

<p style="text-align: center;">ACTIONS Board of Supervisors Meeting of April 15, 2020</p>		
		April 16, 2020
AGENDA ITEM/ACTION	ASSIGNMENT	VIDEO
1. Call to Order. <ul style="list-style-type: none"> Meeting was called to order at 3:30 p.m., by the Chair, Mr. Gallaway. All BOS members were present. Also present were Jeff Richardson, Greg Kamptner, Claudette Borgersen and Travis Morris. 		
4. Adoption of Final Agenda. <ul style="list-style-type: none"> Item 6.2 was removed from the consent agenda for discussion. By a vote of 6:0, ADOPTED the final agenda as amended. 		
5. Brief Announcements by Board Members. <u>Diantha McKeel:</u> <ul style="list-style-type: none"> Reminded the Board to review "Plastic Wars" on NPR. Announced the recipients for the 2020 Emily Couric scholarships. Isabella Pardue is the \$50,000 recipient and Taylor Mills received the \$20,000 merit award. <u>Liz Palmer:</u> <ul style="list-style-type: none"> Clarified that Plastic Wars is through Front Line. Noted that the General Assembly has given the Board the ability to tax plastic bags. <u>Ann Mallek:</u> <ul style="list-style-type: none"> Expressed appreciation for citizens and staff for staying at home and remarked that the coming two weeks will be risky for COVID-19 infections and urged citizens to be vigilant. Urged citizen to call Jake Washburn regarding clarification regarding any voting questions. 		
6.1 Emergency Ordinance to Extend Certain Tax Return Dates and Payment Deadlines. <ul style="list-style-type: none"> ADOPTED the Emergency Ordinance to Establish Due Dates for Filing Certain Tax Returns and Paying Certain Local Taxes During the COVID-19 Disaster 	<u>Clerk:</u> Forward copy of signed ordinance to the Finance Department and the County Attorney's office. (Attachment 1)	
6.2 Resolution of Intent to Amend the Zoning Ordinance to Allow Landscape Contractors in the Rural Areas. <ul style="list-style-type: none"> ADOPTED the Resolution of Intent. 	<u>Clerk:</u> Forward copy of signed resolution to Community Development and the County Attorney's office. (Attachment 2)	
6.3 SDP201900051 Beaver Creek Medical Office Building – Request for Special Exceptions to Disturb a Required Buffer Area and Reduce the Rear Setback. <ul style="list-style-type: none"> ADOPTED the Resolution to approve the special exceptions. 	<u>Clerk:</u> Forward copy of signed resolution to Community Development and the County Attorney's office. (Attachment 3)	Link to Video
7. Approval of Calendar Year 2020 Tax Rates. <ul style="list-style-type: none"> By a vote of 6:0, ADOPTED the Resolution to Set Calendar Year 2020 Tax Rates. 	<u>Clerk:</u> Forward copy of signed resolution to OMB and the County Attorney's office. (Attachment 4)	
8. Authorization to Execute an Economic Development Agreement for a Public-Private Partnership (PPP) with Albemarle Business Campus. <ul style="list-style-type: none"> By a vote of 6:0, ADOPTED the Resolution as amended to approve the Agreement and to authorize the County Executive to execute the Agreement on behalf of the County once approved as to form and content by the County Attorney. 	<u>Clerk:</u> Forward copy of signed resolution to the Economic Development Office and the County Attorney's office. (Attachment 5) <u>County Attorney:</u> Provide Clerk with copy of fully executed agreement. (Attachment 6)	

