on the map hereto in Annex 1 respectively

- 2.4 "The Lease" means the Lease in the form annexed in Annex 3 hereto
- 2.5 "Lessor's Solicitors" mean Departmental Solicitor's Office 3rd Floor Centre House 79 Chichester Street Belfast BT1 4JE
- 2.6 "Lessee's Solicitors" mean Claire McNally of Mid Ulster District COUNCIL of 70 Burn Road Cookstown County Tyrone BT80 8DT
- 2.7 "Permitted Access" means the permitted vehicular access more particularly delineated brown on the map annexed hereto in Annex 1
- 2.8 "The Works" means the site entrance and car park improvement works as detailed in the Schedule annexed hereto in Annex 2
3. The Lessor grants the Lessee right to use the Lands and Permitted Access for the purpose of carrying out and completing the Works for 4 weeks (or such lesser period as is reasonably required) starting on day of and terminating on day of (or such extended period as may be agreed by the Lessor such agreement not to be unreasonably withheld or delayed) to enable the Lessee to carry out the Works to the Lands and for the avoidance of doubt any use of the Lands for the purpose of the Works during the period of the Works shall be undertaken under this Agreement.
4. Subject to the Lessee having fulfilled its obligations under this Agreement the parties agree that they will enter into the Lease on the Completion Date. If the Lessee fails to comply with its obligations under this Agreement for Lease it will be responsible for any necessary works to restore the Lands to their original condition or to the reasonable satisfaction of the Lessor as soon as reasonably practicable and in the event of the Lessee failing to restore the Lands to their original condition within a period of 3 months from the date of any request to do so received from the Lessor then the Lessor

shall be entitled to effect such works of restoration/reinstatement and to recover the costs of same from the Lessee on demand by way of liquidated damages

5. Prior to the Completion Date the Lessee shall undertake and manage the Works in a good and workmanlike manner using good quality materials and will carry out the Works in compliance with the terms of the publication “Guidance on Managing Health and Safety in Forestry” produced by the UK Forest Industry Safety Accord (FISA)

including the appointment of a works manager and in that connection agrees:

- 5.1 To obtain and comply with all necessary statutory consents and approvals in respect of the Works
- 5.2 To ensure that any operatives employed by it or by any contractor or sub contractor employed by it to carry out works e.g. felling of trees removal of encroaching vegetation application of herbicides and pesticides etc within the Lands, in addition to any statutory obligations hold the appropriate and necessary competences required to carry out such works
- 5.3 To comply with the Lessor's reasonable requirements as to the method of carrying out the Works, and in so doing not to cause in so far as is reasonably possible any obstruction or interference with or damage to any adjoining lands
- 5.4 To comply with the requirements of the Lessee's insurers in relation to the carrying out of the Works and to indemnify the Lessor against all additional payments or premiums payable to those insurers
- 5.5 To access the Lands with light vehicles along the Permitted Access within the Lease and to secure permission in advance to access these routes with heavy goods vehicles plant and machinery such permission not to be unreasonably withheld or delayed

- 5.6 To ensure that the permitted access routes are not obstructed for vehicular and pedestrian access use by the Lessor and its agents members of the public and lessees
- 5.7 To only access the Lands to carry out the Works to the Lands between the hours of 8.00am and 6.00pm on Mondays to Fridays (inclusive) public holidays excepted or as otherwise agreed by the Lessor
- 5.8 Not to leave or use any plant vehicles and equipment on the Lands outside the times specified in clause 5.7 above or as otherwise agreed by the Lessor.
- 5.9 Not to invite the public generally to come to the Lands nor to use it for a purpose which attracts casual callers
- 5.10 To observe any security arrangements for the use of the Lands, which the Lessor makes from time to time, provided the Lessee or its appointed representative receives notification of these
- 5.11 Not to store any chemicals for any purpose within the Lands
- 5.12 To ensure that all containers and equipment used for fuels, oils and lubricants are fit for purpose and kept secure on the Lands
- 5.13 To ensure that no pollution is caused to the Lands resulting from any spillage of fuels oils lubricants and to ensure that appropriate pollution control procedures and equipment are available on site
- 5.14 To provide and maintain adequate welfare facilities during the Agreement for Lease term.
- 5.15 Only to use chemical toilets on the Lands if these are fully self contained and do not require to be plumbed in to water or sewage systems
- 5.16 To comply with all statutory and other requirements in relation to Health and Safety and environmental matters and to ensure that appropriate signs and

notices and control measures including any necessary barriers for public safety are in place on the Lands throughout the duration of the works

- 5.17 To bear sole responsibility for all costs and expenses in connection with completion of the Works throughout the period of this Agreement (or any authorised extension thereof) and without prejudice to the generality of the foregoing such costs are to include all costs associated with the construction and installation of the Works together with all management costs in relation thereto AND TOGETHER ALSO with any additional costs which may be incurred in relation to the removal of unauthorised structures and/or use of trails on the Lands or in relation to effecting temporary works (including diversions and closures) in order to facilitate continued public use of the existing trails and all other associated recreational facilities at the Lands. Any reinstatement of the Lands associated with the removal of unauthorised structures or trails will be the sole responsibility of the Lessor
- 5.18 To manage the interface of the trails and associated recreation facilities with other forestry and recreational activities at the Lands throughout the duration of the Works including such rights as shooting, fishing and public access
- 5.19 To comply with the Forestry Land Bye-laws (Northern Ireland) 2013 as they effect Pomeroy Forest or any other bye-laws for the time being in force throughout the duration of the Works
- 5.20 To undertake to inspect the condition of the trees within the Lands that have the potential to impact on the Works and that any risks assessed by the Lessee will be considered for remedial works, such remedial works to be carried out by the Lessee in agreement with the Lessor such consent not to be unreasonably withheld or delayed. The inspection should include an

assessment of the scale of the risk and timing of remedial measures. The Lessee may take immediate steps, without the Lessor's consent, to clear fallen trees and debris from the trails and associated recreational facilities in the case of any emergency health and safety situation, provided such debris is not of a scale associated with a Force Majeure incident. In other situations where the Lessee perceives that there may be an immediate health and safety risk, from hazardous trees the Lessee should take appropriate actions to divert the trail and associated recreation facilities and seek the Lessor's permission to carry out remedial works. The Lessee will bear all costs of such works

