

ACTIONS

Board of Supervisors Meeting of September 12, 2018

September 13, 2018

<u>AGENDA ITEM/ACTION</u>	<u>ASSIGNMENT</u>	<u>VIDEO</u>
1. Call to Order. <ul style="list-style-type: none"> Meeting was called to order at 2:01 p.m., by the Chair, Ms. Mallek. All BOS members were present with the exception of Mr. Norman Dill. Also present were Claudette Borgersen, Greg Kamptner and Jeff Richardson. 		
2. Authorization to Execute Performance Agreements for Project Turtle and Daffodil. <ul style="list-style-type: none"> By a vote of 5:0 (Dill absent), ADOPTED resolution to approve the following agreements and to authorize the County Executive to execute the agreements on behalf of the County once they have been approved as to form and content by the County Attorney: <ul style="list-style-type: none"> Commonwealth's Development Opportunity Fund Performance Agreement Commonwealth's Development Opportunity Fund – Albemarle Match Performance Agreement Virginia Jobs Investment Program – Albemarle County Match Performance Agreement Albemarle County Public Infrastructure Investment Grant Performance Agreement By a vote of 5:0 (Dill absent), <ol style="list-style-type: none"> DIRECTED staff to: <ol style="list-style-type: none"> Finalize the transit partnership; and Initiate the Broadway Economic Redevelopment Corridor Study AUTHORIZED use of funds for those purposes. 	<u>Clerk:</u> Forward signed copy of Resolution to Economic Development and the County Attorney's office. (Attachment 1) <u>County Attorney:</u> Provide Clerk with fully executed copies of agreements. (Attachment 2) (Attachment 3) (Attachment 4) (Attachment 5)	Link to video
3. Proposed 2019 Legislative Priorities. <ul style="list-style-type: none"> HELD. 		
Note: Mr. Randolph left the meeting at 3:06 p.m., and Returned at 3:11 p.m.		
4. Work Session: ZTA 2017-01 Transient Lodging (aka - Homestays). <ul style="list-style-type: none"> HELD. 		
5. Work Session: Rio29 Small Area Plan. <ul style="list-style-type: none"> CONSENSUS to ENDORSE the Small Area Plan design concepts and DIRECTED staff to advance the presented information to a Comprehensive Plan Amendment. 	<u>Community Development:</u> Proceed as directed.	
6. Closed Meeting. <ul style="list-style-type: none"> At the 5:15 p.m., the Board went into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia: Under Subsection (1), to consider appointments to boards, committees, and commissions in which there are pending 		

	<p>vacancies or requests for reappointments; and</p> <ul style="list-style-type: none"> • Under Subsection (3), to discuss and consider the disposition of real property in the City of Charlottesville related to court facilities, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the County; and • Under Subsection (7), to consult with legal counsel and briefings by staff members pertaining to actual litigation between the Board and Route 29 LLC, where the consultation or briefing in an open meeting would adversely affect the negotiating or litigating posture of the County and the Board; and • Under Subsection (8), to consult with and be briefed by legal counsel and staff regarding specific legal matters requiring legal advice relating to the negotiation of an agreement for, and the possible relocation of, court facilities; and • Under Subsection (19), to discuss plans related to the security of the County Office Buildings. 	
7.	<p>Certify Closed Meeting.</p> <ul style="list-style-type: none"> • At 6:18 p.m., the Board reconvened into open meeting and certified the closed meeting. 	
7a.	<p>Boards and Commissions:</p> <ul style="list-style-type: none"> • APPOINTED, Supervisor Ned Gallaway to the Regional Housing Partnership. 	<p><u>Clerk:</u> Prepare appointment/reappointment letters, update Boards and Commissions book, webpage, and notify appropriate persons.</p>
11.	<p>Adoption of Final Agenda.</p> <ul style="list-style-type: none"> • By a vote of 5:0:1 (Dill absent), ADOPTED the final agenda as amended to include the addition of item 15.3a, Resolution Confirming the County Executive's Declaration of a Local Emergency (Hurricane Florence). 	
12.	<p>Brief Announcements by Board Members.</p> <p><u>Ned Gallaway:</u></p> <ul style="list-style-type: none"> • Announced that National Drug Takeback Day will be on September 27, 2018 from 10:00 a.m. to 2:00 p.m. at various locations. <p><u>Rick Randolph:</u></p> <ul style="list-style-type: none"> • Reported his attendance at the UVA Solar conference on September 12, 2018 and requested consideration for an annual breakdown by city and county of the level of megawatts of solar. <p><u>Ann Mallek:</u></p> <ul style="list-style-type: none"> • Announced that the 3rd Annual Rivanna River Renaissance Conference will be held on Friday September 28, 2018 from 10:00 a.m. to 3:00 p.m. at the Albemarle County Office Building. <p><u>Liz Palmer:</u></p> <ul style="list-style-type: none"> • Announced the Yancey Heritage and History Committee will be collecting history stories 	

	related to Yancey School on October 27, 2018 from 10:00 a.m. to 3:00 p.m.		
13.	<p>Proclamation Recognizing September 15, 2018 as Pride Festival Day.</p> <ul style="list-style-type: none"> By a vote of 5:0 (Dill absent), ADOPTED Proclamation and presented to Amy Marshall. 	(Attachment 6)	
14.	<p>From the Public: Matters Not Listed for Public Hearing on the Agenda.</p> <ul style="list-style-type: none"> <u>Jeff Hemanski</u>, resident of the Samuel Miller District, spoke towards Transient Lodging. <u>Joe Jones</u>, resident of the White Hall District, spoke towards the Jail Authority Board consideration of policy change for ICE notifications. <u>Walker Catlett</u>, a Charlottesville High School Student, informed the Board of bird deaths at the Brook's YMCA. 		
15.3a	<p>Resolution Confirming the County Executive's Declaration of a Local Emergency (Hurricane Florence).</p> <ul style="list-style-type: none"> By a vote of 5:0:1 (Dill absent), ADOPTED resolution. 	Clerk: Forward copy of signed resolution to County Attorney's office. (Attachment 7)	
16.	<p>Community Use of County Facilities.</p> <ul style="list-style-type: none"> CONSENSUS to consider for action at the October 3 regular day meeting. 	Clerk: Schedule on October 3 agenda.	
17.	<p><u>Pb. Hrg.: Community Development Block Grant - Southwood.</u></p> <ul style="list-style-type: none"> By a vote of 5:0 (Dill absent), ADOPTED resolution as amended. 	Clerk: Forward copy of signed resolution to Community Development and County Attorney's office. (Attachments 8)	
18.	<p><u>Pb. Hrg.: ZMA201700007 Hogwaller Farm.</u></p> <ul style="list-style-type: none"> By a vote of 5:0 (Dill absent), ADOPTED the Ordinance to approve ZMA201700007 with proffers. 	Clerk: Forward copy of signed ordinance to Community Development and County Attorney's office. (Attachment 9)	
19.	<p><u>Pb. Hrg.: Ordinance to Amend County Code Appendix A.1 (Acquisition of Conservation Easements (ACE) Program).</u></p> <ul style="list-style-type: none"> By a vote of 5:0 (Dill absent), ADOPTED the proposed amendments to the ACE Ordinance. 	Clerk: Forward copy of signed ordinance to Community Development and County Attorney's office. (Attachment 10)	
20.	<p><u>Pb. Hrg.: Yancey School Community Center Lease Agreement: Education Transformation Center.</u></p> <ul style="list-style-type: none"> By a vote of 5:0 (Dill absent), ADOPTED resolution to approve a lease agreement with the Education Transformation Centre. 	<p>Clerk: Forward copy of signed resolution to Facilities and Environmental Services and County Attorney's office. (Attachment 11)</p> <p><u>County Attorney:</u> Provide Clerk with fully executed copy of agreement. (Attachment 12)</p>	
	<p>Recess.</p> <ul style="list-style-type: none"> At 9:29 p.m., the Board recessed and reconvened at 9:50 p.m. 		
21.	<p><u>Pb. Hrg.: SP 2017-26 - Western Albemarle High School Tier III.</u></p> <ul style="list-style-type: none"> By a vote of 4:1:1 (Mallek) (Dill absent), ADOPTED resolution to approve SP 2017-26. Motion to reconsider passed by a vote of 5:0 (Dill absent). 	<p>Clerk: Forward copy of signed resolution to Community Development and County Attorney's office.</p> <p>(Attachment 13)</p>	

<ul style="list-style-type: none"> • By a vote of 4:1:1 (Mallek) (Dill absent), ADOPTED resolution to approve SP 2017-26 as amended. • By a vote of 5:0 (Dill absent), ADOPTED resolution to approve special exception for SP 2017-26. • Motion to reconsider the first special exception passed by a vote of 5:0 (Dill absent). • By a vote of 5:0 (Dill absent), ADOPTED resolution to approve special exception for SP 2017-26 as revised. • By a vote of 5:0 (Dill absent), ADOPTED resolution to approve special exception for critical slopes waiver. • By a vote of 5:0, ADOPTED resolution to approve special exception for antenna size. • Motion to reconsider the special exception for antenna size passed by a vote of 4:1:1 (Palmer) (Dill absent). • By a vote of 4:1:1 (Palmer) (Dill absent), ADOPTED resolution to approve special exception for antenna size as revised. 	<p>(Attachment 14)</p> <p>(Attachment 15)</p> <p>(Attachment 16)</p>	
<p>22. From the Board: Committee Reports and Matters Not Listed on the Agenda. <u>Diantha McKeel:</u></p> <ul style="list-style-type: none"> • Requested that the Board have a future discussion around the definition of “Farm-to-Table”. <p><u>Ann Mallek:</u></p> <ul style="list-style-type: none"> • Requested a future discussion about zero lot line for established residential neighborhoods. 		
<p>19. From the County Executive: Report on Matters Not Listed on the Agenda.</p> <ul style="list-style-type: none"> • There were none. 		
<p>21. Adjourn to September 27, 2018, 3:00 p.m., Lane Auditorium.</p> <ul style="list-style-type: none"> • The meeting was adjourned at 10:50 p.m. 		

ckb/tom

Attachment 1 – Resolution to Approve the Agreements for the Relocation and Expansion of Willowtree, Inc.

Attachment 2 – Commonwealth’s Development Opportunity Fund Performance Agreement

Attachment 3 – Commonwealth’s Development Opportunity Funding: Albemarle Match Performance Agreement

Attachment 4 – Virginia Jobs Investment Program: Albemarle County Match Performance Agreement

Attachment 5 – Albemarle County Public Infrastructure Investment Grant Performance Agreement

Attachment 6 – Proclamation Recognizing September 15, 2018 as Pride Festival Day.

Attachment 7 – Resolution Confirming the County Executive’s Declaration of a Local Emergency (Hurricane Florence)

Attachment 8 – Community Development Block Grant Resolution

Attachment 9 – Ordinance No. 18-A(5) ZMA 2017-07 Hogwaller Farm

Attachment 10 – Ordinance No. 18-A.1(1)

Attachment 11 – Resolution Approving the Agreement of Lease Between the County of Albemarle and the Education Transformation Center

Attachment 12 – Agreement of Lease (Yancey)

Attachment 13 – Resolution to Approve SP 2017-26 Western Albemarle High School – Tier III Personal Wireless

Attachment 14 – Resolution to Approve Special Exception for SP 2017-26 Western Albemarle High School

Attachment 15 – Resolution to Approve Special Exception for 2017-26 Western Albemarle High School (Critical Slopes)

Attachment 16 – Resolution to Approve Special Exception for 2017-26 Western Albemarle High School (Antenna Size)

ATTACHMENT 1

**RESOLUTION TO APPROVE THE AGREEMENTS FOR THE
FOR THE RELOCATION AND EXPANSION OF WILLOWTREE, INC.**

WHEREAS, the Board of Supervisors finds that it is in the best interest of the County to enter into the following Agreements for the relocation and expansion of WillowTree, Inc., to become the anchor tenant in a redeveloped Woolen Mills site:

- Commonwealth's Development Opportunity Fund Performance Agreement
- Commonwealth's Development Opportunity Fund – Albemarle Match Performance Agreement
- Virginia Jobs Investment Program – Albemarle County Match Performance Agreement
- Albemarle County Public Infrastructure Investment Grant Performance Agreement

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Albemarle County, Virginia hereby approves the above-referenced Agreements and authorizes the County Executive to execute the Agreements on behalf of the County once they have been approved as to substance and form by the County Attorney.

COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this ____ day of September, 2018, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **WILLOWTREE, INC.** (the "Company"), a Virginia corporation, the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth, and the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY ("VEDP")**, a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$500,000 from the Commonwealth's Development Opportunity Fund (a "COF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to relocate a portion of its mobile application product development operations, lease and improve a building, and equip and operate a mobile application product development facility in the Locality (the "Facility"), thereby making a significant Capital Investment, relocating and retaining a significant number of Baseline Jobs to the Facility, and creating and Maintaining a significant number of New Jobs at the Facility, as such capitalized terms are hereinafter defined;

WHEREAS, the Locality is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company promises to meet certain criteria relating to Capital Investment, Baseline Jobs and New Jobs;

WHEREAS, the Locality, the Authority, the Company, and VEDP desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, the obligations of the Company regarding Capital Investment, Baseline Jobs, and New Jobs, and the repayment by the Company of all or part of the COF Grant under certain circumstances;

WHEREAS, the relocation, lease, improvement, equipping, and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$12,302,000, of which approximately \$2,802,000 will be invested in furniture, fixtures and equipment and approximately \$9,500,000 be invested in the renovation and up-fit of the building;

WHEREAS, the relocation, lease, improvement, equipping, and operation of the Facility will further entail the relocation to and retention of 160 Base Jobs, as such capitalized term is hereinafter defined, and the creation and Maintenance of 200 New Jobs at the Facility

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment, Baseline Jobs, and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Definitions.

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

“Baseline Job” means an existing full-time position at the Company’s facility in Charlottesville, Virginia (“Charlottesville Facility”) as of December 31, 2017. One hundred and sixty (160) Baseline Jobs are expected to be relocated from the Charlottesville Facility and retained at the Facility.

“Capital Investment” means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility. A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of the Company” if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least seven years, and the real property would not have been constructed or improved but for the Company’s interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as “Capital Investment.” The purchase or lease of furniture, fixtures and equipment, including under an operating lease, and expected building renovation and up-fit by or on behalf of the Company will qualify as Capital Investment. The Capital Investment must be in addition to the capital improvements at the Facility as of December 31, 2017.

