AGREEMENT

THIS AGREEMENT is made and entered into on October ___, 2017, by and between the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "County"), and the **SENIOR CENTER, INCORPORATED**, a Virginia corporation (the "Senior Center").

Recitals

R-1 The Senior Center is the owner of that parcel identified as Tax Map Parcel Number 06100-00-00-15400 (the "Property"), which is located within the Belvedere Development ("Belvedere") in Albemarle County; and

R-2 The Senior Center intends to establish a new center on the Property to provide facilities and services for the County's and the region's senior population (the "Center at Belvedere"); and

R-3 The proposed Center at Belvedere will have the capacity to meet the needs of the County's and the region's expanding senior population, as well as dedicated functional space appropriate to the multi-dimensional activities; and

R-4 The proposed Center at Belvedere's design includes greater accessibility and the first phase of the Center at Belvedere ("Phase One") will include an equipped fitness center, 2 group exercise rooms, a lifelong learning suite with flexible-use, scalable classrooms, an auditorium for performing arts rehearsals and programs, a fine arts studio space, an expanded volunteer center, an expanded travel center, a café for social engagement, a game room, and several rooms for massage and other wellness and personal services; and

R-5 The County has received a onetime funding request in the amount of $2,000,000 from the Senior Center to support the costs of design and construction of Phase One; and

R-6 The total estimated project cost for the proposed Center at Belvedere is $23,000,000, and the Senior Center will seek the majority of the funding required for construction from private contributions; and

R-7 Construction of Phase One is currently scheduled to begin by December 2018 and to be completed between July 2021 and June 2022.

Terms and Conditions for the County's Contribution and the Senior Center's Use of Funds

The parties agree as follows:

1. **Authority.** The contributions by the County to the Senior Center as provided in this Agreement are made pursuant to Virginia Code § 15.2-953. The County, through its Board of Supervisors (the "Board of Supervisors") is enabled by Virginia Code § 15.2-953 to appropriate funds to charitable institutions. The Senior Center is a charitable institution that is eligible to receive appropriations of public funds under Virginia Code § 15.2-953.

2. **Contribution by the County.** The County agrees to appropriate and then contribute to the Senior Center a total of $2,000,000 as provided in Section 4 of this Agreement. The contribution by the County in any fiscal year is subject to nonappropriation by the Board of Supervisors as provided in Section 9 of this Agreement.

3. **Purposes for Which Contributed Funds may be Used.** The funds contributed by the County to the Senior Center shall be used solely for designing and constructing Phase One, which shall include the facilities and services described in recitals R-3 and R-4, above.

4. **Timing of the Contribution of Funds by the County to the Senior Center.** The County will make up to a total of 4 contributions to the Senior Center when the following 4 milestones are reached as provided below:

   A. $500,000 will be contributed to the Senior Center in Fiscal Year 2019 or later, when the Senior Center provides written evidence to the satisfaction of the County Executive that it has obtained actual donations, formal pledges, and bank financing, when combined with the County's total contribution, to fund 75% of Phase One. The funds contributed by the County shall be deposited in an escrow account managed by an escrow agent selected by the County. The funds shall be released by the escrow agent to the Senior Center upon written instruction by the County Executive that the Senior Center has issued a notice to proceed to its contractor to begin work on the construction of Phase One.

   B. $500,000 will be contributed to the Senior Center in Fiscal Year 2020 or later, when the Senior Center provides written evidence to the satisfaction of the County Executive that it has issued a notice to proceed to its contractor to begin work on the construction of Phase One.

   C. $500,000 will be contributed to the Senior Center in Fiscal Year 2021 or later, when the Senior Center provides written evidence to the satisfaction of the County Executive that the construction of Phase One is 50% completed, based upon the contractor's payment applications.

   D. $500,000 will be contributed to the Senior Center in Fiscal Year 2022 or later, when the Senior Center provides written evidence to the satisfaction of the County Executive that it has obtained a certificate of occupancy from the County for Phase One.