- 5.21 Other than the trees which require to be felled under the Agreement for Lease the Lessee shall not fell any other trees from the Lands or without the prior consent of the Lessor (such consent not to be unreasonably withheld or delayed in the case of fallen or damaged trees which pose a danger or obstruction to the Lessee its servants, agents or contractors or the public)
6. Until completion of the Lease there will be no change in land ownership due to this agreement, nor will the Agreement for Lease and Lease restrict the core functions of the Lessor or the Lessee's activities under the permitted use, or require either party to take any action which would be beyond their statutory powers or in breach of government or local government policy or government or local government accounting procedures
7. The Lessor its agents contractors and others authorised by the Lessor in connection with its forestry function will continue to use the Lands taking account of the permitted use and the Lessee taking account of the forestry function needs shall not create any

restriction to this use. Through its operational plans the Lessor will make all reasonable endeavours to minimise any impacts to the trails and associated recreational facilities throughout the duration of this Agreement.

8. Within four weeks of the signing hereof the Lessor shall furnish the Lessee with prima facie evidence of the Lessor's title to grant the Lease if requested by the Lessee. Unless within 14 days of the receipt thereof the Lessee raises any reasonable objection to said title the Lessee shall assume the right of the Lessor to grant the Lease and is not entitled to require the deduction of or to make any requisitions or objections in respect of the title of the Lessor to the Lands

9. The following provisions apply in relation to the completion of the Lease:

9.1 The Lessee shall notify the Lessor of the estimated date of completion of the Works within fourteen days of such date and the Lessor shall within 14 days inspect same and shall if satisfied immediately notify the Lessee that the Works have been satisfactorily completed the Lessor acting reasonably in this regard and upon such provision the Lease and 1 Counterpart shall be prepared and engrossed by the Lessor's Solicitors and the Lessee shall immediately arrange execution on the part of the Lessee

9.2 The Lessor shall grant or cause to be granted the Lease to the Lessee and the Lessee will itself accept the Lease and deliver to the Lessor's solicitors a counterpart of the Lease duly executed by the Lessee.

9.3 Until the actual grant of the Lease this Agreement shall not operate or be deemed to operate as a demise of the Lease premises nor shall the Lessee be entitled to any estate right or interest in the Lease premises or any part of them or any

materials in or upon them other than such equitable interest as is created by and such rights as are granted by this Agreement

- 9.4 Lease completion shall take place on the Completion Date (or such other date as the Lessor and Lessee may agree in writing).
- 9.5 The term of the Lease shall commence on the Completion Date and all rents and other liabilities under the Lease shall commence to be payable from the Completion Date.
- 9.6 The Lease shall be in the form of the Lease annexed hereto.
- 9.7 As from the issue of the notice by the Lessor under clause 9.1 hereof until the completion of the Lease the Lessee shall have the benefit of all the rights covenants conditions and other provisions and be subject to same exceptions reservations covenants conditions and other provisions as those to be contained in the Lease as if the Lease completion had taken place on the Completion Date with the exception that the foregoing provisions shall be subject to clauses 10, 12 and 13 hereto and provided that the Lessee shall take up occupation the Lessee shall comply with the obligations to be contained in the Lease as if Lease completion had taken place on the Completion Date.
- 9.8 Prior to Lease completion any entry or taking up of occupation by the Lessee shall be way of Licence only and shall be subject to the conditions contained in this Agreement.
10. 10.1 If at any time prior to the grant of the Lease the Lessee commits any breach or is in breach of any of the provisions contained in this Agreement or implied by

reference to the Lease or otherwise and on the part of the Lessee to be reasonably performed or observed the Lessor (without prejudice to any other right or remedy available to the Lessor at law or in equity) may at any time prior to the grant of the Lease serve on the Lessee a notice specifying the breach complained of and if the Lessee fails within a period of 6 weeks after the date of such service (excluding the date of service) to remedy the breach complained of then immediately on the expiration of the said period of 6 weeks the Lessee shall be deemed to have committed a material breach of this Agreement

10.2 If at any time prior to the grant of the Lease

10.2.1 The Lessee is deemed to have committed a material breach of this Agreement then and in any of the said cases and at any time thereafter (unless the causes for and the material breach have been remedied to the Lessor's satisfaction) the Lessor may by notice in writing served on the Lessee rescind this Agreement and upon the service of the said notice this Agreement (without prejudice to any pre-existing right of action of the Lessor in respect of any breach by any other party of that party's obligations under this Agreement) immediately determines and ceases to have effect

11. The Lessee admits that it has sufficiently examined the Lands using professionally competent personnel and that it has entered into this Agreement solely on the basis of that examination and the terms hereof and not in reliance upon any representations whether written or implied made by or on behalf of the Lessor. On request the Lessor will provide available information as deemed necessary by the Lessee in relation to undertaking the Works

12. 12.1 The benefit of this Agreement is personal to the Lessee and the Lessee shall not assign part with or otherwise dispose of or deal with its interest in any way whatsoever under this Agreement or any part thereof or any share therein except in the case of a proposed assignment to any statutory successor to the Lessee established to undertake respective responsibilities in which event the Lessor shall not unreasonably withhold or delay consent to such assignment.
- 12.2 The Lessor may assign the benefit of this Agreement subject to the Lessor's obligations hereunder
13. If any dispute or difference arises between the parties hereto relating to the provisions of this Agreement such dispute or difference shall be referred to the determination of a single arbitrator appointed by the parties to the Agreement to Lease hereto and in default of agreement by the Chair for the time being of the Royal Institution of Chartered Surveyors (Northern Ireland Branch) in accordance with the Arbitration Act 1996
14. Notwithstanding the grant of the Lease this Agreement remains in full force and effect and shall not be deemed to be discharged by the grant of the Lease with regard to anything remaining to be done performed or observed hereunder and not provided for in this Agreement.
15. In this agreement where the context so admits words importing the neuter gender only include the masculine the feminine and common genders (as the case may be) and words importing the singular number only include the plural number and vice versa and where a party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons

