

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made as of April 15, 2020, by and among the COUNTY OF ALBEMARLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "**County**"), the ECONOMIC DEVELOPMENT AUTHORITY OF THE COUNTY OF ALBEMARLE, VIRGINIA (the "**EDA**") a political subdivision of the Commonwealth of Virginia, and 5th STREET FOREST LLC, a Virginia limited liability company (the "**Developer**"). The EDA, the County and the Developer are collectively the "Parties."

PURPOSE OF THE AGREEMENT

A. The Developer is the owner of certain property located in Albemarle County, Virginia, and described as Albemarle County Tax Map Parcels Nos. 76-54 and that portion of 76-46A sitting northeast of Old Lynchburg Road containing 8.55 acres, more or less, (the "Property") and shown on the attached **Exhibit** (the "Project Exhibit") which the Developer intends to develop for commercial and retail uses as outlined in the Code of Development (the "Project"). The remainder of Tax Map Parcel 76-46A (the "Residential Property") located southwest of Old Lynchburg Road is being developed by the Developer as a multifamily residential development (the "Residential Project")

B. The County seeks to promote the economic development and the increased vitality of the 5th Street Extended area; provide an opportunity for a permanent location for a primary business as contemplated by the County's economic development plan, Project ENABLE; and ensure the Project's development sooner than it likely would have happened without incentives.

C. The Project is consistent with, promotes, and implements several policies, objectives, and strategies of the Albemarle County Comprehensive Plan (the "Comprehensive Plan"):

a. Growth Management Chapter. The Growth Management chapter of the Comprehensive Plan includes Strategy 1b: "To help promote the Development Areas as the most desirable place for growth, continue to fund capital improvements and infrastructure and provide a higher level of service to the Development Areas."

b. Community Facilities Chapter. The Community Facilities chapter of the Comprehensive Plan includes Objective 1: "Continue to provide public facilities and services in a fiscally responsible and equitable manner."

c. Economic Development Chapter. The Economic Development chapter of the Comprehensive Plan includes Objective 1: "Promote economic development activities that help build on the County's assets while recognizing distinctions between expectations for the Development Areas and the Rural Area" and Strategy 4c: "Explore opportunities to assist with redevelopment of underutilized commercial and industrial zoned properties."

d. Economic Development Strategic Plan. The Economic Development Strategic Plan states: "Goal 4 – Seek private investment to further the public good" and its three objectives: "Objective 1 – Partner with others to develop projects that result in a public good or enhance natural resources," "Objective 2 – Support development projects that capitalize on our assets, inspiration, and potential to create unique and community-based public spaces," and "Objective 3 – Lead the development of public-private partnerships that increase direct private investment."

D. **The Investment in the Project.** The amount of funding and private investment by the Developer, the County, and the EDA in the Project is estimated to be approximately \$40,000,000.

E. **The Animating Public Purposes of this Agreement.** The animating public purposes for the County to enter into this Agreement include:

a. Promoting Economic Development. Promoting the economic development and the increased vitality of the County and the 5th Street Extended area and to leverage the area's Opportunity Zone designation.

b. Enhancing the County's Tax Base and Jobs Base. Enhancing the County's tax base and jobs base by facilitating the development of land in the development area into a mixed use development that, when developed will include commercial uses and public spaces and will provide employment and commerce in an area with existing and expanding number of residential units.

F. **The Incentives to Enable the County to Achieve the Animating Public Purposes.** To further incentivize and financially support the Developer in its construction of the Roads and the Plaza, the County Board of Supervisors (the "Board") agrees, subject to the terms and conditions of this Agreement, to:

a. Provide Financial Support through the EDA for Development Upgrades and to Reserve 25,000 square feet of Space for a Primary Business. Pay to the Developer or Developer's Bank up to \$100,000 through funds transferred to the EDA originating from the Developer's incremental increases in its real estate tax payments according the below terms.

G. **Developer's Acceptance of the Incentives and Related Obligations.** The Developer agrees to such Payments from the County and the EDA described in this Agreement as an incentive for the Developer to (i) provide and construct enhanced connectivity throughout the project site for the public, including sidewalks, pathways, and pedestrian crossings, (ii) provide bicycle parking and racks at all project buildings, (iii) provide and construct an enhanced bus stop that includes an enclosed shelter with glass, lighting, and seating, and (iv) reserve at least 25,000 square feet of Class A office space and associated parking for up to 60 months for a primary business tenant.