	Recess. At 5:00 p.m., the Board recessed and reconvened at 5:05 p.m.	
9.	Business Recovery Fund to Assist Businesses Impacted by COVID-19. <ul style="list-style-type: none"> Adopted the Resolution to approve the appropriation of \$200,000 to fund the Business Recovery Fund for a Small Business Microloan program. 	<u>Clerk:</u> Forward copy of signed resolution to the Economic Development Office and the County Attorney's office. (Attachment 7)
10.	HS201900020 Homestay Special Exception (McGough). <ul style="list-style-type: none"> By a vote of 6:0, ADOPTED the Resolution to approve the special exception with the conditions contained therein. 	<u>Clerk:</u> Forward copy of signed resolution to Community Development and the County Attorney's office. (Attachment 8)
11.	HS202000013 Homestay Special Exception (Kessler). <ul style="list-style-type: none"> By a vote of 6:0, DENIED the special exception. 	
12.	<u>ZMA201900014 Commercial Development TMP #61-134A.</u> <ul style="list-style-type: none"> By a vote of 6:0, ADOPTED Ordinance to approve ZMA201900014. 	<u>Clerk:</u> Forward copy of signed ordinance to Community Development and the County Attorney's office. (Attachment 9)
13.	<u>SP201900007 Tandem Friends School Pavilion.</u> <ul style="list-style-type: none"> By a vote of 6:0, ADOPTED Resolution to approve SP201900007 with the revised conditions, including the revised concept plan. 	<u>Clerk:</u> Forward copy of signed resolution to Community Development and the County Attorney's office. (Attachment 10)
14	<u>Ordinance to Ensure Continuity of Government During the COVID-19 Disaster.</u> <ul style="list-style-type: none"> By a vote of 6:0, ADOPTED the proposed ordinance as amended. 	<u>Clerk:</u> Forward copy of signed resolution to the County Attorney's office. (Attachment 11)
15.	From the Board: Committee Reports and Matters Not Listed on the Agenda. <u>Ann Mallek:</u> <ul style="list-style-type: none"> Requested Board members to read the correspondence from staff and tenants about the rent issue and noted that time is critical for the Counties small business tenants. <u>Diantha McKeel:</u> <ul style="list-style-type: none"> Informed the Board that the Coronavirus Aid, Relief, and Economic Securities Act (CARES Act) of 2020 was released on April 6, 2020 which will provide 6.3 million in funding to the airport and 7.1 in transit funding. She explained that the funding is shared with JAUNT at 25% and CAT at 75%. Ms. McKeel estimates that JAUNT will receive 1.8 million dollars and CAT will receive 5.3 million dollars to ameliorate loss of ridership. She noted that the funds can be accessed now and used for operational funds for 2020 and through the next fiscal year, and it does not have to be approved by the MPO. <u>Donna Price:</u> <ul style="list-style-type: none"> Remarked that she is concerned about balancing of public participation for land use items, property rights of applicants and the continuity of essential services. Encouraged the County Executive to look at the financial impact of a likely drop in property values and its impact on the FY 21 budget. 	
16.	From the County Executive: Report on Matters Not Listed on the Agenda. <ul style="list-style-type: none"> There were none. 	
17.	Adjourn to Adjourn to April 22, 3:30 p.m., electronic meeting pursuant to Ordinance No. 20-A(6).	

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| • The meeting was adjourned at 8:30 p.m. | | |
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ckb/tom

Attachment 1 – Emergency Ordinance No. 20-E(3) - An Emergency Ordinance to Establish Due Dates For Filing Certain Tax Returns and Paying Certain Local Taxes During the Covid-19 Disaster

Attachment 2 – Resolution of Intent to Amend Albemarle County Code Chapter 18, Zoning Ordinance

Attachment 3 – Resolution to Approve Special Exceptions for SDP 201900051 Beaver Creek Medical Center

Attachment 4 - Resolution to Set Calendar Year 2020 Tax Rates

Attachment 5 – Resolution Approving an Agreement Between the County of Albemarle, The Albemarle County Economic Development Authority and 5th Street Forest, LLC

Attachment 6 – Development Agreement between the Albemarle County Economic Development Authority and 5th Street Forest, LLC

Attachment 7 – Resolution to Approve Additional FY 2020 Appropriation to fund the Business Recovery Fund for a Small Business Microloan program

Attachment 8 – Resolution to Approve Special Exception for HS2019-00020 McGough Homestay

Attachment 9 – Ordinance No. 20-A(5) ZMA201900014 - Commercial Development

Attachment 10 – Resolution to Approve SP 201900007 Tandem Friends School Pavilion

Attachment 11 – Ordinance No. 20-A(6) An Ordinance to Ensure the Continuity of Government During the Covid-19 Disaster

EMERGENCY ORDINANCE NO. 20-E(3)**AN EMERGENCY ORDINANCE TO ESTABLISH DUE DATES FOR FILING CERTAIN TAX RETURNS AND PAYING CERTAIN LOCAL TAXES DURING THE COVID-19 DISASTER**

WHEREAS, on this same date the Board of Supervisors considered an ordinance entitled “An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster” (the “Continuity of Government Ordinance”); and

WHEREAS, many, if not all, of the reasons supporting the Continuity of Government Ordinance give cause for this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that:

Sec. 1. Purpose

The purpose of this ordinance is to set the due dates and deadlines for filing certain local tax returns and paying certain local taxes.

Sec. 2. Authority

This ordinance is authorized by Virginia Code § 58.1-3916, which enables the Board of Supervisors to establish due dates for the payment of local taxes, including deadlines for filing returns related to the payment of local taxes. This ordinance is adopted as an emergency ordinance pursuant to Virginia Code § 15.2-1427(F).

Sec. 3. Due Dates and Deadlines

This section establishes the deadlines for filing certain local tax returns and due dates for paying certain local taxes.