16. The Lessee will keep the Lessor fully indemnified from and against all actions proceedings claims demands losses costs expenses damages and liability arising directly or indirectly from:
- 16.1 breach by the Lessee of any provision of this Agreement or
 - 16.2 the use of the Lands during the period of the works specified in 3
 - 16.3 any act neglect or default by the Lessee or any person on the Lands with its actual or implied authority
17. The Lessee shall maintain a policy of insurance with such responsible insurance office as is approved of in writing by the Lessor (such approval not to be unreasonably withheld or delayed) to provide Cover against any such damage or loss and Public and Employers Liability Insurance in the sum of not less than £10 million in respect of any one occurrence and upon the request of the Lessor or its agent to produce for inspection the policy of such insurance or a sufficient extract therefrom and the receipt for the last premium
18. Where “Force Majeure” occurs e.g. trees blowing over the Lands or permitted access or flooding of the Lands or permitted access thereto the Lessor will take action to secure access in order to protect interest in value of the timber and to protect the Lands and roads infrastructure from further damage. Harvesting of any storm-damaged material will be at a time suitable for the Lessor taking account of the needs of the Lessor’s customers for the timber and the amount of similar salvage work required elsewhere within the Forest Estate in Northern Ireland. If the Lessee wishes to keep the Lands or the permitted access open it may do so at its own risk but will bear sole responsibility for management of road closures, diversions and any other signage which may be necessary to facilitate the provision of trails and

associated recreation facilities during such unforeseen events and will compensate the Lessor for the timber value cut by it as determined by the Lessor's existing contracts for material of that type at the time the Lessee elects to work on the trees. Compensation will not be payable provided that the trees are cut to a specification agreed by the Lessor. The Lessor will not accept any responsibility for keeping the Lands or permitted access open due to this or any other cause outside its control

19. Unless otherwise expressly provided any notice to be given on foot of this Agreement shall be in writing and may (in addition to any other prescribed mode of service) be given
 - 19.1 By handing same to the intended recipient and shall be deemed to have been delivered when so handed
 - 19.2 By directing it to the intended recipient and delivering it by hand or sending same by prepaid post to
 - 19.2.1 such address as shall have been advised by it to the party serving the notice as being that required by the intended recipient for the service of notices or
 - 19.2.2 (failing such last mentioned advice) to the address of the intended recipient as specified at the head of this Agreement or
 - 19.2.3 (in the event of the intended recipient being a Company) to its Registered Office for the time being or
 - 19.2.4 to the office of the Solicitor representing the intended recipient in relation to this Agreement

and any such notice shall be deemed to have been given when delivered at the time of delivery and when posted at the expiration of two working days after the envelope containing the same and properly addressed was put in the post

ANNEX 1

MAP

ANNEX 2

DESCRIPTION OF THE WORKS

ANNEX 3
THE LEASE

ANNEX 4

Agreement amending the Licence

IN WITNESS whereof the parties have duly executed this Agreement the day and year first
above **WRITTEN**

Signed on behalf of

Mid Ulster District Council :- _____

In the presence of:- _____

(signature of witness)