H. **This Agreement is Contingent Upon, But Not in Exchange for, Approval of ZMA 2019-00003.** This Agreement is contingent upon the County Board of Supervisors approving (the "Zoning Approval") ZMA 2019-00003 (the "Rezoning") which, as currently proposed, would allow the uses and densities to enable the Project and the Residential Project. However, this Agreement is not, and should not be construed to be, an Agreement by the Board to rezone the Property. In its consideration of ZMA 2019-00003, the Board may and will exercise its full legislative powers and discretion as authorized by law.

I. **Enabling Authority.** The County and the EDA are authorized to enter into this Agreement and to make the cash contributions and transfers as provided in this Agreement to the Developer pursuant to the following:

a. Virginia Code § 15.2-953. Virginia Code § 15.2-953 enables the County to give funds to the EDA for the purposes of promoting economic development.

b. Virginia Code § 15.2-1205. Virginia Code § 15.2-1205 enables the County Board of Supervisors to give, lend, or advance in any manner that it deems proper funds or other County property, not otherwise specifically allocated or obligated, to the EDA.

J. Virginia Code § 15.2-4905(13). Virginia Code § 15.2-4905(13) enables the EDA to make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of the Industrial Development and Revenue Bond Act (Virginia Code § 15.2-4900 et seq.), including for the purposes of promoting economic development, provided that any loans or grants are made only from revenues of the EDA which have not been pledged or assigned for the payment of any of the EDA's bonds.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. INTERPRETATION.

- a. **Captions.** Captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement.
- b. **Gender; Number; Including.** The use of any gender in this Agreement shall refer to all genders, and the use of the singular shall refer to the plural, as the context may require. The term "including" and variants thereof shall mean "including without limitation."
- c. **Not Construed Against Drafter.** The Parties and their respective legal counsel have fully participated in the preparation and negotiation of this Agreement, and accordingly waive any rule of construction that this Agreement be construed against its drafter.

- d. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be severable and the remainder of this Agreement shall continue in full force and effect.
- e. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same instrument.
- f. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflicts of law principles.
- g. **Project Exhibit.** The Project Exhibit is not a site plan for the Project, but is intended to show the general locations of items referenced in this Agreement.

2. DEVELOPER'S OBLIGATIONS

- a. **Rezoning.** The Developer has its modified application for rezoning of the property pending before the Albemarle County Planning Commission. The Developer shall use its best efforts to complete the rezoning from Residential Area (R-10 & R-2) to Neighborhood Model District by July 31, 2020.
- b. **Conceptual Plan.** The Developer will submit a conceptual building plan (including a rendering and/or architectural drawings) to the County's Office of Economic Development (EDO) within four (4) weeks of the Zoning Approval. The EDO will have one week to review the plan for approval and concurrence, which shall not be unreasonably withheld.
- c. **Governmental Approval & Permitting.** The Developer shall apply for and use its best efforts to obtain all governmental approvals and permits necessary to construct a building or buildings with at least 25,000 square feet of space in which to locate a Primary Business and provide Class A Office Space. In addition to the Rezoning, this includes the approval of a final site plan.
- d. **Capacity.** The Developer (including the manager and all members and partners) must demonstrate financial capacity to the County and pass a general background check, both satisfactory to the County. Such proprietary information will be provided subject to a confidentiality agreement from the County in form and substance satisfactory to the Developer. Any information provided subject to such confidentiality agreement shall be exempt from disclosure under the Virginia Freedom of Information Act.
- e. **Reserve Space for Primary Business.** The Developer must reserve at least 25,000 square feet of Class A Office Space within Block 2, Block 3, or a combination of the Blocks (the Blocks are shown on the Project Exhibit) as the Developer and the County may agree. This space reservation will continue for 60 months for a Primary Business to occupy

from when the Developer has obtained the later of: (i) site plan approval or (ii) Architectural Review Board approval for a building on either Block with sufficient space. A “Primary Business” is a commercial or industrial entity that produces goods or services locally and generates more than 50% of its sales revenues from outside the Charlottesville Metropolitan Statistical Area (City of Charlottesville and the Counties of Albemarle, Greene, Fluvanna, Nelson, and Buckingham).