   The Senior Center shall provide the written evidence to the County Executive at the following address: County Executive, 401 McIntire Road, Charlottesville, Virginia, 22902; provided that the written evidence may be transmitted to the County Executive by email or other electronic means as agreed to by the County Executive and the Senior Center's Executive Director.

   Any contribution by the County to the Senior Center will be appropriated and then contributed within 30 days after the County Executive is satisfied that the written evidence provided by the Senior Center demonstrates that the applicable milestone has been reached.

5. **Return of Contributed Funds.** The funds contributed by the County to the Senior Center shall be returned to the County in their entirety in any of the following circumstances:

   A. The Senior Center does not obtain a building permit from the County to construct Phase One by June 30, 2021.

   B. The Senior Center does not obtain a certificate of occupancy from the County for Phase One by June 30, 2024.

   C. The Senior Center loses its status as a charitable institution under the rules of the United States Internal Revenue Service on or before the Senior Center expends all of the County's contribution.

   D. The Senior Center ceases to own the Property on or before the Senior Center expends all of the County's contribution, subject to the proviso in Section 7(C).

6. **Security for the County's Contribution in the Event of the Senior Center's Failure to Complete Phase One.** The County, in its sole discretion, may record an instrument against the Property to secure the return of its contributed funds under any of the circumstances described in Section 5. The Senior

Center will sign the documents necessary to allow the County to record its instrument, and will not otherwise prevent, or seek to prevent, the County from recording its instrument. The County instrument will be subordinate to any instrument recorded by a financial institution to secure its funding provided to the Senior Center for the design and construction of the Senior Center at Belvedere. The County will sign the documents necessary to subordinate its instrument to the instrument recorded, or to be recorded, by the financial institution, and will not otherwise prevent, or seek to prevent, the financial institution from recording its instrument.

7. **Obligations of the Senior Center.** The Senior Center shall:

   A. Complete Phase One and obtain a certificate of occupancy from the County for Phase One in an expeditious manner.

   B. Maintain its status as a charitable institution under the rules of the United States Internal Revenue Service at least until it obtains a certificate of occupancy from the County for Phase One.

   C. Continue to own the Property at least until it obtains a certificate of occupancy from the County for Phase One; provided that the Board of Supervisors may, in its sole discretion, determine that a change in the legal status of the Senior Center as a corporation (*e.g.*, from a corporation to another entity) is not a change in ownership for purposes of this Agreement.

   D. From the date of this Agreement and until the design and construction is 100% funded, diligently conduct a capital campaign to obtain contributions to pay for the cost of design and construction of Phase One and subsequent phases of the Center at Belvedere.

   E. Provide access to the Center at Belvedere to all eligible residents of Albemarle County.

   F. Not discriminate against any person in its employment, membership, or services on any basis prohibited by federal or state law.

8. **No Goods or Services Received by the County.** The contributions made by the County pursuant to this Agreement are solely to enable the Senior Center to construct Phase One of the Center at Belvedere. The descriptions of the services that will be provided by the Senior Center at the Center at Belvedere in recitals R-3 and R-4 above state the public and charitable purposes that may be served by the County's contribution, and are not a description of goods or services being procured by the County by this Agreement.

9. **Nonappropriation.** The obligation of the County to contribute funds as provided in Sections 2 and 4 of this Agreement is subject to, and dependent upon, appropriations being made from time to time by the Board of Supervisors. Under no circumstances shall this Agreement be construed to establish an irrevocable obligation on the County to contribute the funds.

10. **Non-severability.** If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the entire Agreement is unenforceable.

11. **Entire Agreement**. This Agreement states all of the covenants, promises, agreements, condition,s and understandings between the County and the Senior Center regarding the County's contribution of funds.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

13. **Amendments.** This Agreement may be amended by a written amendment signed by the authorized representatives of the parties.

WITNESS, the following authorized signatures:

SENIOR CENTER, INCORPORATED

____
[Insert name and title]

COUNTY OF ALBEMARLE, VIRGINIA

____
Chair, Board of Supervisors

Approved as to form:

____
County Attorney