- A. Return date for business tangible personal property and machinery and tools taxes. For 2020, the deadline to file the return for all items of tangible personal property and machinery and tools pursuant to County Code § 15-801 is June 1, 2020, rather than May 1, 2020 as set out in Virginia Code § 58.1-3518. For 2021 and all following years, the deadline to file returns is as set out in Virginia Code § 58.1-3518 or its replacement.
- B. Payment date for first installment of real estate, tangible personal property, machinery and tools, and mobile homes taxes. Notwithstanding County Code § 15-101(A), the first installment of taxes for real estate, tangible personal property, machinery and tools, and mobile homes for 2020 is due and payable on June 30, 2020, rather than June 5, 2020. Otherwise, County Code § 15-101(A) remains in full force and effect. This subsection does not affect the due date for the first installment of taxes for public service corporations.
- C. Payment date for business license taxes. Notwithstanding County Code § 8-201(B), business license taxes for 2020 are due and payable on June 30, 2020, rather than June 15, 2020. Otherwise, County Code § 8-201(B) remains in full force and effect.
- D. Payment date for transient occupancy and food and beverage taxes. Notwithstanding County Code §§ 15-902(F) and 15-1002(F), the taxes collected under County Code §§ 15-902(A) and 15-1002(A) during the months of March, April, and May 2020 are due and payable on July 20, 2020. This provision does not alter the time at which these taxes are collected, nor the deadline for reporting these taxes collected to the Director of Finance.

Sec. 4. Severability

It is the intention of the Board of Supervisors that any part of this ordinance is severable. If any part is declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, the unconstitutionality or invalidity does not affect any other part of this ordinance.

RESOLUTION OF INTENT

WHEREAS, on June 10, 2015, the Board of Supervisors adopted the Comprehensive Plan, and

WHEREAS, Objective 1 of the Rural Area section of the Comprehensive Plan is to support a strong agricultural and forestal economy, and

WHEREAS, one strategy identified to achieve Objective 1 is to consider amending the Zoning Ordinance to allow landscape services and storage of landscape materials in the Rural Areas zoning district, and

WHEREAS, the Board of Supervisors has endorsed the Community Development 2020 Work Program, which includes the development of a zoning text amendment to allow landscape contractors as a special use permit use in the Rural Areas zoning district.

NOW, THEREFORE, BE IT RESOLVED that for the purposes of public necessity, convenience, general welfare, and good zoning practices, the Albemarle County Board of Supervisors hereby adopts a resolution of intent to consider amending Albemarle County Code Chapter 18 Sections 3, 10, and any other applicable sections of the Zoning Ordinance deemed to be appropriate to allow landscape services and storage of landscape materials in the Rural Areas zoning district.

BE IT FURTHER RESOLVED that the Planning Commission shall hold a public hearing on this resolution of intent and return its recommendation to the Board of Supervisors at the earliest possible date.

**RESOLUTION TO APPROVE SPECIAL EXCEPTIONS
FOR SDP 201900051 BEAVER CREEK MEDICAL CENTER**

BE IT RESOLVED that, upon consideration of the Memorandum prepared in conjunction with the application and the attachments thereto, including staff's supporting analysis, and all of the factors relevant to the special exceptions in Albemarle County Code §§ 18-4.20, 18-21.7(c), 18-32.7.9, and 18-33.49, the Albemarle County Board of Supervisors hereby approves the special exceptions (1) to disturb a required 20-foot buffer area abutting a residential zoning district, and (2) to reduce the rear minimum setback for off-street parking from 20 feet to 5 feet, for SDP 201900051 Beaver Creek Medical Center, subject to the conditions attached hereto.

* * *

SDP 201900051 Beaver Creek Medical Center Special Exception Conditions

1. The buffer disturbance within 20 feet, as measured from the rear property line, is allowed only for screening, landscaping, and parking. No dumpster or dumpster pad may be located closer than 20 feet from the rear property line.
2. All screening, parking lot landscaping, and landscaping islands shall meet Architectural Review Board requirements.
3. Surface parking shall be no closer than 5 feet from the rear property line, as shown on the exhibit titled "Beaver Creek – Medical Office Building – Special Exception: Site Layout with Special Exception Request" and dated December 19, 2019.

**RESOLUTION TO SET
CALENDAR YEAR 2020 TAX RATES**

BE IT RESOLVED that the Board of Supervisors of Albemarle County, Virginia, does hereby set the County Levy for Calendar Year 2020 for general County purposes at:

- (1) Eighty-Five and Four-Tenths Cents (\$0.854) on every One Hundred Dollars for assessed value of real estate;
- (2) Eighty-Five and Four-Tenths Cents (\$0.854) on every One Hundred Dollars for assessed value of manufactured homes;
- (3) Eighty-Five and Four-Tenths Cents (\$0.854) on every One Hundred Dollars for assessed value of public service property;
- (4) Four Dollars and Twenty-Eight Cents (\$4.28) on every One Hundred Dollars for assessed value of personal property;
- (5) Four Dollars and Twenty-Eight Cents (\$4.28) on every One Hundred Dollars for assessed value of business personal property that is not classified as machinery and tools, merchants' capital, or short-term rental property, with an original cost of less than Five Hundred Dollars (\$500.00); and
- (6) Four Dollars and Twenty-Eight Cents (\$4.28) on every One Hundred Dollars for assessed value of machinery and tools; and

BE IT FURTHER RESOLVED that the Board of Supervisors orders the Director of Finance of Albemarle County to assess and collect County taxes on all taxable property, including all taxable real estate and all taxable personal property.