“Maintain” means that the New Jobs will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least \$80,000. Average annual wage means the average annual salary of full-time positions at the Facility, determined by dividing total payroll (of a type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions at the Facility. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the

Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth (except for the expected shift of positions between the Facility and the Charlottesville Facility), and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the 160 Baseline Jobs.

"Performance Date" means March 31, 2023. The Performance Date is not subject to extension.

"Targets" means the Company's obligations to make Capital Investments at the Facility of at least \$12,302,000, to relocate and retain 160 Baseline Jobs, and to create and Maintain at least 200 New Jobs at the Facility, all as of the Performance Date.

"Virginia Code" means the Code of Virginia of 1950, as amended.

Section 2. Targets; Statutory Criteria.

(a) *Targets:* The Company will lease, improve, equip, and operate the Facility in the Locality, will make a Capital Investment of at least \$12,302,000, relocate and retain 160 Baseline Jobs, and create and Maintain at least 200 New Jobs at the Facility, all as of the Performance Date.

(b) *MEI Project Approval Commission:* Pursuant to Virginia Code Sections 2.2-115 and 30-310, the MEI Project Approval Commission ("MEI Commission") must review economic development incentive packages in which a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality. The MEI Commission has reviewed and approved the state-level incentives offered in conjunction with the Company's Capital Investment, the relocation and retention of 160 Baseline Jobs, and the creation and Maintenance of 200 New Jobs at the Facility.

(c) *Relocation:* The Commonwealth's Secretary of Commerce and Trade has delivered to the Co-Chairs of the Senate Finance Committee and the Chair of the House Appropriations Committee a letter indicating that, although the Company is relocating a portion of its mobile application product development operations from Charlottesville, Virginia ("Charlottesville") to the Locality, the reasons for the move and the desire to retain the Company's operations in Virginia justify the use of incentives to move such facility from one Virginia locality to another. The Locality and VEDP have informed Charlottesville of the move and of the use of incentives. Charlottesville has indicated to VEDP that it is supportive of these efforts.

(d) *Encouragement to Offer New Jobs to Residents of the Commonwealth:* The Locality, the Authority, and the Locality hereby strongly encourage the Company to ensure that at least 30% of the New Jobs are offered to "Residents" of the Commonwealth, as defined in

Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

(e) *Prevailing Wage; Unemployment and Poverty Rates:* The average annual wage of the New Jobs of at least \$80,000, is more than the prevailing average annual wage in the Locality of \$53,374. The Locality is not a high-unemployment locality, with an unemployment rate for 2017, which is the last year for which such data is available, of 3.3% as compared to the 2017 statewide unemployment rate of 3.8%. The Locality is not a high-poverty locality, with a poverty rate for 2016, which is the last year for which such data is available, of 8.5% as compared to the 2016 statewide poverty rate of 11.0%.

(f) *Disclosure of Political Contributions:* The Company acknowledges that the name of the Company will be shared by VEDP with the Governor of Virginia, and any campaign committee or political action committee associated with the Governor. The Company acknowledges that within 18 months of the date of this Performance Agreement, the Governor, his campaign committee, and his political action committee will submit to the Virginia Conflict of Interest and Ethics Advisory Council a report listing any contribution, gift, or other item with a value greater than \$100 provided by the Company to the Governor, his campaign committee, or his political action committee, respectively, during the period from the date of the Company's application for the COF Grant through the one-year period immediately after the date of this Agreement.

Section 3. Disbursement of COF Grant.

(a) *Disbursement of the COF Grant:* By execution and delivery of this Agreement, the Locality requests that the COF Grant be disbursed to it. VEDP will promptly arrange for the payment of the \$500,000 COF Grant to the Locality.

The disbursement of the COF Grant proceeds to the Company will serve as an inducement to the Company to achieve the Targets at the Facility.

The COF Grant proceeds shall be retained by the Locality and shall be disbursed in two payments as follows:

First Payment: The Company will provide notice and evidence reasonably satisfactory to the Locality, the Authority, and VEDP that it has received a Certificate of Occupancy for the Facility. Such evidence will be subject to verification by the Locality and VEDP. Within 30 days of the verification, the Locality will disburse \$250,000 of the COF Grant proceeds to the Authority. Within 30 days of its receipt of such COF Grant proceeds, the Authority will disburse such COF Grant proceeds to the Company.

Second Payment: The Company will provide notice and evidence reasonably satisfactory to the Locality, the Authority, and VEDP that it has made Capital Investments of at least \$10,900,000 at the Facility and created at least 100 New Jobs at the Facility as of the date of such notification and evidence and that it will Maintain these positions. Such evidence will be subject to verification by the Locality and VEDP. Within 30 days of the verification, the Locality will disburse the remaining \$250,000 of the COF Grant proceeds to the Authority. Within 30 days of its receipt of such COF Grant proceeds, the Authority will disburse such COF Grant proceeds to the Company.

If any COF Grant proceeds have not been disbursed to the Company within 90 days after the Performance Date, the Locality shall return such proceeds to VEDP for redeposit to the Commonwealth's Development Opportunity Fund.

(b) *Use of the COF Grant Proceeds:* The Company will use the COF Grant proceeds to pay or reimburse for the costs of build-out at the Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

Section 4. Break-Even Point; State and Local Incentives.

(a) *State-Level Incentives:* VEDP has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to the COF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
COF Grant	\$ 500,000
Virginia Jobs Investment Program ("VJIP") (Estimated)	200,000
Virginia Economic Development Incentive Grant ("VEDIG") (Estimated)	1,500,000

The proceeds of the COF Grant shall be used for the purposes described in Section 3(b). The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. The proceeds of the VEDIG may be used by the Company for any lawful purpose.

(b) *Locality-Level Incentives:* The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility by the Performance Date:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Property Tax Grant and Business License Grant (Estimated)	\$ 500,000

If, by the Performance Date, the proceeds of the Property Tax Grant and Business License Grant, as well as the value of the Workforce Development Matching Funds, disbursed or committed to be disbursed by the Locality to the Company total less than the \$500,000 COF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference at the Performance Date, so long as the Company has met its Targets.

The proceeds of the Property Tax Grant and the Business License Grant may be used by the Company for any lawful purpose. The Workforce Development Matching Funds shall be used as matching funds for VJIP funding provided to the Company and will reflect cost savings to the Company.

(c) *Other Incentives:* This Agreement relates solely to the COF Grant. The qualification for, and payment of all State-Level Incentives and Locality-Level Incentives, except for the COF Grant, will be governed by separate arrangements between the Company and the entities offering the other incentives.

Section 5. Company Reporting.

(a) *Progress Reporting:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit A, detailed information reasonably satisfactory to the Locality, the Authority, and VEDP of the Company's progress on the Targets. Such progress reports shall be filed annually, starting at March 31, 2019, and covering the period through the prior December 31. Further, the Company shall provide such progress reports at such other times as the Locality, the Authority or VEDP may reasonably require.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax or related pass-through taxes paid by its members. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

(b) *Final Report:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit B, detailed information reasonably satisfactory to the Locality, the Authority, and VEDP of the Company's achievement of the Targets. The final report shall be filed at March 31, 2023.

Section 6. Verification of Targets.

(a) *Verification of Capital Investment:* The Company hereby authorizes the Locality, including the Locality's Director of Finance, to release to VEDP the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If the Locality or the Director of Finance should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality, the Authority, or VEDP may request. In accordance with Virginia Code Section 58.1-3122.3, VEDP is entitled to receive the Company's real estate tax, business personal property tax and machinery and tools tax information from the Locality's Director of Finance.

In addition to the verification data described above, in the sole discretion of the Locality, the Authority, or VEDP, the Locality, the Authority or VEDP, respectively, may require such other documentation, including invoices, or audits as may be required to properly verify the Capital Investment.

(b) *Verification of New Jobs and Wages:* The Company must submit a copy of its four most recent Employer's Quarterly Tax Report (Form FC-20) with the Virginia Employment Commission with the final report. The form shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the New Jobs Target. In accordance with Virginia Code Section 60.2-114, VEDP is entitled to receive the Company's employment level and wage information from the Virginia Employment Commission ("VEC")

Should the Company ever have business locations in the Commonwealth outside of the Locality and Charlottesville, the Company agrees that it will report to the VEC with respect to its employees at those other locations at the facility-level and not at the company-level.

In addition to the verification data described above, in the sole discretion of the Locality, or of the Authority, or of VEDP, the Locality, the Authority, or VEDP, respectively, may require such other documentation or audits as may be required to properly verify the New Jobs.

Section 7. Repayment Obligation.

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least \$5,000,000 in the Facility and create and Maintain at least 50 New Jobs at the Facility in order to be eligible for the COF Grant. Failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the Company must repay to the Authority all of the COF Grant proceeds previously disbursed to the Company. In such event, the Locality will repay to VEDP all of the COF Grant proceeds not previously disbursed to the Company.

(b) *Allocation of COF Proceeds:* For purposes of repayment under subsection (c), the COF Grant is to be allocated as 50% (\$250,000) for the Company's Capital Investment Target, and 50% (\$250,000) for the Company's New Jobs Target.

(c) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (c) shall become applicable only if the Company has met the statutory minimum eligibility requirements set forth in subsection (a). If the Company has met at least 90% of both of the Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion the COF Grant. If the Company has not met at least 90% of either or both of its Targets as of the Performance Date, the Company shall repay to the Authority that part of the COF Grant previously disbursed to the Company that is proportional to the Target or Targets for which there is a shortfall. For example, if as of the Performance Date, the entire \$500,000 COF Grant has been paid to the Company, but the Capital Investment is only \$9,226,500 (reflecting achievement of 75% of the Capital Investment Target), and only 150 New Jobs have been created and Maintained (reflecting achievement of 75% of the New Jobs Target), the Company shall repay to the Authority 25% of the moneys allocated to the Capital Investment Target (\$62,500) and 25% of the moneys allocated to the New Jobs Target (\$62,500). In such event, the Locality will repay to VEDP all of the COF Grant proceeds not previously disbursed to the Company.

(d) *Determination of Inability to Comply:* If the Locality or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay to the Authority all of the COF Grant proceeds previously disbursed to the Company. In such event, the Locality will repay to VEDP all of the COF Grant proceeds not previously disbursed to the Company. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the COF Grant.

(e) *Repayment Dates:* ***Such repayment shall be due from the Company to the Authority within ninety days of the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality and shall be repaid by the Locality promptly to VEDP for redeposit into the Commonwealth's Development Opportunity Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums payable by the Company hereunder unless said sums have been received by the Authority from the Company.

(f) *Failure to Repay:* If any repayment due pursuant to this Section 7 is not made by the Company when due, the Board of Directors of VEDP (the "Board") may determine that further

collection action is required, and the Board may refer the matter to the Office of the Attorney General (the "OAG") for collection pursuant to Section 2.2-518 of the Virginia Code. In such event, by their signatures below, the Locality and the Authority will be deemed to have assigned to the Commonwealth all of their rights, title and interest in and to this Section 7. In any matter referred to the OAG for collection, the Company shall be liable to pay interest, administrative charges, attorney fees and other applicable fees. Interest on any outstanding repayment referred to the OAG shall accrue at the rate set forth in Section 6.2-301 A. of the Virginia Code (currently 6.0% per year) for the period from the Performance Date or the Determination Date, as applicable, until paid.

Section 8. Notices.

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

if to the Company, to:

WillowTree, Inc.
Facsimile: 866 530 9107
Email: michael.signer@willowtreeapps.com
Attention: Michael Signer, VP and General Counsel

with a copy to:

WillowTree, Inc.
Facsimile: 866 530 9107
Email: abby.cook@willowtreeapps.com
Attention: Abby Cook, Controller

if to the Locality, to:

County of Albemarle, Virginia
401 McIntire Road
Charlottesville, VA 22902
Facsimile: 434-296-5841
Email: jrichardson@albemarle.org
Attention: Jeffrey Richardson, County Executive

with a copy to:

County of Albemarle, Virginia
401 McIntire Road
Charlottesville, VA 22902
Facsimile: 434-972-4068
Email: gkamptner@albemarle.org
Attention: Greg Kamptner, County Attorney

if to the Authority, to:

with a copy to:

Economic Development Authority of
Albemarle County, Virginia
401 McIntire Road
Charlottesville, VA 22902
Attention: Chair, EDA

if to VEDP, to:

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smoret@vedp.org
Attention: President and CEO

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smcninch@vedp.org
Attention: General Counsel

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the COF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto and consented to by VEDP. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court.

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

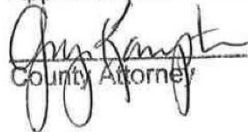
(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original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

(e) *Attorney's Fees:* Except as provided in Section 7(f), attorney's fees shall be paid by the party incurring such fees.


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

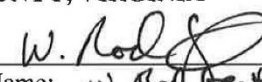
Approved as to form:


County Attorney

**COUNTY OF ALBEMARLE,
VIRGINIA**

By 
Name: JEFFREY B. RICHARDSON
Title: COUNTY EXECUTIVE
Date: 9/13/18

**ECONOMIC DEVELOPMENT
AUTHORITY OF ALBEMARLE
COUNTY, VIRGINIA**

By 
Name: W. Rod Gentry
Title: Chairman
Date: 9/18/18

WILLOWTREE, INC.

By _____
Name: Tobias Dengel
Title: CEO
Date: _____

**VIRGINIA ECONOMIC
DEVELOPMENT PARTNERSHIP
AUTHORITY**

By _____
Name: _____
Title: _____
Date: _____

Exhibit A: Annual Progress Report Form
Exhibit B: Final Report Form

**ANNUAL PROGRESS REPORT
COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND**

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Reporting Period	
Performance Date	

PROJECT PERFORMANCE:

Performance Measurement	Target	As of _____	% Complete
New Jobs (over ____ baseline) ¹			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Capital Investment (provide breakdown below) ²			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Average Annual Wage			N/A
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Standard Fringe Benefits (check one)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A
Virginia Corporate Income Tax Paid in Prior Calendar Year ³	\$ _____		

¹Data will be verified using Virginia Employment Commission records.

²Data will be verified with locality records.

³This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA.

Capital Investment Breakdown	Amount
Land	\$
Land Improvements	\$
New Construction or Expansion	\$
Renovation or Building Upfit	\$
Production Machinery and Tools	\$
Furniture, Fixtures and Equipment	\$
Other	
Total	\$

COMMENTS:

Discuss project status, including the current level of new jobs and capital investment, progress on targets, changes or likely changes in project's nature that may impact achievement of targets, and other information relevant to project performance. If the project is not on track to meet targets, please provide an explanation.