- f. **Lease to a Primary Business.** Subject to Subsection (e) above, the Developer agrees to lease or sell at least 25,000 of Class A Office Space to a credit worthy Primary Business at a fair market rate or fair market value as the case may be. The Developer and the County agree to bargain in good faith to satisfy this condition.
- g. **Enhanced Connectivity.** The Developer will provide enhanced connectivity throughout the site to provide community access from the Project’s southern boundary to its northern boundary. Enhanced connectivity will include pathways, paved sidewalks, and raised pedestrian road crossings. The final design must substantially comport with the Project Exhibit.
- h. **Dynamic Transport Pick-Up.** The Developer will provide space within the Project for automobile passengers to access for-hire, hailed transport services (i.e. taxicab, transportation network partner, JAUNT vehicle, or otherwise) as shown on the Project Exhibit.
- i. **Enhanced Bus Stop.** The Developer must provide an enhanced bus stop along the Project’s southern boundary to accommodate public transportation. The stop must include a glass shelter, lighting, adequate seating, and bicycle parking racks. The design and provisions are subject to the County’s approval, which cannot be withheld unreasonably.
- j. **Bicycle Racks.** The Developer must install bicycle parking racks at all buildings within the Project.
- k. **Dog Park.** The Developer shall construct a Dog Park in the location shown on the Project Exhibit unless the Developer and the County agree otherwise.

3. COUNTY’S OBLIGATIONS.

- a. The County, by and through its Economic Development Office, will create collateral material to provide to its consultant, Retail Strategies, to market retail space in Block 4 of the Project for two years from final approval of the site plan.
- b. The County, by and through its Economic Development Office, will co-market the reserved 25,000 square foot space to prospective eligible Primary Business tenants or purchasers and will provide Developer with leads until the space is occupied by a Primary Business or five years from the final site plan approval, whichever occurs sooner.

- c. The County, by and through its Economic Development Office, will post and update promotional information about the Project to the Virginia Economic Development Partnership website, the Opportunity Virginia website, and other County websites and platforms where entrepreneurs and primary businesses intersect and frequent.
- d. The County, by and through its Economic Development Office, will support the Developer's requests for
 - i. expedited development and governmental agency review if the Project is deemed eligible under County development and review guidelines;
 - ii. the Developer's efforts to obtain Virginia Department of Transportation approval of road designs; and
 - iii. the Developer's request for alternative parking solutions for the Project.
- e. The County will provide the EDA funding for an Enhanced Development and Primary Business Reservation Incremental Tax Grant (the "Grant"), subject to the County's Board of Supervisors annual appropriation.
 - i. The Grant funding will total \$100,000.00;
 - ii. The County will fund the Grant annually;
 - iii. The Grant funding obligation will start after the County issues the first real estate tax bill in which the real estate assessment for the Property exceeds the Base Assessment;
 - iv. The Grant funding obligation will be based on 100% of real estate taxes the Developer pays on the Tax Increment;
 - v. The Tax Increment will be calculated by subtracting \$1,323,786.58 (the total 2020 real estate assessment for the Property) (the "Base Assessment") from the assessed value of the Property as determined by the County's Real Estate Assessor, Department of Finance for the year in which taxes are due;
 - vi. The County will provide the EDA the required funding for the Grant annually within thirty (30) days after the annual second-half real estate tax payment deadline; and
 - vii. The Grant funding will continue until the County has funded \$100,000.00 to the EDA.

4. EDA's Obligations.

- a. So long as the Developer is in compliance with this Agreement and the County has disbursed the Grant funding proceeds to the EDA, the EDA will disburse annually the Grant funds to the Developer within thirty (30) days of receipt; and

- b. The EDA shall not be obligated to pay the Developer if the County does not first provide the EDA with the funds. The EDA's only obligation to the Developer is to provide the Developer with the Grant funds that the County provides to the EDA.
- 5. **Reporting.** At the request of the County Executive, no more frequently than annually, the Developer shall report, document, and verify to the County, at the Developer's expense, a written report that verifies the Project's progress. The report must be in a form and having a content reasonably satisfactory to the County Executive or his designee. Upon the County's reasonable request for additional information, the Developer will provide such additional information related to this Project and reasonably satisfactory to the County before disbursement of Grant funds. No Grant payment shall be made until the County receives adequate documentation and verification.
- 6. **Default.** The following constitute default and allow the non-defaulting party to seek a remedy:
 - a. A party fails to make a payment when the payment becomes due and payable and such failure continues uncured for at least 30 days after receipt of written notice of failure from the non-defaulting party; or
 - b. A party fails to perform any other obligation this Agreement requires as and when such performance is required and such failure continues uncured for at least 60 days after receipt of written notice of failure from the non-defaulting party. If the failure is not reasonably susceptible of being cured within the 60 day period, then the 60 day period to cure will be extended so long as the defaulting party starts making efforts to cure within the 60 day period and thereafter diligently pursues completion of the cure.
- 7. **Remedies.** Upon a default that is not cured pursuant to Section 6, the non-defaulting party shall have the option to:
 - a. Terminate this Agreement by written notice to the defaulting party; or
 - b. Pursue such other rights and remedies as may be available under law.
 - c. If the Developer is in default, then any Grant funds remaining in escrow with the EDA and not paid to the Developer shall be returned to the County.
- 8. **Term.** The term of this Agreement shall commence on the date this Agreement is executed by all the Parties and shall continue until the later of (i) the Developer's obligation to reserve the space provided for in Section 2(e) has ended or has been satisfied or (ii) the Developer has received all Grant funds due from the County as provided for in Section 3(e) or unless terminated sooner by any Party under the terms of this Agreement.