of _____

SIGNED on behalf of the Department of Agriculture Environment and Rural Affairs

Signed by:-

Authorised Officer

In the presence of:-

Witness

Both of Inishkeen House, Enniskillen, County Fermanagh, BT74 4EJ



FOREST SERVICE

Department of
**Agriculture, Environment
and Rural Affairs**
www.dema.gov.ie

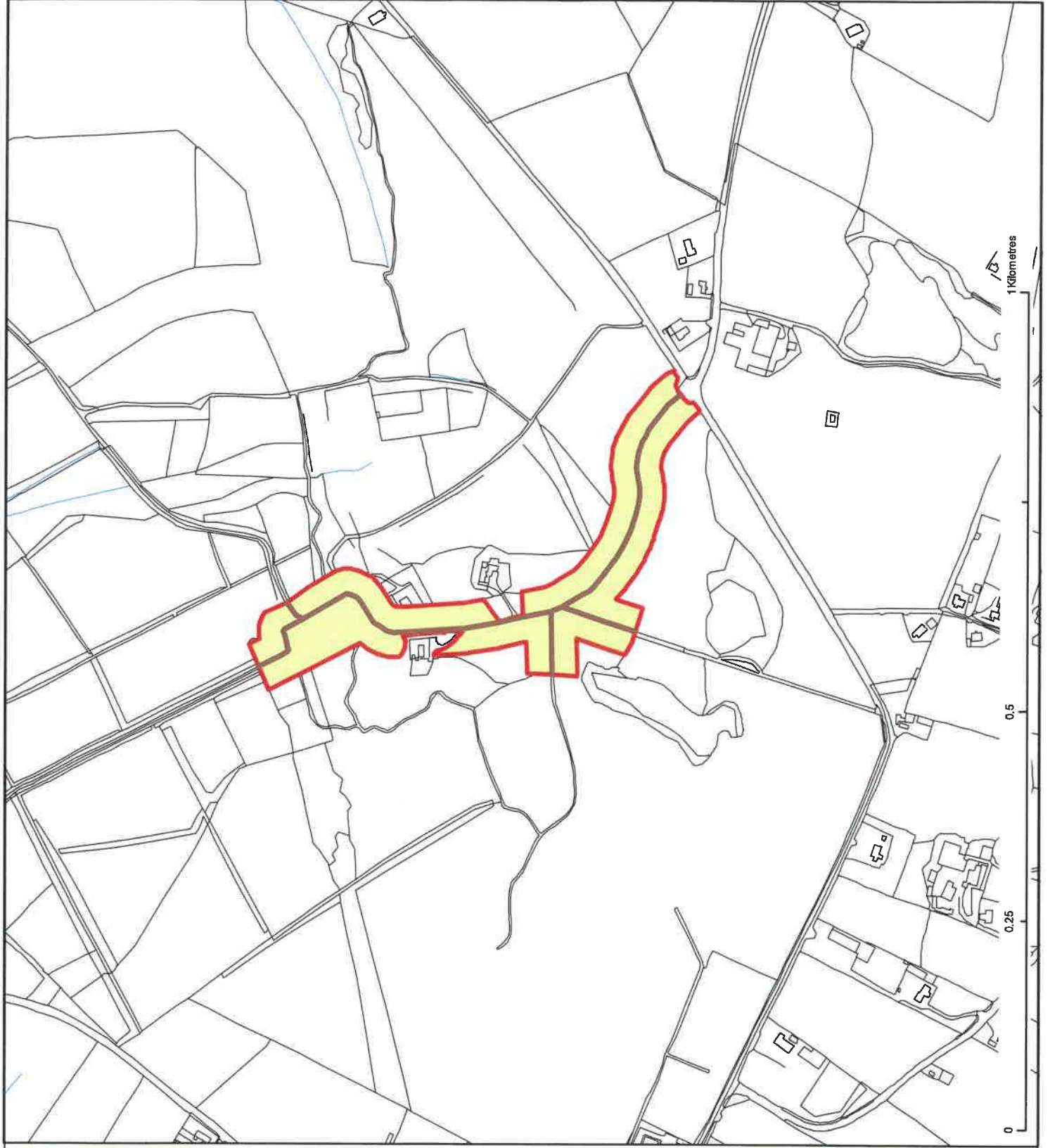
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Annex 1
Agreement for Lease
POMEROY FOREST
To Mid Ulster
District Council



-  Permitted vehicular access
-  Works area

Prepared: 22/03/2018



Dated this

day of

2018

**THE DEPARTMENT OF AGRICULTURE
ENVIRONMENT AND RURAL AFFAIRS**

AND

MID ULSTER DISTRICT COUNCIL

**20 YEAR LEASE POMEROY
FOREST**

**THE SOLICITOR
DEPARTMENT OF FINANCE & PERSONNEL
DEPARTMENTAL SOLICITOR'S OFFICE
3RD FLOOR CENTRE HOUSE
79 CHICHESTER STREET
BELFAST**

THIS LEASE dated the day of 2018 and made between THE DEPARTMENT OF AGRICULTURE ENVIRONMENT AND RURAL AFFAIRS of Dundonald House, Upper Newtownards Road, Belfast (hereinafter called “the Lessor” which expression shall where the context so admits include its successors in title) of the one part and MID ULSTER DISTRICT COUNCIL of Burn Road Cookstown BT80 8DT (hereinafter called “the Lessee” which expression shall where the context so admits include its successors and permitted assigns) of the other part

WITNESSETH as follows:-

1. In consideration of the rent and covenants hereinafter reserved and contained the Lessor hereby demises unto the Lessee ALL THAT the lands described in the First Schedule hereto (hereinafter referred to as “the demised premises”) TOGETHER WITH the benefit of the easements rights and privileges set forth in the Second Schedule hereto (“the Rights”) EXCEPTING AND RESERVING unto the Lessor and all other persons authorised by the Lessor the Exceptions and Reservations contained in the Third Schedule hereto

TO HOLD the same together with the Rights and excepting and reserving as aforesaid unto the Lessee for a term (hereinafter called “the term”) of twenty years from

YIELDING AND PAYING therefore unto the Lessor yearly in advance on the anniversary of the date of commencement of these presents without any deduction the yearly rent of Five hundred pounds (£500.00) per annum (if demanded) subject to clause 2(25) hereof the first payment to be made within one month from the date of commencement of these presents and in respect each successive period of five years of the said term such a rent not being less than the rent payable for the immediately preceding period of 5 years as shall be agreed in accordance with the provisions for

review set out in the Fourth Schedule hereto such revised yearly rent to be paid annually in advance in the same manner as the initial rent hereby reserved

2. The Lessee to the intent that the obligations may continue throughout the term hereby covenants with the Lessor as follows that is to say:-

- (1) To pay the reserved rent
- (2) To maintain and keep the demised premises including all structures and buildings erected thereon and the fixtures and fittings therein in good and substantial repair and condition and to replace where necessary at the Lessee's sole cost the structures and buildings on the demised premises the conducting media serving the demised premises and fixtures and fittings therein ensuring that the demised premises are at all times kept secure the Lessee to be responsible for the provision of any security measures required in respect of same
- (3) Not to use the demised premises for any purpose other than for the development operation management and maintenance of a public recreation facility at Pomeroy Forest with associated car parking, vehicular access, buildings, toilets, and trails and associated recreation facilities as well as related utilities and services which permitted use shall include the promotion of recreation activities on the demised premises and specific events promoted by the Lessee from time to time
- (4) (a) To pay and to indemnify the Lessor against all rates taxes duties charges assessments impositions and outgoings whatsoever of an annual or recurring nature whether parliamentary parochial local or of any other description which are now or may at any time hereafter be taxed assessed charged or imposed upon or payable in respect of the demised premises or on the owner or

occupier in respect thereof except only such as the owner of the leasehold reversion is by law bound to pay notwithstanding any contract to the contrary

(b) VAT (or any tax of a similar nature which may be substituted for it or levied in addition to it) will be chargeable in respect of any payment made by the Lessee under any of the terms of or in connection with the lease or in respect of any payment made by the Lessor where the Lessee agrees in this lease to reimburse the Lessor for such payment