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Company: _____
Submitted By: _____
Signature of Official
Name: _____
Print Name
Title: _____
Date: _____

Please return to: Kim Ellett, Incentives Coordinator, Virginia Economic Development Partnership, 804-545-5618, kelleth@vedp.org

FINAL REPORT COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Date	

PROJECT PERFORMANCE:¹

Performance Measurement	Target	As of March 1, 2021	% Complete
New Jobs (over __ baseline) ²			
Capital Investment (provide breakdown below) ³			
Average Annual Wage			N/A
Standard Fringe Benefits			
Virginia Corporate Income Tax Paid in Prior Calendar Year ⁴	\$		

Capital Investment Breakdown	Amount
Land	\$
Land Improvements	\$
New Construction or Expansion	\$
Renovation or Building Upfit	\$
Production Machinery and Tools	\$
Furniture, Fixtures and Equipment	\$
Other	
Total	\$

¹Final, actual performance will be reported on VEDP's public reporting website.

² Attach the company's four most recent Quarterly Tax Report (Form FC-20) filed with the Virginia Employment Commission.

³ Data will be verified using records from the Commissioner of the Revenue and invoices.

⁴This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA

LOCAL MATCH:

Goal	
Actual	

COMMENTS:

Discuss Project status or the important of the Project to the locality and region.

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Company: _____
Submitted By: _____
Signature of Official
Name: _____
Print Name
Title: _____
Date: _____

Please return to: Kim Ellett, Incentives Coordinator, Virginia Economic Development Partnership, 804-545-5618, kelllett@vedp.org

PERFORMANCE AGREEMENT

This Performance Agreement made and entered into this 18th day of September 2018, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (hereinafter the "County"), a political subdivision of the Commonwealth of Virginia, **WILLOWTREE, INC.**, (hereinafter the "Company") a Virginia corporation, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**, (hereinafter the "Authority"), a political subdivision of the Commonwealth of Virginia.

WITNESSETH:

WHEREAS, the Commonwealth of Virginia will grant the Company a Commonwealth Opportunity Fund of five hundred thousand dollars (\$500,000.00) contingent upon the County providing a sum that equals the Commonwealth's grant; and

WHEREAS, the County is willing to provide funds (hereinafter "County Grant") to the Authority as its local match to the Commonwealth Opportunity Fund with the expectation that the Authority will provide the monies to the Company; provided that the Company meets its lease obligation and workforce location commitment pursuant to this Agreement; and

WHEREAS, the County, the Authority, and the Company desire to set forth their understanding and agreement as to the payout of the County Grant, the lease obligation and the workforce location commitment of the Company, and the termination of all or part of the County Grant under certain circumstances; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Company's location in the County constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the County Grant.

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

Section 1. Lease Obligation and Workforce Location Commitment.

Lease Obligation. The Company will lease and occupy at least forty thousand (40,000) square feet of real property at 2100 East Market Street, Albemarle County Tax Map Parcel 07800-00-00-021B0, located in Albemarle County, Virginia (hereinafter the "Property") beginning for a period of at least five (5) years after the issuance date of the certificate of occupancy for the Property. For purposes of this Agreement, this leasing arrangement shall be referred to as the "Lease Obligation".

Workforce Location Commitment. The Company agrees that seventy-five percent (75%) of its full-time Virginia employees shall work at the Property at all times for at least five (5) years after the issuance date of the certificate of occupancy for the Property. For purposes of this

Agreement, a full-time employee shall be defined as an employee that is employed by the Company at least i) 35 hours per week for at least 48 weeks per year, or ii) one thousand, six hundred and eighty (1,680) hours in a calendar year. For purposes of this Agreement, this workforce arrangement shall be known as the "Workforce Location Commitment".

Section 2. Refund of Business License and Real Estate Taxes.

The County agrees to appropriate a grant to the Authority on an annual basis in an amount equal to fifty percent (50%) of the business license tax that the Company pays to the County pursuant to Albemarle County Code §8-100, et seq. (hereinafter "BPOL tax refund grant").

The County agrees to appropriate a grant to the Authority on an annual basis in an amount equal to fifty percent (50%) of the difference between the annual real estate tax levied upon the Property after the certificate of occupancy is issued to the Company and the real property taxes levied upon the Property in the year preceding the execution of this agreement that are paid to the County pursuant to Albemarle County Code Chapter 15 (hereinafter "real property tax refund grant").

The County agrees to appropriate the BPOL tax refund grant and the real property tax refund grant on an annual basis to the Authority before June 30 of the applicable calendar year.

The Authority agrees to disburse the BPOL tax refund grant and the real property tax refund grant to the Company within thirty (30) days of receipt from the County.

In no event shall the annual sum of the BPOL tax refund grant and the real property tax refund grant equal a sum of less or more than one hundred thousand dollars (\$100,000.00) regardless of the amount of business license taxes paid by the Company and real property taxes levied upon the Property.

If, at the end of the term of this agreement, the total annual sums of the BPOL tax refund grant and the real property tax refund grant (hereinafter "total rebated tax liability") exceed five hundred thousand dollars (\$500,000.00), the County agrees to make a grant to the Authority in the amount of the difference between the total rebated tax liability and \$500,000.00 (hereinafter "final payment").

The Authority agrees it will disburse the final payment to the Company within thirty (30) days of receipt from the County.

Section 3. Termination.

If, at any time during the term of this Agreement, the Company fails to meet the Lease Obligation or the Workforce Location Commitment or both, this Agreement shall automatically terminate. The Company shall not receive any payments pursuant to Section 2 of this Agreement after the date of termination.

The Company agrees to notify the County within seven (7) calendar days of its inability to meet its Lease Obligation or Workforce Location Commitment or both.

If, at any time during the term of this Agreement, the Company fails to pay any taxes due to the County, the County shall notify the Company of its overdue tax liability. The County shall provide the Company thirty (30) days from receipt of the notice to pay any overdue taxes to the County. If the Company does not pay the overdue taxes to the County at the expiration of the 30 day curative period, this Agreement shall automatically terminate, and the Company shall not receive any payments pursuant to Section 2 of this Agreement after the date of termination.

Section 4. Company Reporting.

The County's Chief Finance Officer will submit requests for information to the Company concerning its lease status and the geographic location of the Company's full-time employees. The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the County and the Authority that the Company is fulfilling its Workforce Location Commitment and its Lease Obligation. Upon submission of the County's request for information, the Company shall respond to the request within thirty (30) days. These requests for information will be submitted to the Company at such times as the County or Authority may require.

Section 5. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return or certified mail or overnight courier package not accepted by the addressee):

If to the Company, to:

WillowTree, Inc.
2100 East Market Street
Charlottesville, Virginia 22902
Attention: Tobias Dengel

With a copy to:

WillowTree, Inc.
2100 East Market Street
Charlottesville, Virginia 22902
Attention:

If to the County, to:

Albemarle County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Jeff Richardson

Albemarle County Finance Department
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Bill Letteri

If to the Authority, to:

Economic Development Authority
Albemarle County

Economic Development Authority
Albemarle County

401 McIntire Road
Charlottesville, Virginia 22902
Attention: Rod Gentry, Chair

401 McIntire Road
Charlottesville, Virginia 22902
Attention: Roger Johnson

Section 6. Miscellaneous.

A. *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the COUNTY Grant and may not be amended or modified, except in writing, signed by each of the parties. This Agreement shall be binding upon and inure to the benefits of the parties and their respective successors and assigns. The Company may not assign its rights and obligations pursuant to this Agreement without the prior written consent of the County and the Authority.

B. *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of Albemarle County, and such litigation shall be brought only in that court.

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

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


E. *Term:* This agreement shall run for a period of five calendar years from the issuance date of a certificate of occupancy for the Property.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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

COUNTY OF ALBEMARLE, VIRGINIA

Approved as to form:


County Attorney

By: 
Jeffrey Richardson, County Executive

Date: 9/13/18

**ECONOMIC DEVELOPMENT AUTHORITY
OF ALBEMARLE COUNTY, VIRGINIA**

By: 
W. Rod Gentry, Chairman

Date: 9/18/18

WILLOWTREE, INC.

By: 
Tobias Dengel, CEO

Date: August 10, 2018

**ECONOMIC OPPORTUNITY FUND
PERFORMANCE AGREEMENT**

This Performance Agreement made and entered into this 18th day of September, 2018, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (hereinafter the "County"), a political subdivision of the Commonwealth of Virginia, **WOOLEN MILLS LLC**, (hereinafter the "Company") a Virginia limited liability company, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**, (hereinafter the "Authority"), a political subdivision of the Commonwealth of Virginia.

WITNESSETH:

WHEREAS, Company is the owner and developer of the property located at 2100 East Market Street and known as Albemarle County Tax Map and Parcel No. 07800-00-00-021B0 (the "Property");

WHEREAS, the County is willing to provide one million dollars (hereinafter "County Grant") to the Authority from the County's Economic Opportunity Fund with the expectation that the Authority will provide the monies to the Company subject to the requirements set forth herein that the Company meet its public parking obligation, transit obligation, and pedestrian bridge and trail construction obligation pursuant to this Agreement; and

WHEREAS, the County, the Authority, and the Company desire to set forth their understanding and agreement as to the payout of the County Grant, the parking, transit, and pedestrian bridge and trail construction obligations of the Company, and the termination of all or part of the County Grant under certain circumstances; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Company's location in the County constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the County Grant.

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

Section 1. Parking and Trail Construction Obligations.

Parking Obligation. The Company shall execute, subject to the County Attorney's approval, an agreement allowing the County and members of the public access to and exclusive use of ten (10) parking spaces on the Property (the "Parking Spaces") by December 31, 2019. The exact location of the Parking Spaces and route of access thereto shall be determined by the Company in consultation with the County, including without limitation, Parks and Recreation and Facilities and Environmental Services staff.

Pedestrian Bridge and Trail Construction Obligation. The Company shall provide an easement of adequate area for the construction of a Class A Trail, as defined in the Albemarle County Design Standards Manual, including construction of a pedestrian bridge over Moore's

Creek, providing a public pedestrian connection between the Property and Albemarle County Tax Map Parcel 07800-00-00-022A0. Parks and Recreation and Facilities and Environmental Services staff from the County will participate on the project team for design and precise location of the bridge and trail. Final design of the pedestrian bridge and trail connections must be approved by the County Department of Parks and Recreation and the County Engineer before construction of the pedestrian bridge and trail by the Company commences. The County Engineer shall review and approve all plans for the trail's construction before construction of the trail commences. Upon inspection and final approval by the County Engineer, the Company shall execute a deed of dedication and easement to the County. The deed of dedication and easement shall be in a form acceptable to the County Attorney.

Transit Obligation. The Company shall pay a maximum of forty thousand dollars (\$40,000.00) to the County to fulfill the first year of a five-year County obligation to fund a transit service to the Property to the extent such payment is required by a future three party agreement between WillowTree, Inc., the Company, and the County.

Section 2. County Grant

The County agrees to appropriate a grant to the Authority in the amount of one million dollars (\$1,000,000.00) within thirty days of this Agreement's execution. The Authority agrees to pay the \$1,000,000.00 to the Company within thirty days of receiving the appropriation from the County.

The Company agrees that it will use the grant funds to fulfill its parking and pedestrian bridge and trail construction and transit partnership obligations.

Section 3. Clawback

Unless otherwise mutually agreed upon in writing, the Company agrees that it will fulfill its parking, transit, and pedestrian bridge and trail construction obligations by December 31, 2019. If the Company has not fully achieved the parking, transit, and pedestrian bridge and trail construction obligations by December 31, 2019, the Company shall repay the Authority the sum of \$1,000,000.00, and the Authority shall return that sum to the County within 30 days after the Authority receives the repaid sum from the Company.

Section 4. Company Inspections.

The Company shall permit the County Engineer to inspect the construction of the trail and bridge after receiving twenty-four (24) hours' notice from the County.

Section 5. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return or certified mail or overnight courier package not accepted by the addressee):

If to the Company, to:

Woolen Mills LLC
Attention: Brian H. Roy
1012-C Druid Ave
Charlottesville, VA 22902

With a copy to:

Peter J. Caramanis, Esq.
Royer, Caramanis & McDonough, PLC
200-C Garrett St.
Charlottesville, VA 22902

If to the County, to:

Albemarle County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Jeff Richardson

If to the Authority, to:

Economic Development Authority
Albemarle County
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Rod Gentry, Chair

Section 6. Miscellaneous.

A. *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the County Grant and may not be amended or modified, except in writing, signed by each of the parties. This Agreement shall be binding upon and inure to the benefits of the parties and their respective successors and assigns. The Company may not assign its rights and obligations pursuant to this Agreement without the prior written consent of the County and the Authority.

B. *Dispute Resolution:* If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and if the dispute is not settled through negotiation in 30 days; the parties agree first to try in good faith to settle the dispute by mediation, also within 30 days; before resorting to litigation. In the event that parties are unable to agree on a mediator, an experienced mediator shall be randomly selected. The mediation process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

C. *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of Albemarle County, and such litigation shall be brought only in that court.

D. *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be the same instrument. A scanned or electronic signature shall be as effective as an original.

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

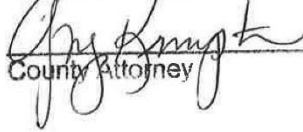
F. *Term:* This agreement shall run from September 18, 2018 to February 28, 2020.


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

COUNTY OF ALBEMARLE, VIRGINIA


Approved as to form:


County Attorney

By: 
Jeffrey Richardson, County Executive

Date: 9/18/18

**ECONOMIC DEVELOPMENT AUTHORITY
OF ALBEMARLE COUNTY, VIRGINIA**

By: 
W. Rod Gentry, Chairman

Date: 9/18/18

WOOLEN MILLS LLC

By: 
Brian H. Roy, Manager

Date: 9/18/18

THIS AGREEMENT is made and entered into on the 18th day of September, 2018, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (hereinafter "the County"), a political subdivision of the Commonwealth of Virginia, **WILLOWTREE, INC.** (hereinafter "the Company"), a Virginia corporation, and the **ALBEMARLE COUNTY ECONOMIC DEVELOPMENT AUTHORITY** (hereinafter "the EDA"), a political subdivision of the Commonwealth of Virginia.