9. **Effect of Termination.** The termination of this Agreement for any reason shall not affect any right, obligation or liability which has accrued under this Agreement on or before the effective date of such termination.
10. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, the following limitations on assignment shall apply:
- a. The Developer shall not assign its rights or obligations under this Agreement without the prior written approval of the EDA and the County.
 - b. Neither the EDA nor the County shall assign its rights or obligations under this Agreement to any Entity other than the EDA or the County without the prior written approval of the Developer.
11. **Notice.** All notices and other communications given or made pursuant to this Agreement ("**Notice**") shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or: (a) personal delivery to the party to be notified, (b) when sent, if sent by electronic mail or facsimile, during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. Any notices sent by email shall only be valid with a read receipt and if a copy of the Notice is also sent by regular mail. All notices shall be sent to the addresses set forth below. A party may designate other or additional addresses in writing according to this section.

County: Albemarle County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
ATTN: Jeffrey B. Richardson, County Executive
jrichardson3@albemarle.org

With a copy (which does not constitute notice) to:

Albemarle County Attorney
401 McIntire Road
Charlottesville, Virginia 22902
ATTN: Greg Kamptner, County Attorney
gkamptner@albemarle.org

EDA: Albemarle Economic Development Authority
401 McIntire Road
Charlottesville, Virginia 22902
ATTN: Rod Gentry, Chair
rgentry@albemarle.org

With a copy (which does not constitute notice) to:

Economic Development Office
Roger Johnson, Director Albemarle EDO
401 McIntire Road
Charlottesville, Virginia 22902
rjohnson2@albemarle.org

Developer: 5th Street Forest LLC
c/o Kyle Redinger
250 W. Main Street, Suite 201
Charlottesville, Virginia 22902

With a copy (which does not constitute notice) to:

Flora Pettit PC
530 East Main Street
Charlottesville, Virginia 22902
ATTN: Donald D. Long, Esq.
ddl@fplegal.com

12. **Amendments.** Modification or amendment of this Agreement and waiver of any of its provisions must be done only in a writing executed by the party against whom such modification, amendment or waiver is sought to be enforced.
13. **Non-appropriation.** The obligation of the County to contribute the Grant as provided in this Agreement is subject to and dependent upon appropriations being made from time to time by the Board. Therefore:
 - a. **Obligations in the Event of Non-appropriation.** If the Board of Supervisors does not appropriate funds for the Grant, then this Agreement terminates and the Developer shall have no further obligation under this Agreement.
 - b. **This Agreement does not Establish an Irrevocable Obligation.** Under no circumstances shall this Agreement be construed to establish an irrevocable obligation on the County to fund the Grant as provided in this Agreement.
14. **No Goods or Services Received by the County or EDA.** The Grant funds transferred by the EDA to the Developer pursuant to this Agreement are solely to enable the Developer to construct the enhanced Project elements and facilitate the location of a Primary Business within the Project. The descriptions of the services that the Developer will provide support the Grant's public and economic development purposes and are not a description of goods or services being procured by the EDA or the County.