(5) From the date of this Lease to comply with all Legislation where 'Legislation' means any statute or order in council or any order, instrument, rule or regulation made under them, or any notice or order issued by a government department, the Northern Ireland Assembly, the legislative making institutions of the European Union, minister, Secretary of State for Northern Ireland or local public regulatory or other authority for the time being in force in relation to the demised premises including all relevant requirements regarding health and safety and environmental matters including the provision and maintenance of fire prevention and fire-fighting equipment (within the buildings and elsewhere on the demised premises) and do and execute or cause to be done and executed all such works acts deed matters and things as under or by virtue thereof are or shall be properly directed or necessary to be done or executed upon or in respect of the demised premises or any part thereof whether by the owner Lessor Lessee or occupier and at all times to keep the Lessor indemnified against all claims demands and liability in respect thereof

(6) At the expiration or sooner determination of the term quietly to yield up unto the Lessor the demised premises together with any improvements made thereto in such state and condition as shall in all respects be consistent with the full and due

performance by the Lessee of the covenants herein contained including the observance by the Lessee of the repair obligation herein contained at clause 2 (2) above

- (7) (a) To regularly and without prejudice to the generality of the foregoing following extreme weather conditions such as flooding and storms using professionally competent personnel inspect the condition of trees that have the potential to impact on the Lessee's use of the demised premises such inspection to include an assessment of the scale of the risk and timing of remedial measures and the Lessee acknowledges that it has entered into this Lease solely on the basis of having completed an examination of tree safety prior to the date of this Lease and after considering the terms of this Lease and not in reliance upon any representations whether written or implied made by or on behalf of the Lessor
- (b) to carry out any remedial works assessed as necessary as a result of such inspection or examination such remedial works to be carried out by the Lessee at the Lessee's sole cost with the prior consent of the Lessor (such consent not to be unreasonably withheld or delayed) provided that the Lessee may take immediate steps, without the Lessor's consent, to clear fallen trees and debris from the demised premises in the case of any emergency or health and safety situation where such debris is not of a scale associated with a Force Majeure incident in which case clause 7 hereof shall apply
- (c) In situations where the Lessee perceives that there may be an immediate health and safety risk from hazardous trees the Lessee should take appropriate actions e.g. suspend public access in that particular area and carry out any necessary remedial works at the Lessee's sole cost.

- (8) to be responsible for all maintenance and repairs in respect of fencing and walls comprising the boundaries of the demised premises
- (9) to permit the Lessor or its agents or such workmen as may be authorised by him at all convenient hours in the daytime on reasonable notice to enter into and upon the demised premises and every part thereof to examine the state of repair and condition of the demised premises and within three months or sooner if requisite after notice in writing to the Lessee of all defects and wants or reparation that are the responsibility of the Lessee in accordance with clause 2 (2) above found on such examination shall have been given or left at the demised premises to repair and make good the same according to such notice and the covenants in that behalf hereinbefore contained and in case the Lessee shall make default in so doing it shall be lawful for the workmen or others to be employed by the Lessor to enter upon the demised premises and repair and restore the same and to pay the Lessor the cost of so doing and all expenses incurred by the Lessor within 28 days of written demand
- (10) To pay to the Lessor all reasonable costs charges and expenses which may be incurred by the Lessor in abating any nuisance connected with the Lessee's use of the demised premises and executing all such works as may be necessary for abating nuisance on the demised premises in obedience to a notice served by a local or public authority
- (11) To pay to the Lessor all reasonable and proper costs charges and expenses (including reasonable legal costs and fees payable to a surveyor) which may be incurred by the Lessor in or in contemplation of any proceedings under Section 14 of the Conveyancing Act 1881

- (12) The Lessee must ensure that any operatives employed by it or by any contractor or sub contractor employed by it to carryout works including the removal or pruning of trees, and application of herbicides, and pesticides, to the demised premises and permitted access and environs hold the appropriate and necessary qualifications required to carry out such works
- (13) The Lessee shall not remove any trees from the demised premises and environs without the prior written consent of the Lessor (not to be unreasonably withheld or delayed) excepting those trees requiring removal for health and safety reasons as per Clause 2(7)(b)
- (14) (a) Not without the consent in writing of the Lessor first obtained nor except in accordance with plans and specifications previously submitted in duplicate to and approved by the Lessor (but so that such written consent and approval of plans and specifications shall not be unreasonably withheld or delayed) nor except to the reasonable satisfaction of the Lessor nor without obtaining and complying with all necessary statutory consents to make any alteration to the demised premises including for the avoidance of doubt the removal of any existing buildings the erection of any new or additional buildings or structures on the demised premises and the renovation of any existing buildings unless for the purpose of making good any defect therein required by the Lessor nor to do or suffer in or upon the demised premises any wilful or voluntary waste or spoil. **PROVIDED ALWAYS** that it may be a condition of any consent required under the provisions of this clause that the Lessee shall pay the costs and expenses reasonably incurred by the Lessor in relation to the granting of such consent

- (b) without prejudice to the generality of clause (14)(a) not to make any alterations or additions to any electrical installations on the demised premises without the prior consent of the Lessor (not to be unreasonably withheld or delayed) and to carry out any such works for which consent is granted in accordance with the terms and conditions of the Institute of Electrical Engineers (or such equivalent body as the case might be during the term of the Lease) and all Northern Ireland Electricity Regulations (or such equivalent body as the case might be during the term of the Lease)
- (15) Not at any time to use the demised premises or any part thereof or permit or suffer the same to be used for any illegal or immoral purpose
- (16) To take account of other activities on the Lessor's lands adjoining the demised premises ("the adjoining lands") including such rights as shooting, fishing and public access and to communicate and inform all servants agents licensees and invitees of the Lessee or any person on or at demised premises with the Lessee's actual or implied authority of such forestry and recreational activities and to plan operate manage and maintain the health and safety management of demised premises in accordance therewith
- (17) (a) To effect and maintain employer's liability and public liability insurance for a minimum sum of £10,000,000 (ten million pounds) or as otherwise revised by the Lessor in relation to any one occurrence with a reputable UK insurance company and to furnish to the Lessor when requested evidence of the existence of such policy together with copies of all renewal notices or endorsements affecting same
- (b) To insure any buildings on the demised premises in their full reinstatement value with a reputable UK based insurance company against the usual insured