WITNESSETH:

WHEREAS, the Company is participating in the Virginia Jobs Investment Program New Jobs Program (hereinafter "VJIP") with the Commonwealth of Virginia; and

WHEREAS, VJIP has agreed to provide the Company with one thousand dollars (\$1,000.00) for every new full-time job created by the Company that is filled for ninety (90) consecutive days in order to reduce the Company's human resources costs; and

WHEREAS, the County is willing to provide Economic Opportunity Fund monies (hereinafter "EOF Grant") to the EDA in order to provide half of a local match to VJIP with the expectation that the EDA will provide the monies to the Company upon successful completion of the Company's obligations pursuant to this Agreement; and

WHEREAS, the EDA is willing to provide a portion of its own funds to the Company in order to provide half of a local match to VJIP (hereinafter "EDA Match"); and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Company's creation of new full-time jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose of the EOF Grant and the EDA Match.

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

Section 1. Definition. For purposes of this agreement, a "new full-time job" must require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year.

Section 2. Company Obligations. The Company is participating in the Virginia Jobs Investment Program New Jobs Program with the Commonwealth of Virginia. In order to receive an economic incentive payment from the Commonwealth, the Company is required to present a

“Virginia Jobs Investment Reimbursement Request Form” (hereinafter “the Form”) to the Commonwealth.

The Company agrees to provide the County and the EDA with its current roster of employees serving in full-time jobs on September 18, 2018.

The Company hereby agrees to provide a copy of the Form to the County and the EDA upon the Company’s submission of the Form to the Commonwealth.

The Company further agrees to provide, at the Company’s expense, detailed verification reasonably satisfactory to the County and the EDA of “new full time jobs” created.

Section 3. County and EDA Obligations. Upon submission and approval of the Form, the County, through EOF Grant funds paid to the EDA, and the EDA each pledge five hundred dollars (\$500.00) to the Company for each new full-time job in Albemarle County created by the Company. No individual employee may qualify for the payments more than one time.

The maximum amount of EOF Grant money from the County shall be one hundred thousand dollars (\$100,000.00). The maximum amount of EDA match money shall be one hundred thousand dollars (\$100,000.00).

Section 4. Term. This Agreement shall be in effect from March 1, 2018, until March 1, 2021. The parties may extend the term of this Agreement for one (1) calendar year upon written amendment signed by each of the parties.

Section 5. Miscellaneous.

A. *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the EOF Grant and may not be amended or modified, except in writing, signed by each of the parties. This Agreement shall be binding upon and inure to the benefits of the parties and their respective successors and assigns. The Company may not assign its rights and obligations pursuant to this Agreement without the prior written consent of the County and the Authority.

B. *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of Albemarle County, and such litigation shall be brought only in that court.

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

D. *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid, or illegal, then the enforceability, validity, and legality of the remaining


provisions will not in any way be affected or impaired, and the unenforceable provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

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

COUNTY OF ALBEMARLE, VIRGINIA

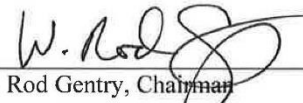
Approved as to form:


County Attorney

By: 
Jeffrey Richardson, County Executive

Date: 9/13/18

ECONOMIC DEVELOPMENT AUTHORITY
OF ALBEMARLE COUNTY, VIRGINIA

By: 
W. Rod Gentry, Chairman

Date: 9/18/18

WILLOWTREE, INC.

By: 
Tobias Dengel, CEO

Date: August 10, 2018

Proclamation

WHEREAS, the County of Albemarle is a community that values human rights, and respects the dignity of each person; and

WHEREAS, the Board of Supervisors of the County of Albemarle is committed to equal rights for all Americans, and opposes discrimination in all forms; and

WHEREAS, the cultural diversity and heritage of the County of Albemarle has been enriched by the contributions of its lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) community; and

WHEREAS, the County's LGBTQ community members are integrally and actively involved with the County's health and safety, learning and innovation, economic energy, and quality of life; and

WHEREAS, the Pride Festival celebrates the lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) community and its proud presence in the County of Albemarle; and

NOW, THEREFORE, we, the Albemarle County Board of Supervisors recognize with pride the lesbian, gay, bisexual, transgender, queer and questioning community in the County, and proclaim

Saturday,
September 15, 2018, as Pride Festival Day.

**RESOLUTION CONFIRMING THE COUNTY EXECUTIVE'S
DECLARATION OF A LOCAL EMERGENCY
(Hurricane Florence)
(Virginia Code § 44-146.21)**

WHEREAS, the County Executive is designated as the Director of Emergency Management for the County of Albemarle; and

WHEREAS, Hurricane Florence is forecast to bring heavy rain, flooding, and wind to the Commonwealth, including Albemarle County, beginning Thursday, September 13, 2018 (the "Event"); and

WHEREAS, the Event may result in the loss of life, human suffering, damage to public and private property, and the loss of utility and other public services; and

WHEREAS, the Governor declared a state of emergency on September 8, 2018 related to the Event; and

WHEREAS, because of the potential adverse impacts of the Event, County Executive Jeffrey B. Richardson, acting in his capacity as the Director of Emergency Management, declared a local emergency on September 11, 2018 pursuant to Virginia Code § 44-146.21; and

WHEREAS, the declaration of a local emergency enables the County Executive to exercise the powers conferred to him as the Director of Emergency Management pursuant to Virginia Code § 44-146.21 and other sections of the Emergency Services and Disaster Law (Virginia Code § 44-146.13 *et seq.*); and

WHEREAS, the Albemarle County Board of Supervisors could not timely convene on September 11, 2018 to declare the Event to be a local emergency.

NOW THEREFORE, BE IT RESOLVED, that the Albemarle County Board of Supervisors confirms the declaration of a local emergency by the County Executive on September 11, 2018.

RESOLUTION

WHEREAS, the County of Albemarle is committed to ensuring that safe, decent, affordable, and accessible housing is available for all residents and to improving the livability of all neighborhoods; and

WHEREAS, the County of Albemarle has recognized the redevelopment of the Southwood Mobile Home Park as a strategic priority; and

WHEREAS, the County of Albemarle executed a public/private partnership agreement with the Greater Charlottesville Habitat for Humanity (Habitat) in September 2016 to support and provide resources to Habitat to assist with rezoning, pre-development, and redevelopment initiatives; and

WHEREAS, the Virginia Department of Housing and Community Development invited the County of Albemarle to submit an application under their Vibrant Communities Initiatives Program (VCI); and

WHEREAS, after holding public hearings on December 6, 2017 and September 12, 2018, the County wishes to apply for up to \$1,250,000 in Virginia Community Development Block Grant ("VCDBG") funds which are a part of the VCI funding requested for the Southwood Redevelopment Project ("Project") to support site development and infrastructure for the construction of 20 new homes as the first village in the redevelopment; and

WHEREAS, the County of Albemarle has committed \$675,000 and significant staff resources to Habitat to support pre-development activities; and

WHEREAS, all households proposed to receive assistance are low- and moderate-income; and

WHEREAS, the projected benefits of the Project are improved living conditions for 20 families currently residing in the mobile home park.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby endorses the County's submission of the VCI application for the Southwood Redevelopment Project and authorizes the County Executive to execute the application and any required certifications and assurances, as well as any supporting or related contracts or documents required to obtain or accept this grant, and to take any further action required for this application.

**ORDINANCE NO. 18-A(5)
ZMA 2017-07 HOGWALLER FARM**

**AN ORDINANCE TO REZONE 7.52 ACRES
FROM LI LIGHT INDUSTRIAL TO RA RURAL AREAS
FOR TAX MAP PARCEL NUMBER 07700-00-00-02000**

WHEREAS, the application to rezone 7.52 acres from LI Light Industrial to RA Rural Areas for Tax Map Parcel Number 07700-00-00-020000 is identified as ZMA 2017-00007 Hogwaller Farm ("ZMA 2017-07"); and

WHEREAS, staff recommended denial of ZMA 2017-07 for reasons set forth in the May 1, 2018 Planning Commission staff report; and

WHEREAS, the Planning Commission held a duly noticed public hearing on ZMA 2017-07 on May 1, 2018 and recommended denial; and

WHEREAS, subsequent to the Planning Commission meeting, the applicant submitted a revised conceptual plan and revised proffers, which staff believes address the issues of concern raised by staff and the Planning Commission; and

WHEREAS, on August 1 and September 12, 2018, the Albemarle County Board of Supervisors held duly noticed public hearings on ZMA 2017-07.

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that upon consideration of the staff report prepared for ZMA 2017-07 and its attachments, including the proffers dated August 20, 2018, which include the use restrictions and the establishment and maintenance of a riparian buffer as recommended by staff, as well as the establishment of a maximum aggregate limit of 600 square feet for any structure(s) within the Floor Hazard Overlay District as requested by the Board on August 1, and the rezoning application plan entitled "TMP 07700-00-00-02000: Hogwaller Farm, ZMA Application: 2017-00007", prepared by Shimp Engineering, P.C., dated January 16, 2018 and last revised on June 27, 2018 (the "conceptual plan"), the information presented at the public hearing, the material and relevant factors in Virginia Code § 15.2-2284, the intent of the RA Rural Areas zoning district stated in County Code § 18-10.1, and for the purposes of public necessity, convenience, general welfare, and good zoning practices, the Board hereby approves ZMA 2017-07 with the proffers dated August 20, 2018 and the conceptual plan dated January 16, 2018 and last revised on June 27, 2018.

* * *

Original Proffers X
Amendment

PROFFER STATEMENT

ZMA Number: 2017-00007

Tax Map and Parcel Number: 07700-00-00-02000

Owner: Franklin St. Land Trust II; Charles Wm Hurt & Shirley L Fisher,
Trustees
PO Box 8147
Charlottesville, VA 22906

Date of Proffer Signature:

7.52 Acres to be rezoned from LI to RA

Franklin St. Land Trust II, is the owner (the "Owner") of Tax Map and Parcel Number 07700-00-00-02000 (the "Property") which is the subject of rezoning application ZMA No. 2017-00007, a project known as "Hogwaller Farm" (the "Project").

Pursuant to Section 33 of the Albemarle County Zoning Ordinance (Chapter 18 of the Albemarle County Code), the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the Property if it is rezoned to the requested zoning district, rural areas (RA). These conditions are proffered as a part of the requested rezoning and the Owner acknowledges that the conditions are reasonable. Each signatory below signing on behalf of the Owner covenants and warrants that it is an authorized signatory of the Owner for this Proffer Statement.

1. **SITE DEVELOPMENT:** The property will be developed in general accord with the conceptual plan titled "TMP 07700-00-00-02000: Hogwaller Farm" dated 01-16-2018 and last revised 06-27-18, as determined by the Zoning Administrator. The property will be developed to feature the major elements shown on the conceptual plan, which includes an undisturbed riparian buffer and riparian buffer signage. The conceptual plan is attached herein as Attachment A.
2. **RIPARIAN BUFFER:** An undisturbed riparian buffer area ("riparian buffer") managed in accordance with the Albemarle County stream buffer protection regulations (County Code § 17-600, et seq.) will be established and maintained for perpetuity, provided that the area within the riparian buffer shall not be eligible for the "silvicultural activities" exemption that is otherwise provided by County Code § 17-602(c). The riparian buffer will extend to 100' from the top of bank of Moore's Creek or to the limits of the

floodway, whichever is greater. A copy of County Code § 17-601 is attached herein as Attachment B for reference purposes.

3. **RIPARIAN BUFFER AREA DESIGNATION:** Signage denoting the extent of the riparian buffer along the property shall be installed by the property owner prior to the commencement of uses/activities listed in Proffer #4 "Agricultural Uses." Signage shall be maintained as long as the property is in operation with uses/activities stated in Proffer #4. Signage will be maintained by the property owner at the time the signage is in need of repair. The size, type of material(s), content, number, and locations of the signs shall be approved by the Zoning Administrator and County Engineer.
4. **FUTURE USES:** Agricultural Uses: The use of the property shall be restricted to the following by right uses pursuant to Section 10.2.1(3), (6), (7), (9), (21), (27), and (30) of the Albemarle County Zoning Ordinance, as in effect on August 1, 2018, a copy of which is attached hereto and incorporated herein as Attachment C, inclusive of modifications as shown in underline or strikethrough typeface:
 - 3. Agriculture, forestry, and fishery uses, excluding livestock activity involving swine or cows, and excluding agriculture, forestry, or fishery uses within the designated "riparian buffer" area.
 - 6. Water, sewer, energy, communications distribution facilities (reference 6.1.12)
 - 7. Accessory uses and building including ~~major home occupations (reference 5.2A), minor home occupations (reference 5.2A), and~~ storage buildings.
 - 9. Public uses (reference 5.1.12)
 - 21. Stormwater management facilities shown on an approved final site plan or subdivision plat.
 - 27. Farm stands (reference 5.1.47).
 - 30. Events and activities at agricultural operations authorized by right under section 5.1.58(d).

Additionally, the property may also be used for the following special uses pursuant to Section 10.2.2 of the Zoning Ordinance, as in effect on August 1, 2018, a copy of which is attached hereto and incorporated herein as Attachment C, subject to the applicable requirements of the Zoning Ordinance, provided that a special use permit is approved:

- 39. Hydroelectric power generation (reference 5.1.26).
5. **STRUCTURES:** Any structure(s) within the Flood Hazard Overlay District shall:
 - (a) not exceed six hundred (600) square feet of aggregate improved space, and
 - (b) be subject to both
 - (i) the applicable Required Permits and Certifications Prerequisite to Development, pursuant to Section 30.3.12 of the Albemarle County Zoning Ordinance (in effect on August 1, 2018), and
 - (ii) the applicable Construction Standards, pursuant to Section 30.3.15 of the Albemarle County Zoning Ordinance (in effect on August 1, 2018).

OWNER:

Franklin St. Land Trust II

(to be signed upon final submission of proffer statement)

By: Charles Wm Hurt

Title: Trustee



Tax Map and Parcel Number: 07700-00-00-02000

The undersigned Owner hereby proffers that the use and development of the Property shall be in conformance with the proffers and conditions herein above. This document shall supersede all other agreements, proffers or conditions that may be found to be in conflict. The Owner agrees that all proffers shall be binding to the property, which means the proffers shall be transferred to all future property successors of the land.

WITNESS the following signature:

Franklin St. Land Trust II

By:

Charles Wm Hurt

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Mecklenburg, to wit:

The foregoing instrument was acknowledged before me this 20th day of August 2018 by Dr. Charles Wm Hurt, Trustee of Franklin St. Land Trust II.