**RESOLUTION APPROVING AN AGREEMENT BETWEEN
THE COUNTY OF ALBEMARLE, THE ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY, AND
5TH STREET FOREST, LLC**

WHEREAS, the Board finds it is in the best interest of the County to enter into an Agreement with the Albemarle County Economic Development Authority and 5th Street Forest, LLC, subject to the Board's approval of ZMA201900003 Albemarle Business Campus, that outlines 5th Street Forest, LLC's provision of various elements of development in exchange for its receipt of Synthetic Tax Increment Financing Grants from the County Economic Development Authority as provided by the County.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby approves the Agreement referenced above, subject to the Board's approval of ZMA201900003 Albemarle Business Campus, and authorizes the County Executive to execute the Agreement, subject to its approval as to substance and form by the County Attorney.

DEVELOPMENT AGREEMENT

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

PURPOSE OF THE AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. **INTERPRETATION.**

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

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

2. DEVELOPER'S OBLIGATIONS

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

with sufficient space. A “Primary Business” is a commercial or industrial entity that produces goods or services locally and generates more than 50% of its sales revenues from outside the Charlottesville Metropolitan Statistical Area (City of Charlottesville and the Counties of Albemarle, Greene, Fluvanna, Nelson, and Buckingham).

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

3. COUNTY’S OBLIGATIONS.

- a. The County, by and through its Economic Development Office, will create collateral material to provide to its consultant, Retail Strategies, to market retail space in Block 4 of the Project for two years from final approval of the site plan.
- b. The County, by and through its Economic Development Office, will co-market the reserved 25,000 square foot space to prospective eligible Primary Business tenants or purchasers and will provide Developer with leads until the space is occupied by a Primary Business or five years from the final site plan approval, whichever occurs sooner.
- c. The County, by and through its Economic Development Office, will post and update promotional information about the Project to the Virginia Economic Development Partnership website, the Opportunity Virginia website, and other County websites and platforms where entrepreneurs and primary businesses intersect and frequent.

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

4. **EDA's Obligations.**

- a. So long as the Developer is in compliance with this Agreement and the County has disbursed the Grant funding proceeds to the EDA, the EDA will disburse annually the Grant funds to the Developer within thirty (30) days of receipt; and
- b. The EDA shall not be obligated to pay the Developer if the County does not first provide the EDA with the funds. The EDA's only obligation to the Developer is to provide the Developer with the Grant funds that the County provides to the EDA.

- 5. **Reporting.** At the request of the County Executive, no more frequently than annually, the Developer shall report, document, and verify to the County, at the Developer's expense, a written report that verifies the Project's progress. The report must be in a form and having a content reasonably satisfactory to the County Executive or his designee. Upon the County's reasonable request for additional information, the Developer will provide such additional information

related to this Project and reasonably satisfactory to the County before disbursement of Grant funds. No Grant payment shall be made until the County receives adequate documentation and verification.

6. **Default.** The following constitute default and allow the non-defaulting party to seek a remedy:
 - a. A party fails to make a payment when the payment becomes due and payable and such failure continues uncured for at least 30 days after receipt of written notice of failure from the non-defaulting party; or
 - b. A party fails to perform any other obligation this Agreement requires as and when such performance is required and such failure continues uncured for at least 60 days after receipt of written notice of failure from the non-defaulting party. If the failure is not reasonably susceptible of being cured within the 60 day period, then the 60 day period to cure will be extended so long as the defaulting party starts making efforts to cure within the 60 day period and thereafter diligently pursues completion of the cure.
7. **Remedies.** Upon a default that is not cured pursuant to Section 6, the non-defaulting party shall have the option to:
 - a. Terminate this Agreement by written notice to the defaulting party; or
 - b. Pursue such other rights and remedies as may be available under law.
 - c. If the Developer is in default, then any Grant funds remaining in escrow with the EDA and not paid to the Developer shall be returned to the County.
8. **Term.** The term of this Agreement shall commence on the date this Agreement is executed by all the Parties and shall continue until the later of (i) the Developer's obligation to reserve the space provided for in Section 2(e) has ended or has been satisfied or (ii) the Developer has received all Grant funds due from the County as provided for in Section 3(e) or unless terminated sooner by any Party under the terms of this Agreement.
9. **Effect of Termination.** The termination of this Agreement for any reason shall not affect any right, obligation or liability which has accrued under this Agreement on or before the effective date of such termination.
10. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, the following limitations on assignment shall apply:
 - a. The Developer shall not assign its rights or obligations under this Agreement without the prior written approval of the EDA and the County.
 - b. Neither the EDA nor the County shall assign its rights or obligations under

this Agreement to any Entity other than the EDA or the County without the prior written approval of the Developer.