risks to include loss or damage by fire, lightning, explosion (including that of boilers and heating apparatus but other than by reason of terrorist activity) aircraft (other than hostile aircraft) and other aerial devices and articles dropped therefrom, heave and subsidence, land slip, earthquake, storm, tempest, bursting or overflowing of water tanks, apparatus or pipes, flood, impact by road vehicles malicious damage and (if available at reasonable economic premium) riot, civil commotion together with any other reasonably foreseeable risks (“Insured Risks”)

- (c) In the event of the buildings on the demised premises being destroyed or damaged by an Insured Risk or an event giving rise to a claim for compensation under the Criminal Damage (Northern Ireland) Order 1977 (“1977 Order”), then save to the extent that the insurance proceeds or compensation monies are irrecoverable due to a negligent act default or omission of the Lessor its servants or agents in relation to its exercise of rights reserved to the Lessor over the demised premises or its activities on adjoining lands then the Lessee shall apply for and use all reasonable endeavours to obtain all planning permissions building regulations consents and other consents and licences required to enable the Lessee to repair and reinstate the buildings on the demised premises (“the Permissions”) as soon as possible and shall apply all insurance and compensation money received in repairing and reinstating the buildings on the demised premises as soon as the Permissions have been received or immediately where no Permissions are required making up any deficiency in such insurance and compensation out of its own monies and to carry out the works of repair reinstatement or replacement in a good and workmanlike manner in accordance with good

building practice and using good quality materials and in accordance with all necessary statutory consents and the requirements of statute any statutory orders and regulations made under or deriving validity from them and codes of practice of local authorities and competent authorities affecting such reinstatement works, bye-laws, any local Act, the Fire Officer and any applicable supranational legislation or directions and the requirement of any relevant British standards institution standards and codes of practice applicable at the time that such reinstatement is commenced

(d) The Lessee need not reinstate any buildings agreed for removal with the Lessor under Clause 2(14)(a) or under Clause 2(17)(c) as appropriate while prevented by any of the following:

- (i) failure by the Lessee to obtain the Permissions despite using all reasonable endeavours;
- (ii) the grant of any of the Permissions subject to a lawful condition with which it would be unreasonable to expect the Lessee to comply with or the planning or highway authority's insistence that as a pre-condition to obtaining any of the Permissions the Lessee must enter into an agreement with the planning or highway authority that would contain a term with which it would be unreasonable to expect the Lessee to comply;
- (iii) some defect in the site upon which the reinstatement is to take place so that it could not be undertaken or undertaken only at excessive cost which is unreasonable in the circumstances;
- (iv) war act of God government action strike lock-out or any other similar circumstances beyond the control of the Lessor or the Lessee

(e) If the buildings or any erections on the demised premises shall suffer total or substantial damage or destruction by an Insured Risk or an event giving rise to a claim for compensation under the 1977 Order the Lessee shall use all reasonable endeavours to repair and reinstate the buildings or any erections on the demised premises within a period of 24 months from the date of such damage or destruction provided that if clause 2(17)(d) applies or the substantial damage or destruction is caused by a risk which is not an Insured Risk and for which compensation monies under the 1977 Order are not payable or the insurance proceeds or compensation monies are irrecoverable due to a negligent act default or omission of the Lessor its servants or agents in relation to its exercise of rights reserved to the Lessor over the demised premises or its activities on adjoining lands then the Lessee or the Lessor shall subject to the Lessee first removing all damaged or destroyed buildings from the demised premises (but such removal shall not require the removal of foundations or services laid beneath the ground which will be made safe by the Lessee) become entitled at any time thereafter to determine this Lease on giving the other party not less than four weeks prior written notice and on the expiration of such notice the term will immediately cease and determine but without prejudice to any rights or remedies that may have accrued to either party against the other in respect of any breach of covenant or other term of this Lease

(18) (a) To the extent permitted by law the Lessor shall not be responsible for any damage or injury to any person or persons or property on the demised premises occasioned by fire storm tempest flooding lightning explosion or any other cause attributable to any defect or want of repair and the Lessee will

effectually indemnify and keep indemnified the Lessor with respect to all or any such damage or injury

(b) To keep the Lessor fully indemnified from and against all actions, proceedings, claims, demands, losses, costs, expenses, damages and liability arising directly or indirectly from:

(i) breach by the Lessee of any of the provisions of this Lease or

(ii) the use of the demised premises and any access thereto during the term hereof by the Lessee or any person on the demised premises and any access thereto with its actual or implied authority or

(iii) any act, neglect or default by the Lessee or any person on the demised premises and any access thereto with its actual or implied authority

(19) To be responsible at all times during the term of the Lease for implementing any health and safety measures required in respect of the demised premises and the rights granted in relation thereto including the use of the access thereto and to comply with all health and safety regulations and legislation

(20) To provide during the term of this Lease an annual report to the Lessor containing evidence of the inspection of the demised premises to ensure compliance with all relevant Health and Safety requirements along with details of any maintenance, repair and replacement carried out to equipment installed thereon and the demised premises in general and information regarding any visitor surveys carried out by the Lessee thereon and within three months or sooner if requisite after notice in writing to the Lessee of all defects and wants or reparation found on receipt of such a report shall have been given or left at the demised premises to make good the same according to such notice and the covenants in that behalf hereinbefore contained and in case the Lessee shall make default in so doing it shall be lawful

for the workmen or others to be employed by the Lessor to enter upon the demised premises to make good and to pay the Lessor the cost of so doing and all expenses incurred by the Lessor within 28 days of written demand