My Commission expires: May 31, 2021

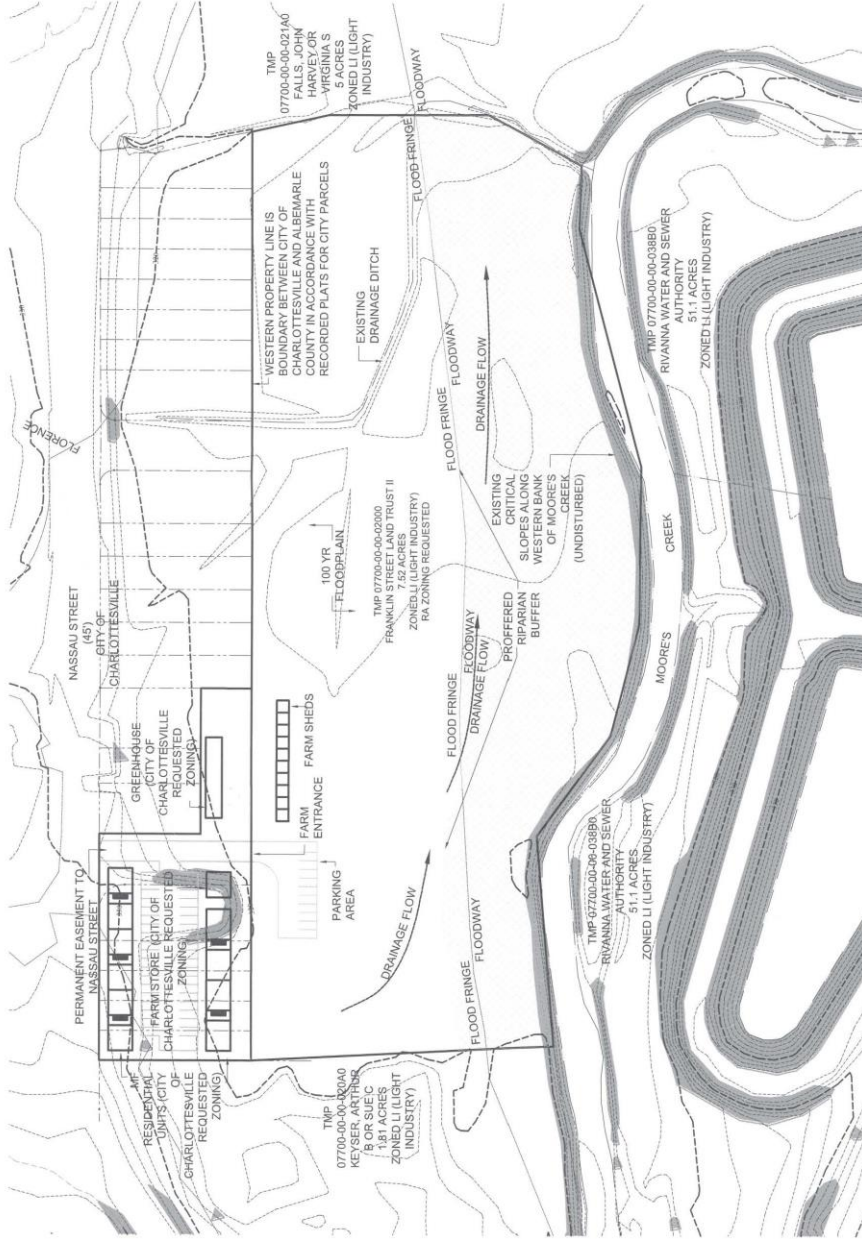
Gail B Watkins

Notary Public

GAIL BREEDEN WATKINS
NOTARY PUBLIC
REG. #101082
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES MAY 31, 2021

NOTES:

1. TOPOGRAPHIC INFORMATION PROVIDED BY ALBEMARLE COUNTY GIS DATA, CHARLOTTEVILLE CITY GIS DATA, AND ADDITIONAL FIELD SURVEY PROVIDED BY ROGER RAY AND ASSOCIATES.
2. THE PROPOSED STRUCTURES WITH THIS REZONING ARE ACCESSORY TO THE AGRICULTURAL USE, ARE LOCATED OUTSIDE OF THE FLOODWAY, AND ARE NOT PROVIDED FOR THE FARM USE WILL BE DESIGNED SO AS NOT TO IMPEDE THE FLOW OF THE 100-YEAR FLOOD. SECURITY FENCING, SUCH AS CHAIN LINK, WILL NOT BE PROVIDED FOR THIS SITE.
3. PARKING AREA SHOWN IS FOR TEMPORARY VEHICLE PARKING FOR FARM VISITORS AND EMPLOYEES.
4. RIPARIAN BUFFER SHOWN IS 100' FROM TOP OF BANK OR EDGE OF FLOODWAY, WHICHEVER IS GREATER. PER PROFFER STATEMENT



TMP 07700-00-00-02000: Hogwaller Farm

ZMA Application: 2017-00007

Conceptual Plan

01-16-2018

Last revised:

06-27-2018

SHIMP ENGINEERING, P.C.

ENGINEERING - LAND PLANNING - PROJECT MANAGEMENT
200 E MAIN ST. STE. N
CHARLOTTEVILLE, VA 22903 JUSTIN@SHIMP-ENGINEERING.COM

ATTACHMENT B

Sec. 17-601 Management of stream buffer.

Each stream buffer required to be retained or established pursuant to section 17-600 shall be managed as provided herein:

- A. Target vegetative cover. The preferred vegetative cover in a stream buffer shall be a native riparian forest with ground cover, shrub, and tree canopy layers.
- B. Preservation of native vegetation. When evaluating a development design under subsection (C), when native vegetation may be disturbed or removed under subsection (D) and sections 17-603 and 17-604, and when stream buffers are maintained under subsection (E), native vegetation shall be preserved to the fullest extent possible.
- C. Incorporation into development design. Each stream buffer shall be incorporated into the design of the development by keeping stream buffers in open or natural spaces, and out of residential lots or areas of active use, to the fullest extent possible.
- D. Retaining native vegetation; disturbance or removal. In order to maintain the runoff, erosion, nonpoint source pollution control, stream temperature, and ecological values of the stream buffer, no native vegetation within the stream buffer shall be disturbed or removed, regardless of the size of the area affected, except to maintain the stream buffer as provided in subsection (E), provided that native vegetation may be removed to construct, install, operate or maintain any improvement, or engage in any activity, authorized by sections 17-603 and 17-604.
- E. Maintaining the stream buffer. Each stream buffer shall be maintained in as natural a condition as possible.

(§ 19.3-42, 2-11-98, § 19.2-8, 6-19-91, § 8; Code 1988, §§ 19.2-8, 19.3-42; § 17-318, Ord. 98-A(1), 8-5-98; § 17-601, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:73; 9VAC25-890-40.

CHAPTER 18. ZONING

SECTION 10. RURAL AREAS DISTRICT, RA

Sections:

10.1	Intent, where permitted.
10.2	Permitted uses.
10.2.1	By right.
10.2.2	By special use permit.
10.3	Application of regulations for development by right.
10.3.1	Conventional development.
10.3.3	Rural preservation development.
10.3.3.1	Definitions.
10.3.3.2	Intent; design standards.
10.3.3.3	Special provisions.
10.4	Area and bulk regulations.
10.5.2	Where permitted by special use permit.
10.5.2.2	Materials to be submitted by the applicant.

Sec. 10.1 Intent, where permitted.

This district (hereafter referred to as RA) is hereby created and may hereafter be established by amendment of the zoning map for the following purposes:

- Preservation of agricultural and forestal lands and activities;
- Water supply protection;
- Limited service delivery to the rural areas; and
- Conservation of natural, scenic, and historic resources.

Residential development not related to bona fide agricultural/forestal use shall be encouraged to locate in the urban area, communities and villages as designated in the comprehensive plan where services and utilities are available and where such development will not conflict with the agricultural/forestal or other rural objective. Where development does occur, rural residents should expect to receive a lower level of service delivery than will be provided to residential developments in designated growth areas. In relation to residential development, agricultural/forestal activities shall be regulated only to the extent necessary to protect public health and safety.

In regard to agricultural preservation, this district is intended to preserve the county's active farms and best agricultural and forestal lands by providing lot areas designed to insure the continued availability of such lands for preferential land use tax assessment in order to enhance the economy, and maintain employment and lifestyle opportunities. In addition, the continuation and establishment of agriculture and agriculturally-related uses will be encouraged, and landowners will be encouraged to employ Virginia State Water Control Board best management practices.

(§ 20-10.1, 12-10-80, 11-8-89; § 18-10.1, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-3-01)

It is intended that permitted development be restricted to land which is of marginal utility for agricultural/forestal purposes, provided that such development be carried out in a manner which is

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compatible with other purposes of this district. Roadside strip development is to be discouraged through the various design requirements contained herein.

Sec. 10.2 Permitted uses.

Sec. 10.2.1 By right.

The following uses shall be permitted by right in the RA district, subject to the applicable requirements of this chapter:

1. Detached single-family dwellings, including guest cottages and rental of the same; provided that yard, area and other requirements of section 10.4, conventional development by right, shall be met for each such use whether or not such use is on an individual lot subject to section 10.3.
2. Side-by-side duplexes subject to the provisions of section 10.4; provided that density is maintained and provided that buildings are located so that each unit could be provided with a lot meeting all other requirements for detached single-family dwellings except for side yards at the common wall. Other two-family dwellings shall be permitted provided density is maintained.
3. Agriculture, forestry, and fishery uses except as otherwise expressly provided.
4. Game preserves, wildlife sanctuaries and fishery uses.
5. (Repealed 5-5-10)
6. Water, sewer, energy, communications distribution facilities (reference 5.1.12).
7. Accessory uses and buildings including major home occupations (reference 5.2A), minor home occupations (reference 5.2A), and storage buildings.
8. Temporary construction uses (reference 5.1.18).
9. Public uses (reference 5.1.12).
10. Temporary sawmill (reference 5.1.15 and subject to performance standards in 4.14).
11. Veterinary services - off-site treatment only.
12. Agricultural service occupation (subject to performance standards in 4.14).
13. Divisions of land in accordance with section 10.3.
14. Bed and breakfast (reference 5.1.48).
15. Manufactured homes, individual, qualifying under the following requirements (reference 5.6):
 - a. A property owner residing on the premises in a permanent home wishes to place a manufactured home on such property in order to maintain a full-time agricultural employee.
 - b. Due to the destruction of a permanent home an emergency exists. A permit can be issued in this event not to exceed twelve (12) months. The Zoning Administrator shall be authorized to issue permits in accordance with the intent of this ordinance and shall be authorized to require or seek any information which he may determine necessary in making a determination of cases "a" and "b" of the aforementioned uses.
16. Temporary manufactured home in accordance with section 5.7.

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17. Farm winery uses, events, and activities authorized by section 5.1.25(a),(b), and (c)(2).
 18. Borrow area, borrow pit, not exceeding an aggregate volume of fifty thousand (50,000) cubic yards including all borrow pits and borrow areas on any one parcel of record on the adoption date of this provision (reference 5.1.28).
 19. Manufactured homes on individual lots (reference 5.6).
 20. Commercial stable (reference 5.1.03).
 21. Stormwater management facilities shown on an approved final site plan or subdivision plat.
 22. Tier I and Tier II personal wireless service facilities (reference 5.1.40).
 23. Farm worker housing, Class A (up to ten occupants and up to two sleeping structures) (reference 5.1.44).
 24. County store, Class A (reference 5.1.45).
 25. Small wind turbines (reference 5.1.46).
 26. (Repealed 11-12-14)
 27. Farm stands (reference 5.1.47).
 28. Family day homes (reference 5.1.56).
 29. Farm brewery uses, events, and activities authorized by section 5.1.57(a), (b), and (c)(2).
 30. Events and activities at agricultural operations authorized by right under section 5.1.58(d).
 31. Farm distillery uses, events, and activities authorized by section 5.1.59(a), (b), and (c)(2).
 32. Group home (reference 5.1.07).
- (§ 20-10.2.1, 12-10-80; 12-16-81; 7-6-83; 11-1-89; 11-8-89; 11-11-92; 5-12-93; Ord. 95-20(5), 11-15-95; § 18-10.2.1, Ord. 98-A(1), 8-5-98; Ord. 02-18(6), 10-9-02; Ord. 04-18(2), 10-13-04; Ord. 06-18(2), 12-13-06; Ord. 08-18(7), 11-12-08; Ord. 09-18(11), 12-10-09; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 11-18(1), 1-12-11; Ord. 12-18(3), 6-6-12; Ord. 13-18(5), 9-11-13; Ord. 14-18(4), 11-12-14; Ord. 15-18(10), 12-9-15; Ord. 17-18(1), 1-18-17; Ord. 17-18(4), 8-9-17; Ord. 18-18(1), 1-10-18)

Sec. 10.2.2 By special use permit.

The following uses shall be permitted by special use permit in the RA district, subject to the applicable requirements of this chapter:

1. Community center (reference 5.1.04).
2. Clubs and lodges (reference 5.1.02).
3. Fire and rescue squad stations (volunteer) (reference 5.1.09).
4. Swim, golf, tennis or similar athletic facilities (reference 5.1.16).
5. Private schools.