15. **Non-severability.** If any provision of this Agreement is determined by a court having competent jurisdiction to be unenforceable to any extent, the entire Agreement is unenforceable.
16. **Governing Law and Venue.** This Agreement is to be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Albemarle or in the United States District Court for the Western District of Virginia. An action shall not be brought in any other court.
17. **Interpretation of this Agreement.** This Agreement shall be interpreted in accord with how any terms are defined in this Agreement and otherwise by applying the plain and natural meaning of the words used, and not for or against any party by reason of authorship.
18. **Dispute Resolution.** If there is a dispute of any kind between any parties arising under this Agreement, upon the written request of a party:
- a. **Designation of a Senior Representative; Negotiation.** Each of the parties to whom the dispute pertains will designate one or more senior representative to negotiate with the other parties' senior representative in good faith and as necessary to attempt to resolve the dispute without any formal proceedings.
 - b. **Corrective Action.** If the negotiated resolution of the dispute requires any party to take, cause to be taken, or cease taking some action or practice, that party shall do so within a reasonable period of time, not to exceed 90 days.
 - c. **Dispute Resolution Process a Prerequisite to Starting Court Proceedings.** No party may initiate court proceedings by filing an action in a court of competent jurisdiction to resolve a dispute until the earlier of: (i) a good faith mutual conclusion by the senior representatives that amicable resolution through continued negotiation of the dispute does not appear likely; or (ii) 90 days after the initial request to negotiate the dispute. After either condition has occurred, a party may file an action in the jurisdiction and venue provided in this Agreement and may pursue any other remedy available at law or in equity. Each party shall pay its own attorney's fees.
 - d. **When the Dispute Resolution Process is Not Required.** Nothing in this Section 7.13 will, however, prevent or delay a Party from instituting court proceedings to: (i) avoid the expiration of any applicable limitations period; or (ii) seek declaratory and injunctive relief.
19. **Relationship of Parties.** This Agreement is intended solely to establish the relative rights and obligations of the parties and does not create any type of partnership, joint venture, purchaser-vendor, or employer-employee relationship.

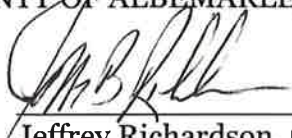
20. **No Third-Party Beneficiaries.** This Agreement does not confer any rights on any person or entity who is not a party, whether as a third-party beneficiary or otherwise.
21. **No Waiver of Sovereign Immunity or Other Immunities.** This Agreement and any action taken by the County, the EDA, or their respective Boards pursuant to this Agreement is not, and shall not construed to be, a waiver of either sovereign immunity or any other governmental immunity that applies to the County, the County's Board of Supervisors, the EDA, or the EDA's Board of Directors.
22. **Non-liability of County and EDA Officers and Employees.** No County Supervisor or other County officer or employee, and no EDA Director or other EDA officer or employee, shall be personally liable to the Developer if there is any default or breach by the County, the Board, the EDA, or the EDA's Board of Directors pursuant to this Agreement.
23. **Indemnification and Hold Harmless.** The Developer agrees to indemnify, hold harmless, and defend the County, the EDA, and their supervisors, officers, directors, agents, and employees from any and all liability, loss, damage, claims, causes of action, and expenses (including without limitation reasonable attorneys' fees), caused or asserted to have been caused, directly or indirectly, by the Developer in connection with the performance of this Agreement. This includes any act or omission of an officer, director, agent, employee, or representative of the Developer, its successors and assigns, to the extent that such liability or damage is caused in whole or in part by such party's default or breach, negligence, or intentional misconduct. The provisions of this section shall survive termination of this Agreement as to acts or omissions occurring prior to the effective date of termination.
24. **Force Majeure.** If any Party's timely performance of any obligation in this Agreement is interrupted or delayed by any occurrence that is not caused by the conduct of the officers or employees of either the County, the EDA, or the Developer, whether the occurrence is an "Act of God" such as lightning, earthquakes, floods, or other similar causes; a common enemy; the result of war, riot, strike, lockout, civil commotion, sovereign conduct, explosion, fire, or the act or conduct of any person or persons not a party to or under the direction or control of the County, the EDA, or the Developer, then performance is excused for a period of time that is reasonably necessary after the occurrence to remedy the effects thereof.
25. **Entirety of Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all oral discussions, agreement, or understanding.

[SIGNATURES PAGE FOLLOWS]

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

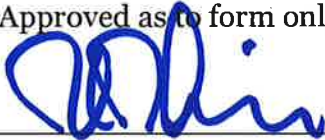
COUNTY OF ALBEMARLE, VIRGINIA

By:



Jeffrey Richardson, County Executive

Approved as to form only:



Greg Kamptner, County Attorney

ECONOMIC DEVELOPMENT
AUTHORITY OF ALBEMARLE COUNTY

By:



W. Rod Gentry, Chairman

ATTEST:



Secretary/Treasurer

5th STREET FOREST LLC

By:



Kyle Redinger, Manager

ALBEMARLE BUSINESS CAMPUS
PERFORMANCE AGREEMENT EXHIBIT

[illegible]