- (21) permit the Lessor or his agents or workmen and the lessees and occupiers of any adjoining or neighbouring property now or at any time hereafter belonging to the Lessor at all convenient hours in the daytime on reasonable notice being given to enter upon the demised premises for matters associated with the Lessor's statutory duties
- (22) Not to affix erect attach or exhibit or permit or suffer so to be upon any part of the demised premises any placard poster or notice other than appropriate signage relating to the purposes referred to in clause 2(3) and of a style compatible with the Lessor's forestry objectives and overall forestry environment
- (23) Generally not to do or permit or suffer to be done upon or in connection with the demised premises anything which shall be or tend to be a nuisance or cause of damage to the Lessor or to any adjoining or neighbouring property of the Lessor, owner or occupier thereof
- (24) To assume all responsibilities relating to the collection and removal of litter, including dog foul, from the demised premises, and to provide adequate litter receptacles on the demised premises throughout the term of this lease.
- (25) Save for occasional event licences not to assign or sub-let or part with or share possession of all or any part of the demised premises without the prior written consent of the Lessor not to be unreasonably withheld or delayed and in the event of the Lessee approaching the Lessor for its consent to create a licence or sublease permitting some other party to use the demised premises or any part thereof the parties hereby agree that the Lessor shall in such circumstances be entitled to part

of any consideration payable to the Lessee as a result of any tender procurement competition such portion of said consideration to be assessed by Land and Property Services or its equivalent at the relevant point in time and in the absence of a tender procurement competition the parties agree to take advice from Land and Property Services on the value of the use of the asset and the apportionment of value to the Lessor and Lessee

- (26) Not to mortgage or charge the demised premises
- (27) To comply with The Forestry Land Byelaws (NI) 2013 and any other bye-laws for the time being in force during the term of this Lease
- (28) To observe all biosecurity measures for Pomeroy Forest, which the Lessor makes from time to time, provided the Lessee or its appointed representative receives written notification of same
- (29) To be responsible for the management and maintenance of the permitted vehicular access infrastructure on a user basis

3. The Lessor hereby covenants with the Lessee as follows:-

- (1) That the Lessee paying the said yearly rent hereby reserved and observing and performing the covenants conditions and agreements hereinbefore contained on the Lessee's part to be observed and performed shall and may quietly enjoy the demised premises during the term without any interruption by the Lessor

4. **PROVIDED ALWAYS AND IT IS HEREBY AGREED** that these presents are made upon the following express conditions:

- (1) If the said rent or any part thereof shall be unpaid for twenty-one days after any of the days hereinbefore appointed for payment thereof whether the same shall have

been lawfully demanded or not or if any covenant on the Lessee's part therein contained shall not be performed or observed and the Lessee having been notified in writing by the Lessor of the breach does not remedy the breach within a period of 3 calendar months from the date of the notice or such other longer or shorter period of time that the circumstances require and as shall be agreed by the Lessor or if the Lessee shall be wound up then and in any of the said cases and thenceforth it shall be lawful for the Lessor or any person or persons duly authorised by the Lessor in that behalf into or upon the demised premises or any part thereof in the name of the whole to re-enter and the same to repossess and enjoy as if these presents had not been made without prejudice to any right of action or remedy of the Lessor in respect of any antecedent breach of any of the covenants by the Lessee herein contained

(2) That nothing in these presents shall operate or prevent the Lessor from dealing with its adjoining or adjacent premises as it may desire or from erecting or suffering to be erected on such adjoining or adjacent premises any building whatsoever whether such building shall or shall not affect the demised premises

(3) The Lessee may not determine this Lease before After the

Lessee may determine this Lease on the sole ground that it is no longer in its statutory interest to continue to operate the permitted user on the demised premises on condition that:

(a) the Lessee gives the Lessor not less than 12 months' prior written notice of the date of determination

(b) the Lessee gives clear evidence to the Lessor that the Lessee has completed all due process relating to the funding for the demised premises and that it has

considered all competing priorities in the relevant area before deciding that it is no longer in the public interest to continue to use the demised premises

(c) the Lessee 9 months prior to the date of determination of the Lease publishes fully and communicates to the public the Lessee's decision to terminate public use of the demised premises in such manner as the Lessor reasonably requires

(d) the Lessee at the date of the determination observes all the obligations contained in this Lease (including without prejudice to the generality of the foregoing clause 2(6) regarding reinstatement of the Lands)

(e) on the date of determination in accordance with this clause the Lease shall terminate immediately but without prejudice to any rights or remedies which may have accrued to either party hereto

(4) For the purposes of interpretation the masculine shall include the feminine and vice versa and the singular shall include the plural and vice versa and if more than one Lessee they shall hold as joint Lessees and be jointly and severally liable under the covenants herein contained

5. Nothing herein contained shall by implication of law or otherwise operate to confer on the Lessee any easement right or privilege whatsoever over or against any adjoining or other property belonging to the Lessor (whether forming part of the property aforesaid or not) which might restrict or prejudicially affect the future rebuilding alteration or development of such adjoining or other property nor shall the Lessee be entitled to compensation for any damage or disturbance caused by or suffered through any such rebuilding alteration or development