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6. Energy and communications transmission facilities (reference 5.1.12).
7. Day care centers (reference 5.1.06).
8. (Repealed 3-5-86)
9. Manufactured home subdivisions (reference 5.5).
10. (Repealed 11-11-92)
11. (Repealed 3-15-95)
12. Horse show grounds, permanent.
13. Custom slaughterhouse.
14. Sawmills, planing mills and woodyards (reference 5.1.15 and subject to performance standards in 4.14).
15. (Repealed 8-9-17)
16. (Repealed 11-15-95)
17. Commercial kennel (reference 5.1.11 and subject to performance standards in 4.14).
18. Veterinary services, animal hospital (reference 5.1.11 and subject to performance standards in 4.14).
19. Private airport, helistop, heliport, flight strip (reference 5.1.01).
20. Day camp, boarding camp (reference 5.1.05).
21. Sanitary landfill (reference 5.1.14).
22. Country store, Class B (reference 5.1.45).
23. Commercial fruit or agricultural produce packing plants.
24. (Repealed 11-8-89)
25. Flood control dams and impoundments.
26. (Repealed 11-8-89)
27. Restaurants, taverns, and inns that are:
 - a. Located on a site containing a structure that is a historic structure and/or site as defined in section 3.1 or located on a site containing a structure that is identified as contributing to a historic district as defined in section 3.1, provided: (i) the structure was historically used as a restaurant, tavern or inn or previously approved for such use by special use permit; and (ii) if renovation or restoration of the historic structure is proposed, such changes shall restore the structure as faithfully as possible to the architectural character of the period(s) of its significance and shall be maintained consistent therewith; and (iii) that any additions or new structures shall serve a restaurant, tavern or inn use existing within the historic structure and lawfully operating on December 14, 2016; or

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- b. Nonconforming uses, provided the restaurant or inn is served by existing water and sewerage systems having adequate capacity for both the existing and proposed uses and facilities without expansion of either system.
- 28. Divisions of land as provided in section 10.5.2.1.
- 29. Boat landings and canoe livery.
- 30. Permitted residential uses as provided in section 10.5.2.1.
- 31. (Repealed 1-12-11)
- 32. Cemetery.
- 33. Crematorium.
- 34. (Repealed 3-21-01)
- 35. Religious assembly use.
- 36. Gift, craft and antique shops.
- 37. Public garage.
- 38. Exploratory drilling.
- 39. Hydroelectric power generation (reference 5.1.26).
- 40. Borrow area, borrow pit not permitted under section 10.2.1.18.
- 41. Convent, Monastery (reference 5.1.29).
- 42. Temporary events sponsored by local nonprofit organizations which are related to, and supportive of the RA, rural areas, district (reference 5.1.27).
- 43. Agricultural Museum (reference 5.1.30).
- 44. Theatre, outdoor drama.
- 45. (Repealed 11-12-14)
- 46. Off-site parking for historic structures or sites (reference 5.1.38) or off-site employee parking for an industrial use in an industrial zoning district (reference 5.1.39).
- 47. Animal shelter (reference 5.1.11).
- 48. Tier III personal wireless service facilities (reference 5.1.40).
- 49. Historical centers, historical center special events, historical center festivals (reference 5.1.42).
- 50. Special events (reference 5.1.43).
- 51. Farm worker housing, Class B (more than ten occupants or more than two sleeping structures) (reference 5.1.44).

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- 52. Sale of gasoline and other fuels in conjunction with a country store, Class A or Class B (reference 5.1.45).
- 53. Farm winery uses, events, and activities authorized by section 5.1.25(c)(3).
- 54. Farmers' markets (reference 5.1.47).
- 55. Farm brewery uses, events, and activities authorized by section 5.1.57(c)(3).
- 56. Events and activities at agricultural operations authorized by special use permit under section 5.1.58(d).
- 57. Farm distillery uses, events, and activities authorized by section 5.1.59(c)(3).
- 58. Solar energy systems.

(§ 20-10.2.2, 12-10-80; 3-18-81; 2-10-82; 4-28-82; 7-6-83; 3-5-86; 1-1-87; 12-2-87; 11-8-89; 6-10-92; 11-11-92; Ord. 95-20(1), 3-15-95; Ord. 95-20(3), 10-11-95; Ord. 95-20(5), 11-15-95; § 18-10.2.2, Ord. 98-A(1), 8-5-98; Ord. 99-18(4), 6-16-99; Ord. 00-18(6), 10-18-00; Ord. 01-18(2), 3-21-01; Ord. 02-18(6), 10-9-02; Ord. 04-18(1), 5-5-04 effective 7-1-04; Ord. 04-18(2), 10-13-04; Ord. 05-18(7), 6-8-05; Ord. 05-18(8), 7-13-05; Ord. 06-18(2), 12-13-06; Ord. 08-18(7), 11-12-08; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 11-18(1), 1-12-11; Ord. 14-18(4), 11-12-14; Ord. 15-18(10), 12-9-15; Ord. 16-18(7), 12-14-16; Ord. 17-18(1), 1-18-17; Ord. 17-18(2), 6-14-17; Ord. 17-18(4), 8-9-17; Ord. 18-18(1), 1-10-18)

Sec. 10.3 Application of regulations for development by right.

The following provisions shall apply to any parcel of record at 5:15 p.m., the tenth day of December, 1980 (reference 6.5).

(§ 20-10.3, 12-10-80; 11-8-89; § 18-10.3, Ord. 98-A(1), 8-5-98)

Sec. 10.3.1 Conventional development.

Regulations in section 10.5 governing development by right shall apply to the division of a parcel into five (5) or fewer lots of less than twenty-one (21) acres in area and to the location of five (5) or fewer dwelling units on any parcel in existence at the time of adoption of this ordinance (reference section 1.3). The aggregate acreage devoted to such lots or development shall not exceed thirty-one (31) acres, except in such case where this aggregate acreage limitation is precluded by other provisions of this ordinance. The second sentence of this provision shall not be applicable to land divided between the effective date of this ordinance (reference section 1.3) and November 8, 1989.

(§ 20-10.3.1, 12-10-80; 11-8-89; 9-9-92; § 18-10.3.1, Ord. 98-A(1), 8-5-98; Ord. 00-18(4), 6-14-00)

- 10.3.2 In addition to the foregoing, there shall be permitted by right any division of land into parcels each of which shall be twenty-one (21) acres or more in area. No such parcel shall be included in determining the number of parcels which may be created by right pursuant to section 10.3.1; provided that (a) no such division shall affect the number of parcels which may be divided pursuant to section 10.3.1; (b) there may be located not more than one (1) dwelling unit on any parcel created pursuant to this section; (c) at the time of any such division, the owner of the parcel so divided shall designate the number of parcels into which each parcel so divided may be further divided pursuant to section 10.3.1 together with aggregate acreage limitations in accordance with section 10.3.1; and (d) no such division shall increase the number of parcels which may be created pursuant to section 10.3.1.

(§ 20-10.3.2, 12-10-80; 11-8-89; 9-9-92; § 18-10.3.2, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-3-01)

ORDINANCE NO. 18-A.1(1)

AN ORDINANCE TO AMEND APPENDIX A.1, ACQUISITION OF CONSERVATION EASEMENTS PROGRAM, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Appendix A.1, Acquisition of Conservation Easements Program, is hereby amended and reordained as follows:

By Amending:

Sec. A.1-108 Ranking criteria.
 Sec. A.1-109 Easement terms and conditions.

Appendix A.1**Acquisition of Conservation Easements Program**

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Sec. A.1-108. Ranking criteria.

In order to effectuate the purposes of the ACE program, parcels for which conservation easement applications have been received shall be ranked according to the criteria and the point values assigned as provided below. Points shall be prorated and rounded to the first decimal.

A. *Open-space resources.*

1. The parcel adjoins an existing permanent conservation easement, a national, state or local park, or other permanently protected open-space: two (2) points, with one (1) additional point for every five hundred (500) feet of shared boundary; or the parcel is within one-quarter (1/4) mile of, but not adjoining, an existing permanent conservation easement, a national, state or local park, or other permanently protected open-space: two (2) points.

2. Size of the parcel: zero (0) points for parcels of less than fifty (50) acres; one (1) point for parcels of at least fifty (50) acres; one (1) additional point for each fifty (50) acres over fifty (50) acres; one (1) additional point for each fifty (50) acres over two hundred (200) acres.

B. *Threat of conversion to developed use.*

1. The parcel is threatened with forced sale or other hardship: three (3) points.

2. The number of division rights to be eliminated on the parcel: one-half (1/2) point for each division right to be eliminated, which shall be determined by subtracting the number of retained division rights from the number of division rights.

C. *Natural, cultural and scenic resources.*

1. Mountain protection: one (1) point for each fifty (50) acres in the mountain overlay district, as delineated in the comprehensive plan; an additional one (1) point may be awarded for each twenty (20) acres within a ridge area boundary. For purposes of this section, the term "ridge area boundary" means the area that lies within one hundred (100) feet below designated ridgelines shown on county mountain overlay district elevation maps. The deed restriction set forth in section A.1-109(B)(1) shall apply if the parcel is eligible for points under this criterion.

2. Working family farm, including forestry: five (5) points if at least one family member's principal occupation and income (more than half) is farming or foresting the parcel; three (3) points if at least one family member has as a secondary occupation farming or foresting the parcel so that it is eligible for or subject to land use taxation as land devoted to agriculture, horticulture or forest use under Albemarle County Code § 15-800 *et seq.*; one (1) additional point if the parcel is certified as a Virginia Century Farm by the Virginia Department of Agriculture and Consumer Services.

3. The parcel adjoins a road designated either as a Virginia scenic highway or byway, or as an entrance corridor under section 30.6.2 of Chapter 18 of the Albemarle County Code: two (2) points, with one (1) additional point for each six hundred (600) feet of road frontage if the parcel is subject to a deed restriction as provided herein; otherwise, one (1) point for each one thousand (1000) feet of road frontage; the parcel adjoins a public road: two (2) points, with one (1) additional point for each one thousand (1000) feet of road frontage; or, the parcel is substantially visible from, but is not contiguous to, a public road designated either as a Virginia scenic highway or byway, or as an entrance corridor under section 30.6.2 of Chapter 18 of the Albemarle County Code: two (2) points. The deed restriction set forth in section A.1-109(B)(2) shall apply if the parcel is eligible for points for adjoining a Virginia scenic highway or byway.

4. The parcel contains historic resources: three (3) points if it is within a national or state rural historic district or is subject to a permanent easement protecting a historic resource; two (2) points if the parcel is within the primary Monticello viewshed, as shown on viewshed maps prepared for Monticello and in the possession of the county; two (2) points if the parcel contains a site of archaeological or architectural significance as determined by a qualified archaeologist or architectural historian under the United States Department of Interior's professional qualification standards. The deed restriction set forth in section A.1-109(B)(5) shall apply if the parcel is eligible for points under this criterion.

5. The parcel contains an occurrence listed on the Virginia Natural Heritage Inventory or a qualified biologist submitted documentation of an occurrence of a natural heritage resource to the program administrator and the Virginia Division of Natural Heritage on behalf of the owner: five (5) points.

6. The parcel contains capability class I, II or III soils ("prime soils") for agricultural lands or ordination symbol 1 or 2 for forest land, based on federal natural resources conservation service classifications found in the United States Department of Agriculture Soil Survey of Albemarle County, Virginia: one (1) point for each fifty (50) acres containing such soils to a maximum of five (5) points.

7. The parcel is within the South Fork Rivanna Reservoir Watershed, the Chris Greene Lake Watershed, the Ragged Mountain Reservoir Watershed, or the Totter Creek Reservoir Watershed: three (3) points.

8. The parcel adjoins or contains perennial stream(s), as that term is defined in Chapter 17 of the Albemarle County Code: one (1) point for each one thousand (1000) feet of frontage.

9. The parcel adjoins or contains a waterway designated as a state scenic river: one-half (1/2) point for each one thousand (1000) feet of frontage. The deed restriction set forth in section A.1-109(B)(4) shall apply if the parcel is eligible for points under this criterion.

10. The parcel is within a sensitive groundwater recharging area identified in a county-sponsored groundwater study: one (1) point.

11. The parcel is within an agricultural and forestal district: two (2) points.

12. The parcel is subject to a professionally prepared Forestry Stewardship Management Plan approved by the Virginia Department of Forestry: one (1) point.

D. *County fund leveraging.* State, federal or private funding identified to leverage the purchase of the conservation easement: one (1) point for each ten (10) percent of the purchase price for which those funds can be applied.

(Ord. 00-A.1(1), 7-5-00; Ord. 02-A.1(1), 12-11-02; Ord. 04-A.1(1), 10-6-04; Ord. 07-A.1(1), 12-5-07; Ord. 11-A.1(1), 5-4-11)

Sec. A.1-109. Easement terms and conditions.

Each conservation easement shall conform with the requirements of the Open-Space Land Act of 1966 (Virginia Code § 10.1-1700 *et seq.*) and of this appendix. The deed of easement shall be in a form approved by the county attorney, and shall contain, at a minimum, the following provisions:

A. *Restriction on division.* The parcel shall be restricted from division as follows: (i) if the parcel is less than one hundred (100) acres, it shall not be divided; (ii) if the parcel is one hundred (100) acres or larger but less than two hundred (200) acres, it may be divided into two (2) lots; (iii) if the parcel is two hundred (200) acres or larger, it may be divided into as many lots so as to maintain an average lot size of at least one hundred (100) acres, plus one additional lot for any acres remaining above the required minimum average lot size (e.g., an eight hundred fifty (850) acre parcel may be divided into as many as nine (9) parcels, eight (8) of which maintain an average lot size of at least one hundred (100) acres, and the ninth of which consists of the remaining acres).

B. *Protection of conservation resources.* The deed of easement shall include the following restrictions if the owner is eligible for points under section A.1-108 for the resources identified therein:

1. *Mountain resources.* If the parcel is eligible for points in the evaluation process under section A.1-108(C)(1) for mountain protection, the deed of easement shall prohibit establishing all primary and accessory structures and other improvements, provided that one or more farm buildings or agricultural structures may be permitted within the mountain overlay district with the prior written approval from each grantee; the deed of easement also shall assure that the parcel is used and maintained in a manner consistent with the comprehensive plan as it pertains to mountain resources and, in particular, the Mountain Design Standards in the Natural Resources and Cultural Assets Component of the comprehensive plan.

2. *Scenic highways and byways.* If the parcel is eligible for points in the evaluation process under section A.1-108(C)(3) for adjoining a Virginia scenic highway or byway, the deed of easement shall provide that each new dwelling (a) have a two hundred fifty (250) foot setback from the edge of the right-of-way of the scenic highway or byway or (b) if within two hundred fifty (250) feet of the edge of the right-of-way of the scenic highway or byway, be sited in a location approved by each grantee prior to issuance of a building permit to assure that the dwelling is not visible from the scenic highway or byway at any time of the year.

3. *Stream buffers.* If the parcel is eligible for points in the evaluation process under section A.1-108(C)(8) for adjoining or containing perennial stream(s), the deed of easement shall provide for a stream buffer at least thirty-five (35) feet wide from the top of each bank of any perennial stream, as that term is defined in Chapter 17, Water Protection, of the Albemarle County Code. At a minimum, the deed of easement shall provide that within the stream buffer, there be:

(a) no livestock, except (i) during times of drought or other emergencies, (ii) for stream crossings, or (iii) for watering at limited access points;

(b) no buildings or other substantial structures constructed;

(c) no timber harvest(s); and

(d) no plowing, cultivation, filling, dumping, or other earth-disturbing activity, except as may be reasonably necessary for the limited permitted activities set forth in the deed.

4. *Scenic rivers.* If the parcel is eligible for points in the evaluation process under section A.1-108(C)(9) for adjoining or containing a Virginia scenic river, the deed of easement shall provide that each new dwelling (a) have a two hundred fifty (250) foot setback from the top of the subject stream bank or (b) if within two hundred fifty (250) feet of the top of the subject stream bank, be sited in a location approved by each grantee prior to issuance of a building permit to assure that the dwelling is not visible from the scenic river at any time of the year.