11. **Notice.** All notices and other communications given or made pursuant to this Agreement (“**Notice**”) shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or: (a) personal delivery to the party to be notified, (b) when sent, if sent by electronic mail or facsimile, during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient’s next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. Any notices sent by email shall only be valid with a read receipt and if a copy of the Notice is also sent by regular mail. All notices shall be sent to the addresses set forth below. A party may designate other or additional addresses in writing according to this section.

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

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

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

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

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

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

Developer: 5th Street, LLC
c/o Kyle Redinger

Charlottesville, Virginia _____

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

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

12. **Amendments.** Modification or amendment of this Agreement and waiver of any of its provisions must be done only in a writing executed by the party against whom such modification, amendment or waiver is sought to be enforced.
13. **Non-appropriation.** The obligation of the County to contribute the Grant as provided in this Agreement is subject to and dependent upon appropriations being made from time to time by the Board. Therefore:
 - a. **Obligations in the Event of Non-appropriation.** If the Board of Supervisors does not appropriate funds for the Grant, then this Agreement terminates and the Developer shall have no further obligation under this Agreement.
 - b. **This Agreement does not Establish an Irrevocable Obligation.** Under no circumstances shall this Agreement be construed to establish an irrevocable obligation on the County to fund the Grant as provided in this Agreement.
14. **No Goods or Services Received by the County or EDA.** The Grant funds transferred by the EDA to the Developer pursuant to this Agreement are solely to enable the Developer to construct the enhanced Project elements and facilitate the location of a Primary Business within the Project. The descriptions of the services that the Developer will provide support the Grant's public and economic development purposes and are not a description of goods or services being procured by the EDA or the County.
15. **Non-severability.** If any provision of this Agreement is determined by a court having competent jurisdiction to be unenforceable to any extent, the entire Agreement is unenforceable.
16. **Governing Law and Venue.** This Agreement is to be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Albemarle or in the United States District Court for the Western District of Virginia. An action shall not be brought in any other court.

17. **Interpretation of this Agreement.** This Agreement shall be interpreted in accord with how any terms are defined in this Agreement and otherwise by applying the plain and natural meaning of the words used, and not for or against any party by reason of authorship.
18. **Dispute Resolution.** If there is a dispute of any kind between any parties arising under this Agreement, upon the written request of a party:
- a. **Designation of a Senior Representative; Negotiation.** Each of the parties to whom the dispute pertains will designate one or more senior representative to negotiate with the other parties' senior representative in good faith and as necessary to attempt to resolve the dispute without any formal proceedings.
 - b. **Corrective Action.** If the negotiated resolution of the dispute requires any party to take, cause to be taken, or cease taking some action or practice, that party shall do so within a reasonable period of time, not to exceed 90 days.
 - c. **Dispute Resolution Process a Prerequisite to Starting Court Proceedings.** No party may initiate court proceedings by filing an action in a court of competent jurisdiction to resolve a dispute until the earlier of: (i) a good faith mutual conclusion by the senior representatives that amicable resolution through continued negotiation of the dispute does not appear likely; or (ii) 90 days after the initial request to negotiate the dispute. After either condition has occurred, a party may file an action in the jurisdiction and venue provided in this Agreement and may pursue any other remedy available at law or in equity. Each party shall pay its own attorney's fees.
 - d. **When the Dispute Resolution Process is Not Required.** Nothing in this Section 7.13 will, however, prevent or delay a Party from instituting court proceedings to: (i) avoid the expiration of any applicable limitations period; or (ii) seek declaratory and injunctive relief.
19. **Relationship of Parties.** This Agreement is intended solely to establish the relative rights and obligations of the parties and does not create any type of partnership, joint venture, purchaser-vendor, or employer-employee relationship.
20. **No Third-Party Beneficiaries.** This Agreement does not confer any rights on any person or entity who is not a party, whether as a third-party beneficiary or otherwise.
21. **No Waiver of Sovereign Immunity or Other Immunities.** This Agreement and any action taken by the County, the EDA, or their respective Boards pursuant to this Agreement is not, and shall not construed to be, a waiver of either sovereign immunity or any other governmental immunity that applies to

the County, the County's Board of Supervisors, the EDA, or the EDA's Board of Directors.