6. The parties hereto acknowledge and agree that this Lease will not restrict the core functions or activities of the Lessor or Lessee or require the Lessor or Lessee to take any action which would be beyond its statutory powers or in breach of government or local government policy or of government or local government accounting procedures
7. Where “Force Majeure” occurs e.g. trees blowing over access routes or flooding of same the Lessor will take action to secure access in order to protect interest in value of the timber and to protect the wider forest and roads infrastructure from further damage. Harvesting of any storm-damaged material will be at a time suitable for the Lessor taking account of the needs of the Lessor’s customers for the timber and the amount of similar salvage work required elsewhere in Northern Ireland. If the Lessee wishes to continue to use the demised premises and permitted access for the purposes hereby permitted it may do so at its own risk but will bear sole responsibility for management of any road closures, diversions and any other signage which may be necessary to facilitate continued use of the demised premises during such unforeseen events and will compensate the Lessor for the timber value so cut by the Lessee as determined by the Lessor’s existing contracts for material of that type at the time the Lessee plans to work on the trees PROVIDED ALWAYS THAT compensation will not be payable by the Lessee provided that the trees are cut to a specification agreed by the Lessor. The Lessor will not accept any responsibility for keeping the demised premises open due to this or any other cause outside its control.
8. ANY notice under this Lease shall be in writing and any notice to the Lessee shall be sufficiently served if sent by registered post or recorded delivery to Burn Road Cookstown BT80 8DT and any notice to the Lessor shall be sufficiently served if sent

to Forest Service care of Forest Estates Administration Inishkeen House Killyhevlin Industrial Estate Enniskillen BT74 4EJ or such other address as either party shall previously advise the other in writing.

FIRST SCHEDULE

DEMISED PREMISES

ALL THAT AND THOSE the portions of the hereditaments and premises forming part of Pomeroy Forest shown hatched red on the map attached hereto (Annex 1)

SECOND SCHEDULE

(Easements Rights and Privileges)

1. Full and free right and liberty at any time hereafter at convenient times and following service on the Lessor of reasonable prior written notice (except in the case of emergency) to enter upon any adjoining and neighbouring property of the Lessor to view the state of condition of and to execute any necessary works and repairs to the demised premises which would not otherwise be reasonably practicable subject to the Lessee making good all damage and disturbance thereby caused to the reasonable satisfaction of the Lessor
2. Full and free right and liberty to manage replace in the same location and maintain utility services that serve the demised premises together in connection therewith making good all damage and disturbance thereby caused to the reasonable satisfaction of the Lessor in so far as is applicable to the services now laid the free passage of water, soil, electricity and any other connected utility service from the demised premises through all channels drains and sewers existing upon or under (either in whole or in part) the

adjoining lands or neighbouring lands or buildings owned by the Lessor on the date of this Lease

3. Full right and liberty for the Lessee and all persons authorised by the Lessee in common with the Lessor to pass and repass at all times and for all purposes with or without vehicles over and along the roadways shown coloured brown on the said map attached hereto (Annex 1)

THIRD SCHEDULE

(Exceptions and Reservations)

1. The right to enter on to the demised premises for all purposes to enable the Lessor to carry out its own business provided always that if the Lessor causes any damage to the demised premises (including the contents of any building on the demised premises) it shall repair same at its own expense or at its option may pay reasonable compensation for such damage
2. The right at any time to alter or add to any adjoining or neighbouring premises notwithstanding the effect same will have on the demised premises
3. For so long as the interest of the Lessor is vested in a government department authority or other body charged with the current policy function of the Lessor at the date of this lease the Lessor shall have the right to withdraw permission to enjoy access to the demised premises where it is expedient in view of the Lessor observing its wider government obligations provided always that the Lessor shall except in the case of emergency give notice to the Lessee at least 48 hours before such closure and shall post notices on the demised premises giving reasons for such closure
4. All sporting and mineral rights (if any) pertaining to the demised premises
6. Full right and liberty for the Lessor its servants agents and licensees at all times and for all purposes (but in the case of buildings situate on the demised premises only upon

- giving reasonable prior notice) to have access to the demised premises to ensure that the Lessee is performing its obligations under the Lease or to enable the Lessor to deal with any emergency situation (eg a fire or storm) in relation to the Lessor's adjoining lands
7. The free passage of water and soil from any adjoining or neighbouring lands or buildings now or formerly the property of the Lessor through all channels drains and sewers upon or under the demised premises

FOURTH SCHEDULE

(Rent Review)

1. The yearly rent hereby reserved may be reviewed on 20 and thereafter on the in the Fifth year of each subsequent quinquennial period of the term at the option of the Lessor by the service of not less than 6 months' notice in writing on the Lessee of intention to review the rent with effect from ("the Review Date") in the review year
2. If agreement between the parties as to the amount of the reviewed rent is not reached at least 2 months before the Review Date the reviewed rent shall be such sum as is certified in writing by a valuer from Land and Property Services (or such body as Land and Property Services are known at the relevant time in the Lease) as the fair market rent of the demised premises
3. The following matters shall be disregarded by the valuer in his assessment of the fair market rent:
 - (a) The value of any improvements or additions to the demised premises made by the Lessee

(b) The effect on the rent of the fact that the Lessees are in occupation of the Premises

4. The amount of the reviewed rent shall be paid by the Lessee with the effect from the Review Date notwithstanding the amount has not been agreed or certified on or before that date
5. The costs of any valuer appointed under this Schedule shall be borne by both parties hereto in equal shares

IN WITNESS whereof the parties hereto have hereunto set their respective Official and
Common Seals the day and year first herein written

The Official Seal of)
THE DEPARTMENT OF)
AGRICULTURE ENVIRONMENT)
AND RURAL AFFAIRS)
hereunto affixed)
is authenticated by:-)
)
)
)
)
)
)
)

THE OFFICIAL SEAL
of MID ULSTER
DISTRICT COUNCIL was
hereunto affixed in the presence of

in the presence of:-)
)
)
)
)
)
_____)
Authorised Signatory)
)
)
)
_____)
Number in the Sealing Register

ANNEX 1

MAP

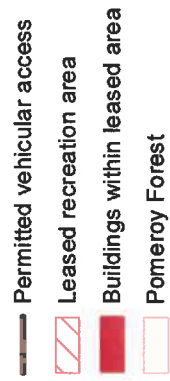


An Agency within the Department of
**Agriculture, Environment
and Rural Affairs**

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LEASE

**Leased area to Mid Ulster
District Council**



Prepared: 10/11/2017