5. *Historic resources.* If the parcel is eligible for points in the evaluation process under section A.1-108(C)(4) for sites of archaeological or architectural significance, the deed of easement shall provide that no such site shall be razed, demolished or moved until the razing, demolition or moving thereof is approved by each grantee.

C. *No buy-back option.* The owner shall not have the option to reacquire any property rights relinquished under the conservation easement.

D. *Other restrictions.* The parcel also shall be subject to standard restrictions contained in conservation easements pertaining to uses and activities allowed on the parcel. These standard restrictions

shall be delineated in the deed of easement and shall include, but not necessarily be limited to, restrictions pertaining to: (i) the accumulation of trash and junk; (ii) the display of billboards, signs and advertisements; (iii) the management of forest resources; (iv) grading, blasting or earth removal; (v) the number and size of primary and secondary dwellings, non-residential outbuildings and farm buildings or structures; (vi) the conduct of industrial or commercial activities on the parcel; and (vii) monitoring of the easement.

E. *Designation of easement holders.* The county and one or more other public bodies, as defined in Virginia Code § 10.1-1700, and designated by the board of supervisors shall be the easement holders of each easement. The public body or bodies who may be designated by the board shall include, but not be limited to, the Albemarle County Public Recreational Facilities Authority and the Virginia Outdoors Foundation.

(Ord. 00-A.1(1), 7-5-00; Ord. 02-A.1(1), 12-11-02; Ord. 07-A.1(1), 12-5-07; Ord. 11-A.1(1), 5-4-11)

**RESOLUTION APPROVING THE AGREEMENT OF LEASE
BETWEEN THE COUNTY OF ALBEMARLE
AND THE EDUCATION TRANSFORMATION CENTER**

WHEREAS, the Board finds it is in the best interest of the County to lease a portion of the space at the former Yancey Elementary School, located at 7625 Porters Road, Esmont, VA 22937 (TMP 128A2-00-00-01800), to the Education Transformation Centre.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby authorizes the County Executive to execute an Agreement of Lease between the County of Albemarle and the Education Transformation Centre, in a form approved by the County Attorney.

AGREEMENT OF LEASE

THIS LEASE AGREEMENT, dated this 12th day of September, 2018, is by and between the COUNTY OF ALBEMARLE, VIRGINIA, Landlord, and the EDUCATION TRANSFORMATION CENTRE, a Virginia corporation, Tenant.

ARTICLE I. PREMISES AND IMPROVEMENTS

In consideration of the rents and covenants herein set forth, Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, the premises shown as "ETC" on Exhibit A attached hereto and made a part hereof, together with any and all improvements thereon (the "Leased Premises"). Except as otherwise provided herein, the Tenant shall have exclusive use of Rooms 8, 9, 10, 11, 12, and 13, and shall have shared use of the Cafeteria, Kitchen, Gymnasium, and common areas. Upon mutual written agreement of the parties, this Lease may be amended to add additional square footage to the Premises.

ARTICLE II. TITLE: QUIET ENJOYMENT

So long as Tenant is not in default hereunder, Tenant shall have peaceful and quiet enjoyment, use and possession of the Leased Premises without hindrance on the part of the Landlord or anyone claiming by, through, or under Landlord.

ARTICLE III. TERM

Section 3.1. Commencement and Expiration. The term of this Lease shall commence on October 1, 2018 (the "Date of Commencement") and shall expire on September 30, 2019. All references to the "term" of this Lease shall, unless the context indicates a different meaning, be deemed to be a reference to the term described herein.

Section 3.2. Renewal. This Lease shall automatically renew for additional 12-month terms unless written notice is given by either Landlord or Tenant no later than 60 days prior to the expiration of any term.

ARTICLE IV. RENT

Section 4.1. Annual Rent. Commencing upon the Date of Commencement, during the first year of this Lease, Tenant agrees to pay to Landlord annual rent of \$48,458.61, payable in equal monthly installments, in advance, on the first day of each month during the term hereof. Gross square feet shall be calculated within the perimeter of the area to be used solely by the Tenant.

After the first year of this Lease, the rent for subsequent years of the term of the Lease shall be indexed for inflation and shall be calculated by first establishing a fraction, the numerator of which shall be the level of the CPI Index (as defined herein) as of the first day of that month which is two months before the month in which the Date of Commencement occurs in the subsequent years, and the denominator of which shall be the level of the CPI Index as of the first day of that month which is two months before the initial Date of Commencement. The resulting fraction shall be multiplied by the rent agreed upon or established for the first year of the term of the Lease to determine the annual rent due for the year. The rental figure shall be revised each year based upon this formula. The CPI Index shall be the U.S. Bureau of Labor Statistics

Consumer Price Index (all items, all urban consumers, 1982-1984 = 100). If the CPI Index shall be discontinued, Landlord shall designate an appropriate substitute index or formula having the same general acceptance as to use and reliability as the CPI Index and such substitute shall be used as if originally designated herein. Notwithstanding the foregoing, in no event shall the rent due for any lease year decrease below the rent payable for the first year.

If additional square footage is added to the Premises during any term of this lease, the total rent will be increased by the product of multiplying the additional square footage by the base rental rate for the term during which the additional square footage is to be added and prorated for the number of months remaining in that term. The base rental rate is defined as the then-current total rent for the term during which the additional square footage is to be added divided by the then-current gross square feet for the term during which the additional square footage is to be added.

Section 4.2. Address for Rent Payment. All payments of rent due Landlord pursuant to Section 4.1 shall be made to Landlord at the address specified in Section 18.3, or to such other party or at such other address as hereinafter may be designated by Landlord by written notice delivered to Tenant at least ten (10) days prior to the next ensuing monthly rental payment date.

ARTICLE V. UTILITIES AND SERVICES

Landlord shall provide water, sewer, electricity, and heating and cooling services as part of Tenant's rent. Landlord shall further provide custodial services (to common areas only) and arrange for the regular collection of a shared dumpster as part of Tenant's rent. Tenant shall exercise reasonable and responsible care to conserve these services. The Tenant agrees that the monthly rent stipulated above may be adjusted to reflect any change in the cost to the Landlord of providing those services above. The Landlord shall provide the Tenant with prompt notice of any such change, and shall make evidence of its actual costs. Tenant shall provide telephone, custodial (including clean-up of Cafeteria, Kitchen, and Gymnasium when used), and all other services to the Leased Premises.

ARTICLE VI. USE OF PROPERTY

Section 6.1. Permitted Use. Tenant shall have use of the Leased Premises as a school. No other use of the Leased Premises is permitted without the prior consent of the Landlord.

Section 6.2. Parking. Tenant shall be entitled to the shared use of parking spaces in the parking lot and an access easement to the Leased Premises. Landlord reserves the nonexclusive right to use the parking lot.

ARTICLE VII. ALTERATIONS, IMPROVEMENTS, FIXTURES AND SIGNS

Section 7.1. Installation by Tenant.

(a) Tenant may, from time to time, make or cause to be made any interior non-structural alterations, additions or improvements which do not damage or alter the Leased Premises, provided that Landlord's consent shall have first been obtained in writing, and provided that Tenant shall obtain all required governmental permits for such alterations, additions or improvements. Except as provided in Section 7.1(c), all such alterations, additions or improvements shall be at the sole expense of the Tenant.

(b) Tenant may, from time to time, make interior structural alterations, additions or improvements, only with Landlord's prior written consent to plans and specifications therefor, which consent shall not be unreasonably withheld. Except as provided in Section 7.1(c), all such alterations, additions or improvements shall be at the sole expense of the Tenant. Upon the expiration or sooner termination of this Lease, Landlord shall have the option (exercisable upon sixty (60) days notice to Tenant except in the case of a termination of this Lease due to a default by Tenant, in which case no such notice shall be required) to require Tenant to remove at Tenant's sole cost and expense any and all improvements made by Tenant to the Leased Premises or to elect to keep such improvement as Landlord's property. In the event Tenant is required to remove any improvements, (i) Tenant shall be responsible for the repair of all damage caused by the installation or removal thereof, and (ii) if Tenant fails to properly remove such improvements or provide for the repair of the Leased Premises, Landlord may perform the same at Tenant's cost and expense.

(c) During the first term of the lease, certain costs associated with alterations, additions, or improvements made pursuant to Section 7.1(a) and Section 7.1(b) may be deducted from the rent due during that term. With prior approval from the Landlord, documented paid costs for labor or material (excluding costs of donated labor or material) may be deducted. Documentation will consist of the original invoice from a business duly licensed to provide such material or services. The total deductions authorized under the provisions of this section shall not exceed \$4,038.22.

Section 7.2. Signs. Tenant shall have the right to place signs on the interior or exterior of the Leased Premises with the prior written approval of Landlord.

ARTICLE VIII MAINTENANCE OF LEASED PREMISES

Section 8.1. Maintenance. Tenant shall keep the Property clean, neat, orderly, presentable, and in good repair at all times. Landlord shall deliver the Property to Tenant at the beginning of the term in its present condition. Landlord shall be responsible for all repairs and maintenance for the Leased Premises, except as provided below, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, including, but not limited to, plumbing, heating, electrical, plate glass and windows. Tenant shall be responsible for routine repairs and maintenance (excluding repairs and maintenance of the building and structural components identified above), except that the Tenant's obligation for such routine repairs and maintenance shall not exceed \$2,500.00 in any one year of the initial or subsequent term(s). Notwithstanding the foregoing, Tenant shall be responsible for all maintenance and repairs necessitated by the negligence of Tenant, its employees and invitees.

Section 8.2. Right of Entry. Landlord reserves the right for itself, its agents and employees to enter upon the Leased premises at any reasonable time to make repairs, alterations or improvements; provided, however, that such repairs, alterations, or improvements shall not unreasonably interfere with Tenant's operations. Such right to enter shall also include the right to enter upon the leased premises for the purposes of inspection.

Section 8.3. Surrender of Leased Premises. At the expiration of the tenancy hereby created, Tenant shall surrender the Leased Premises and all keys for the Leased Premises to Landlord at the place then fixed for the payment of rent and shall inform Landlord of all combinations on locks, safes and vaults, if any, which Landlord has granted permission to have left in the Leased Premises. At such time, the Leased Premises shall be broom clean and in good

condition and repair, commensurate with its age. If Tenant leaves any of Tenant's personal property in the Leased Premises, Landlord, at its option, may remove and store any or all of such property at Tenant's expense or may deem the same abandoned and, in such event, the property deemed abandoned shall become the property of Landlord.

ARTICLE IX. INSURANCE

Section 9.1. Liability Insurance of Tenant. Tenant covenants and agrees that it will, at all times during the term of this Lease, keep in full force and effect a policy of public liability and property damage insurance with respect to the Leased Premises and the business operated by Tenant and any sub-tenants of Tenant on the Leased Premises in which the limits of public liability for bodily injury and property damage shall not be less than One Million Dollars (\$1,000,000) per accident, combined single limit. The policy shall name Landlord as additional insured. The policy shall provide that the insurance thereunder shall not be cancelled until thirty (30) days after written notice thereof to all named insured.

Section 9.2. Fire and Extended Coverage. Landlord agrees that it will, during the initial and any renewal term of this Lease, insure and keep insured, for the benefit of Landlord and its respective successors in interest, the Leased Premises, or any portion thereof then in being. Such policy shall contain coverage against loss, damage or destruction by fire and such other hazards as are covered and protected against, at standard rates under policies of insurance commonly referred to and known as "extended coverage," as the same may exist from time to time. Landlord agrees to name Tenant as an additional insured on such policy, as its interest may appear.

Section 9.3. Evidence of Insurance. Copies of policies of insurance (or certificates of the insurers) for insurance required to be maintained by Tenant and Landlord pursuant to Sections 9.1 and 9.2 shall be delivered by Landlord or Tenant, as the case may be, to the other upon the issuance of such insurance and thereafter not less than thirty (30) days prior to the expiration dates thereof.

Section 9.4. Waiver of Subrogation. Landlord and Tenant each hereby release the other from any and all liability or responsibility to itself or anyone claiming through or under it by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties, even if such fire or other casualty results from the negligence of itself or anyone for whom it may be responsible, provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as any such release shall not adversely affect or impair the releasor's policies or insurance or prejudice the right of the releasor to recover thereunder.

ARTICLE X. WASTE, NUISANCE, COMPLIANCE WITH GOVERNMENTAL REGULATIONS

Section 10.1. Waste or Nuisance. Tenant shall not commit or suffer to be committed any waste or any nuisance upon the Leased Premises.

Section 10.2. Governmental Regulations. During the term of this Lease, Tenant shall, at Tenant's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the Leased Premises or Tenant's use and occupancy thereof.

ARTICLE XI. FIRE OR OTHER CASUALTY

If the Leased Premises shall be damaged so as to render two-thirds (2/3) or more of the Leased Premises untenable by fire or other casualty insured against under the insurance required to be carried by Landlord pursuant to Section 9.2, Landlord may elect to either terminate this Lease as of the date of damage or repair the Leased Premises. Unless Landlord elects to terminate this Lease, such damage or destruction shall in no way annul or void this Lease except that Tenant shall be entitled to a proportionate reduction of the rent payable under Article IV while such repairs are being made, such proportionate reduction to be based upon the proportion of the Leased Premises rendered untenable as a result of such damage. Notwithstanding the foregoing, if any damage or destruction from any cause whatsoever has not been repaired and such repairs have not commenced within one hundred eighty (180) days of the date thereof, Tenant may, as its exclusive remedy, terminate this Lease upon thirty (30) days written notice to Landlord.

ARTICLE XII. CONDEMNATION

If the whole or any part of the Leased Premises shall be taken under the power of eminent domain, then this Lease shall terminate as to the part so taken on the day when Tenant is required to yield possession thereof, the Landlord shall make such repairs and alterations as may be necessary in order to restore the part not taken to useful condition; and the rent payable under Article IV shall be reduced proportionately as to the portion of the Leased Premises so taken. If the amount of the Leased Premises so taken is such as to impair substantially the usefulness of the Leased Premises for the purposes for which the same are hereby leased, then either party shall have the option to terminate this Lease as of the date when Tenant is required to yield possession.