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

[SIGNATURES PAGE FOLLOWS]

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

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Jeffrey Richardson, County Executive

Approved as to form only:

Greg Kamptner, County Attorney

ECONOMIC DEVELOPMENT
AUTHORITY OF ALBEMARLE COUNTY

By: _____
W. Rod Gentry, Chairman

ATTEST:

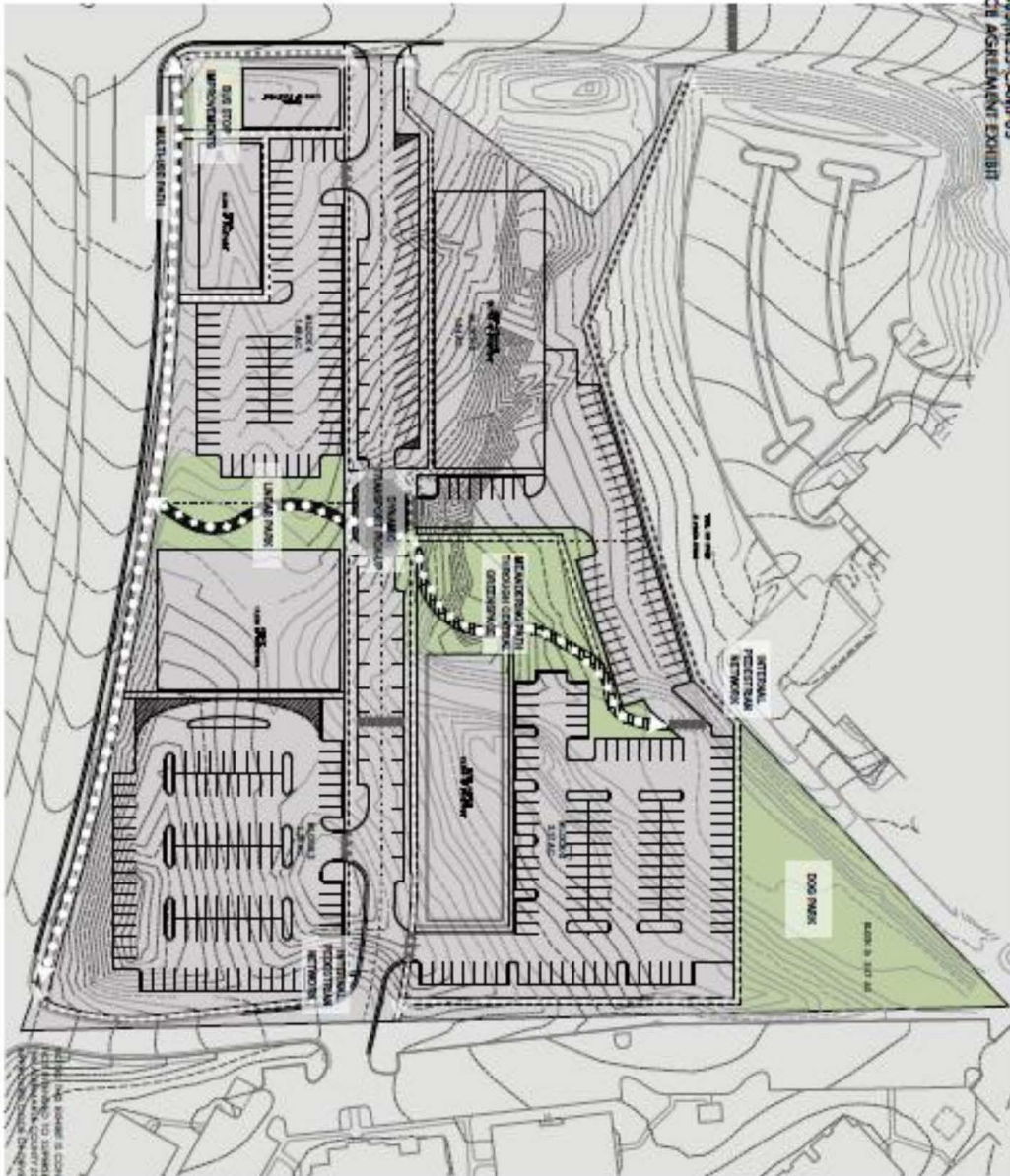
Secretary/Treasurer

5th STREET FOREST, LLC

By: _____
Kyle Redinger, Manager

PROJECT EXHIBIT

ALBEMARLE BUSINESS CAMPUS PERFORMANCE AGREEMENT EXHIBIT



March 31, 2020
April 6, 2020 Revised
Prepared by: Davis Engineering, P.C.

THIS PLAN AND BOOKS IS CONCEPTUAL IN NATURE AND IS NOT A GUARANTEE OF PERFORMANCE. IT IS NOT A GUARANTEE TO SPECIFIC AND REASONABLE OR ANY OTHER SPECIFIC PERFORMANCE OR ANY OTHER SPECIFIC PERFORMANCE ON THE PROJECTS.

**RESOLUTION TO APPROVE
ADDITIONAL FY 2020 APPROPRIATION**

BE IT RESOLVED by the Albemarle County Board of Supervisors:

- 1) That Appropriation #2020056 is approved; and
- 2) That the appropriation referenced in Paragraph #1, above, is subject to the provisions set forth in the Annual Resolution of Appropriations of the County of Albemarle for the Fiscal Year ending June 30, 2020.

**RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR HS2019-00020 McGOUGH HOMESTAY**

BE IT RESOLVED that, upon consideration of the Memorandum prepared in conjunction with the application and the attachments thereto, including staff's supporting analysis, any written comments received, and all of the factors relevant to the special exception in Albemarle County Code §§ 18-5.1.48 and 18-33.49, the Albemarle County Board of Supervisors hereby approves the special exception to modify the minimum 125 foot east side yard required for a homestay in the Rural Areas zoning district for HS2019-00020 McGough Homestay, subject to the conditions attached hereto.

* * *

HS 2019-00020 McGough Homestay Special Exception Conditions

1. The Homestay use is limited to three (3) guest rooms within the existing residence as depicted on the Parking and House Location Exhibit dated March 4, 2020.
2. Parking for homestay guests is limited to the existing parking areas as depicted on the Parking and House Location Exhibit dated March 4, 2020.

**ORDINANCE NO. 20-A(5)
ZMA201900014**

**AN ORDINANCE TO AMEND THE ZONING MAP
FOR TAX PARCEL 06100-00-00-134A0**

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that upon consideration of the transmittal summary and staff report prepared for ZMA201900014 and their attachments, the information presented at the public hearings, any written comments received, the material and relevant factors in Virginia Code § 15.2-2284 and County Code §§ 18-22.2.1, 18-23.2.1, 18-24.2.1, 18-25.2.1, and 18-33.27, and for the purposes of public necessity, convenience, general welfare and good zoning practices, the Board hereby approves ZMA 201900014.

**RESOLUTION TO APPROVE
SP 201900007 TANDEM FRIENDS SCHOOL PAVILION**

NOW, BE IT RESOLVED that, upon consideration of the staff report prepared for SP 201900007 and all of its attachments, the information presented at the public hearing, any written comments received, and the factors relevant to a special use permit in Albemarle County Code §§ 18-13.2.2(5) and 18-33.40, the Albemarle County Board of Supervisors hereby approves SP 201900007, subject to the conditions attached hereto.

* * *

SP 201900007 Tandem Friends School Pavilion Special Use Permit Conditions

1. The development of the use shall be in general accord with the concept plan entitled "Tandem Friends School Outdoor Pavilion," prepared by Train Architects, dated 24 March 2020, as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the specified plan, development and use shall reflect the following major elements as shown on the plan:

- a. Building orientation
- b. Building size (including height)
- c. Location of buildings
- d. Limits of disturbance
- e. Parking lot layout and landscaping

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

2. Additional buildings may be authorized only by a new special use permit;
3. Total school enrollment may not exceed two-hundred fifty (250) students; and
4. Amplified sound from the pavilion will be subject to maximum sound level regulations as provided in County Code § 18-4.18.04. Amplified sound is prohibited beginning Sunday through Thursday nights at 10:00 p.m. through 7:00 a.m. the following morning, and beginning Friday and Saturday nights at 11:00 p.m. through 7:00 a.m. the following morning. Unamplified sound will not be subject to the maximum sound level regulations, as provided in County Code § 18-4.18.05(N).

ORDINANCE NO. 20-A(6)

AN ORDINANCE TO ENSURE THE CONTINUITY OF GOVERNMENT DURING THE COVID-19 DISASTER

WHEREAS, on March 11, 2020, the World Health Organization declared the novel coronavirus (“COVID-19”) outbreak a pandemic; and

WHEREAS, on March 12, 2020, the County Executive, acting as the Director of Emergency Management, declared a local emergency because of the COVID-19 pandemic pursuant to his authority under Virginia Code § 44-146.21, and this declaration was confirmed by the Board of Supervisors on March 17, 2020; and

WHEREAS, also on March 12, 2020, Governor Ralph S. Northam issued Executive Order Fifty-One declaring a state of emergency for the Commonwealth of Virginia because of the COVID-19 pandemic; and

WHEREAS, Executive Order Fifty-One acknowledged the existence of a public health emergency arising from the COVID-19 pandemic and that it constitutes a “disaster” as defined by Virginia Code § 44-146.16 because of the public health threat presented by a communicable disease anticipated to spread; and

WHEREAS, Executive Order Fifty-One ordered implementation of the Commonwealth of Virginia Emergency Operations Plan, activation of the Virginia Emergency Operations Center to provide assistance to local governments, and authorization for executive branch agencies to waive “any state requirement or regulation” as appropriate; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency in response to the spread of COVID-19; and

WHEREAS, on March 17, 2020, Governor Ralph S. Northam and the Virginia State Health Commissioner issued an Order of the Governor and State Health Commissioner Declaration of Public Health Emergency (amended on March 20, 2020) limiting the number of patrons in restaurants, fitness centers, and theaters to no more than 10 per establishment; and