ARTICLE XIII. DEFAULT OF TENANT

Section 13.1. Default. The occurrence of any of the following shall be deemed a "default" under this Lease:

(a) Tenant fails to pay when due any amount of rent, additional rent or other monies due under this Lease, including Articles IV and V, and such payment is not received by Landlord within ten (10) days after written notice of such failure is received by Tenant; or

(b) a default in any of the other provisions of this Lease, and such default continues uncured for a period of thirty (30) days after written notice thereof from Landlord.

Section 13.2. Remedies. In the event of any default or breach hereof by Tenant, Landlord shall have the right (in addition to all other rights and remedies provided by law) to terminate this Lease or to re-enter and take possession of the Leased Premises, peaceably or by force, and to remove any property therein without liability for damage to and without obligation to store such property, but may store the same at Tenant's expense, and to collect from Tenant all rent then due and which would accrue for the unexpired portion of the term hereof, together with reasonable attorney's fees. In addition, in the event of a failure to pay rent, additional rent or other money within five (5) days of its due date, Tenant shall pay to Landlord the greater of Twenty-Five and no/100 Dollars (\$25.00) or one half (1/2) of one percent (1%) of such sum for each day after the fifth day such rent or other money is late.

ARTICLE XIV HOLDING OVER, SIGNS, SUCCESSORS

Section 14.1. Holding Over. Any holding over after the expiration of the term hereof, with the consent of Landlord, shall be construed to be a tenancy from month-to-month at the same rent herein specified (prorated on a monthly basis) and shall otherwise be on the terms and conditions herein specified as far as applicable.

Section 14.2. Showing the Leased Premises. During the last ninety (90) days of the term hereof, Tenant shall allow Landlord, or its agents, to show the Leased Premises to prospective tenants or purchasers at such times as Landlord may reasonably desire.

Section 14.3. Successors. All rights and liabilities herein given to, or imposed upon the respective parties hereto, shall extend to and bind the heirs, executors, administrators, successors and permitted assigns of the parties. All covenants, representations and agreements of Landlord shall be deemed the covenants, representations and agreements of the fee owner from time to time of the Leased Premises and Landlord shall be automatically released of all liability under this Lease from and after the date of any sale by Landlord of the Leased Premises. All covenants, representations and agreements of Tenant shall be deemed the covenants, representations, and agreements of the occupant or occupants of the Leased Premises.

ARTICLE XV. BROKER'S FEES

Tenant and Landlord hereby warrant that there are no brokerage commissions due in connection with this Lease.

ARTICLE XVI. NO ASSIGNMENT

Tenant shall not assign this Lease or sublet all or any portion of the Leased Premises, either directly or indirectly, without the prior written consent of Landlord. No assignment, sublease or transfer of this Lease by Tenant shall (i) be effective unless and until the assignee, subtenant or transferee expressly assumes in writing Tenant's obligations under this Lease, or (ii) relieve Tenant of its obligations hereunder, and Tenant shall thereafter remain liable for the obligations of the Tenant under this Lease whether arising before or after such assignment, sublease or transfer.

ARTICLE XVII. SUBORDINATION OF LEASE

This Lease and all rights of Tenant hereunder are and shall be subject and subordinate in all respects to (1) any mortgages, deeds of trust and building loan agreements affecting the Leased Premises, including any and all renewals, replacements, modifications, substitutions, supplements and extensions thereof, and (2) each advance made or to be made thereunder. In confirmation of such subordination, Tenant shall promptly upon the request of Landlord execute and deliver an instrument in recordable form satisfactory to Landlord evidencing such subordination; and if Tenant fails to execute, acknowledge or deliver any such instrument within ten (10) days after request therefor, Tenant hereby irrevocably constitutes and appoints Landlord as Tenant's attorney-in-fact, coupled with an interest, to execute, acknowledge and deliver any such instruments on behalf of Tenant. Tenant further agrees that in the event any such mortgagee or lender requests reasonable modifications to this Lease as a condition of such financing, Tenant shall not withhold or delay its consent thereto.

ARTICLE XVIII. MISCELLANEOUS

Section 18.1. Waiver. The waiver by landlord or Tenant of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition contained herein. The subsequent acceptance or payment of rent hereunder by Landlord or Tenant, respectively, shall not be deemed to be a waiver of any breach by Tenant or Landlord, respectively, of any term, covenant or condition of this Lease regardless of knowledge of such breach at the time of acceptance or payment of such rent. No covenant, term, or condition of this Lease shall be deemed to have been waived by Tenant or Landlord unless the waiver be in writing signed by the party to be charged thereby.

Section 18.2. Entire Agreement. This Lease, and the Exhibits attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Leased Premises; and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced in writing and signed by them.

Section 18.3. Notices. Any notice, demand, request or other instrument which may be, or is required to be given under this Lease, shall be in writing and delivered in person or by United States certified mail, postage prepaid, and shall be addressed:

(a) if to Landlord, at
County of Albemarle
County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
or at such other address as Landlord may designate by written notice;

(b) if to Tenant, at
Education Transformation Centre
Post Office Box 7203
Charlottesville, VA 22906

or at such other address as Tenant shall designate by written notice.

Section 18.4. Captions and Section Numbers. The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Lease nor in any way do they affect this Lease.

Section 18.5. Partial Invalidity. If any term, covenant or condition of this Lease, or the application thereof, to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 18.6. Recording. Upon request of either party, a memorandum of lease will be executed and recorded. Such memorandum shall contain any provisions of this Lease which either party requests except for the provisions of Article IV, which shall not be included. The cost of recording such memorandum of lease or a short form hereof shall be borne by the party requesting such recordation.

Section 18.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Section 18.8. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

TENANT

EDUCATION TRANSFORMATION CENTRE

By: _____
Dolores Carr, President

LANDLORD

This Lease is executed on behalf of the County of Albemarle by Jeffrey B. Richardson, County Executive, following a duly-held public hearing, and pursuant to a Resolution of the Albemarle County Board of Supervisors.

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Jeffrey B. Richardson, County Executive

Approved as to form:

Albemarle County Attorney

EXHIBIT A

7625 Porters Road, Esmont, VA 22937

-  Leased Space (4,704 sq ft)
-  Shared Space (8,966 sq ft)



**RESOLUTION TO APPROVE
SP 2017-26 WESTERN ALBEMARLE HIGH SCHOOL - TIER III
PERSONAL WIRELESS SERVICE FACILITY**

WHEREAS, Albemarle County School Board is the owner of Tax Map Parcel Number 05600-00-00-017C0 (the "Property");

WHEREAS, the Owner filed an application for a special use permit to install a personal wireless service facility consisting of a 145-foot tall monopole with three flush-mounted antenna arrays, associated ground equipment in a 2,625 square foot fenced compound, and an access road on the Property, and the application is identified as Special Use Permit 2017-26 Western Albemarle High School – Tier III Personal Wireless Service Facility ("SP 2017-26"); and

WHEREAS, on June 26, 2018, after a duly noticed public hearing, the Albemarle County Planning Commission recommended denial of SP 2017-26; and

WHEREAS, on September 12, 2018, the Albemarle County Board of Supervisors held a duly noticed public hearing on SP 2017-26.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the staff report prepared for SP 2017-26 and all of its attachments, the information presented at the public hearing, and the factors relevant to a special use permit in Albemarle County Code §§ 18-5.1.40, 18-10.2.2(48), and 18-33.40, the Albemarle County Board of Supervisors hereby approves SP 2017-26, subject to the applicable performance standards for personal wireless service facilities in Albemarle County Code § 18-5.1.40, and the conditions attached hereto; and

BE IT FURTHER RESOLVED that the antenna design and mounting techniques are concealment elements.

* * * *

**SP-2017-00026 Western Albemarle High School – Tier III Personal Wireless Service Facility
Special Use Permit Conditions**

1. The development of the site, and any modifications to the arrays, shall be in general accord with the plan titled "*Milestone Communications – Shentel at Western Albemarle High School 5941 Rockfish Gap Turnpike Crozet, VA 22932*" dated June 6, 2018 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Conceptual Plan, development and use shall reflect the following major elements within the development essential to the design of the development, including but not limited to all concealment elements, concealment technique, and concealment elements of the eligible support structure, as shown and described on the Conceptual Plan and mentioned below:

- a. Tower height (80 feet tall)
- b. Color (equipment and monopole – Sherwin Williams – Java Brown)
- c. Flush mounting of antenna (18 inch maximum standoff distance)
- d. Tree preservation areas
- e. Location of ground equipment

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Albemarle County Zoning Ordinance.

2. The facility shall comply with subsection 5.1.40(b), 5.1.40(c), 5.1.40(d), 5.1.40(e), and 5.1.40(f) – (j) of the Albemarle County Zoning Ordinance unless modified by the Board of Supervisors by special exception.
3. Prior to the issuance of a building permit, the Owner shall obtain a VSMP permit.

4. The VSMP plan shall depict both County provided topography from the County GIS and the field run topography used for the Conceptual Plan. Each shall be labeled appropriately.
5. Prior to the issuance of a building permit, the Owner shall submit revised landscape plans depicting a slightly modified location of the row of Eastern Red Cedars being planted along the frontage of the Western Albemarle High School property in order to avoid interfering with the overhead power lines. Architectural Review Board staff shall review and approve this modification.

**RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR SP 2017-26 WESTERN ALBEMARLE HIGH SCHOOL-TIER III
PERSONAL WIRELESS SERVICE FACILITY**

WHEREAS, Albemarle County School Board is the owner of Tax Map and Parcel Number 05600-00-00-017C0 (the "Property");

WHEREAS, the Owner filed an application for a special use permit to install a 145 foot tall monopole with three flush-mounted antenna arrays, associated ground-equipment in a 2,625 square foot fenced compound, and an access road on the Property (SP 2017-26); and

WHEREAS, the Applicant filed a request for a special exception to modify the requirements of County Code 18-5.1.40(b)(2)(c) in conjunction with SP 2017-26; and

WHEREAS, Albemarle County Code § 18-5.1.40(b)(2)(c) requires that antennas be mounted so that in no case shall the farthest point of the back of the antenna be more than eighteen (18) inches from the facility, which may be modified by special exception.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the executive summary and staff report prepared in conjunction with the application, all of the factors relevant to the special exceptions in County Code §§ 18-5.1.40(b)(2)(c) and 18-33.49, and the information provided at the Planning Commission and Board of Supervisors' meetings, the Albemarle County Board of Supervisors hereby approves the special exception to authorize the modification of County Code § 18-5.1.40(b)(2)(c) as set forth above, subject to the condition attached hereto; and

BE IT FURTHER RESOLVED that the antenna mounting technique is a concealment element.

* * *

**SP 2017-26 Western Albemarle High School -Tier III Personal Wireless Service Facility
Special Exception Condition**

1. The closest point of the back of the antenna may be more than twelve (12) inches from the monopole and the farthest point of the back of the antenna may not be more than eighteen (18) inches from the monopole as depicted on the Conceptual Plan titled "*Milestone Communications – Shentel at Western Albemarle High School 5941 Rockfish Gap Turnpike Crozet, VA 22932*" dated June 6, 2018, and the outer face of the antenna shall be not more than 26.2 inches from the monopole.

**RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR SP 2017-26 WESTERN ALBEMARLE HIGH SCHOOL-TIER III
PERSONAL WIRELESS SERVICE FACILITY**

WHEREAS, Albemarle County School Board is the owner of Tax Map and Parcel Number 05600-00-00-017C0 (the "Property");

WHEREAS, the Owner filed an application for a special use permit to install a 145 foot tall monopole with three flush-mounted antenna arrays, associated ground-equipment in a 2,625 square foot fenced compound, and an access road on the Property (SP 2017-26); and

WHEREAS, the Applicant filed a request for a special exception to waive the requirements of County Code § 18-4.2.3(b) in conjunction with SP 2017-26; and

WHEREAS, Albemarle County Code § 18-4.2.3(b) provides that no land disturbance to establish a structure or improvement shall be located on critical or preserved slopes, which may be waived by special exception pursuant to County Code § 18-4.2.5.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the executive summary and staff report prepared in conjunction with the application, all of the factors relevant to the special exceptions in County Code §§ 18-4.2.3(b), 18-4.2.5, and 18-33.49, and the information provided at the Planning Commission and Board of Supervisors' meetings, the Albemarle County Board of Supervisors hereby approves the special exception to authorize the waiver of County Code § 18-4.2.3(b) as set forth above, subject to the condition attached hereto.

* * * * *

**SP 2017-26 Western Albemarle High School -Tier III Personal Wireless Service Facility
Special Exception Condition**

1. Disturbance of the critical slopes shall be limited to that necessary to construct a single access road providing access to permitted uses on the RA, Rural Areas zoned portion of the Property as depicted on the Conceptual Plan titled *"Milestone Communications – Shentel at Western Albemarle High School 5941 Rockfish Gap Turnpike Crozet, VA 22932"* dated June 6, 2018.

**RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR SP 2017-26 WESTERN ALBEMARLE HIGH SCHOOL-TIER III
PERSONAL WIRELESS SERVICE FACILITY**

WHEREAS, Albemarle County School Board is the owner of Tax Map and Parcel Number 05600-00-00-017C0 (the "Property");

WHEREAS, the Owner filed an application for a special use permit to install a 145 foot tall monopole with three flush-mounted antenna arrays, associated ground-equipment in a 2,625 square foot fenced compound, and an access road on the Property (SP 2017-26); and

WHEREAS, the Applicant filed a request for a special exception to modify the requirements of County Code 18-5.1.40(b)(2)(b) in conjunction with SP 2017-26; and

WHEREAS, Albemarle County Code § 18-5.1.40(b)(2)(b) requires that each proposed antenna shall not exceed the size shown on the application, which size shall not exceed one thousand four hundred (1,400) square inches, which may be modified by special exception.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the executive summary and staff report prepared in conjunction with the application, all of the factors relevant to the special exceptions in County Code §§ 18-5.1.40(b)(2)(b) and 18-33.49, and the information provided at the Planning Commission and Board of Supervisors' meetings, the Albemarle County Board of Supervisors hereby approves the special exception to authorize the modification of County Code § 18-5.1.40(b)(2)(b) as set forth above, subject to the condition attached hereto; and

BE IT FURTHER RESOLVED that the antenna size is a concealment element.

* * * * *

**SP 2017-26 Western Albemarle High School -Tier III Personal Wireless Service Facility
Special Exception Conditions**

1. The maximum size of the three flush-mount antenna arrays to be installed shall not exceed 2,388.46 square inches as depicted on the Conceptual Plan titled "*Milestone Communications – Shentel at Western Albemarle High School 5941 Rockfish Gap Turnpike Crozet, VA 22932*" dated June 6, 2018.