WHEREAS, on March 18, 2020, the Board of Supervisors consented to the County Executive, acting as the Director of Emergency Management, issuing an amended declaration of local emergency to refer to the COVID-19 pandemic as not only an emergency, but also as a “disaster,” as the Governor had included in Executive Order Fifty-One, and the County Executive issued the amended declaration on March 20, 2020; and

WHEREAS, on March 20, 2020, the Attorney General for the Commonwealth of Virginia issued an opinion in which he concluded that the COVID-19 pandemic, which the Governor declared is a “disaster” as defined in Virginia Code § 44-146.16, is also a “disaster” as that term is used in Virginia Code § 15.2-1413; and

WHEREAS, Virginia Code § 15.2-1413 provides that, notwithstanding any contrary provision of law, a locality may, by ordinance, provide a method to “assure continuity in its government” in the event of a disaster for a period not to exceed six months; and

WHEREAS, on March 23, 2020, Governor Ralph S. Northam issued Executive Order Fifty-Three, which closed all public and private K-12 schools throughout the Commonwealth of Virginia for the remainder of the 2019-2020 school year, imposed further restrictions on public and private gatherings on several classes of dining establishments, closed many classes of “recreational and entertainment businesses” in their entirety, imposed limitations on the number of patrons allowed in other businesses, and encouraged businesses to use teleworking when feasible and, if not feasible, to adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and other appropriate workplace guidance to the extent possible; and

WHEREAS, Executive Order Fifty-Three states that, despite the measure taken to date, “COVID-19 presents an ongoing threat to our communities,” that there are occurrences of the virus in every region of the Commonwealth, and that the data suggests that in several regions there may be community spread of the virus; and

WHEREAS, Executive Order Fifty-Three states that further measures are needed because “[u]nnecessary person-to-person contact increases the risk of transmission and community spread” and that “we must limit such interactions to those necessary to access food and essential materials”; and

WHEREAS, on March 27, 2020, the Virginia Employment Commission reported that the number of initial claims for unemployment insurance benefits filed statewide for the week ending March 21 was 46,277, an increase of 43,571 claimants from the previous week’s total of 2,706, a more than 2000% increase in one week; and on April 3, 2020, the number of initial claims for unemployment insurance benefits filed statewide for the week ending March 28 was 112,497; and

WHEREAS, on March 28, Governor Ralph S. Northam issued Executive Order Fifty-Four, in which he affirmed and delegated to the Commissioner of the Virginia Employment Commission the authority and responsibility for executing agreements with the United States Department of Labor related to implementing Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) and requesting Title XII advances from the Federal Unemployment Account; and

WHEREAS, Executive Order Fifty-Four was issued because “many Virginians are out of work due to temporar[y] business closures, school closures, and other health-related emergencies;” and

WHEREAS, on March 30, 2020, Governor Ralph S. Northam issued Executive Order Fifty-Five, entitled a “Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19)” which, among other things, ordered that all “individuals in Virginia shall remain at their place of residence,” with specific exceptions, continued to prohibit all public and private in-person gatherings of more than 10 individuals, with specific exceptions, prohibited all institutions of higher education cease all in-person classes and instruction, and closed all public beaches; and

WHEREAS, on April 2, 2020, President Donald J. Trump declared that a major disaster exists in the Commonwealth of Virginia and ordered Federal assistance to supplement Commonwealth, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic beginning on January 20, 2020, and continuing; and

WHEREAS, the Board of Supervisors finds that the COVID-19 pandemic constitutes a real and substantial threat to public health and safety and constitutes a “disaster” as defined by Virginia Code § 44-146.16 and within the meaning of Virginia Code § 15.2-1413; and

WHEREAS, the General Assembly recognizes the extreme public danger created by contagious diseases such as the COVID-19 virus by enabling counties, through the exercise of their police powers expressly granted in Virginia Code § 15.2-1200, to “adopt necessary regulations to prevent the spread of contagious diseases among persons” and to adopt “quarantine regulations” affecting persons; and

WHEREAS, Virginia § 15.2-1413 authorizes the County, by ordinance adopted by the Board of Supervisors, to “provide a method to assure continuity in its government” in the event of a disaster such as the COVID-19 disaster, and that this authority is granted “[n]otwithstanding any contrary provision of law, general or special”; and

WHEREAS, the Board has tailored this ordinance to “assure continuity in [the County’s] government” during the COVID-19 disaster by attempting to vary from existing State law and County Code procedures and requirements to the minimum extent necessary, recognizing the danger to public health and safety posed by public bodies physically assembling to conduct public meetings, and the difficulty in adhering to all of the procedures and deadlines imposed on the County and its public bodies by State law and the County Code, which are routine during normal governmental operations but which may be impossible to completely and timely satisfy during the disaster because most County staff are working remotely and significant staff resources are dedicated to, in effect, designing County government to address the unique issues arising daily during the disaster; and

WHEREAS, the Board has identified in Section 4 of this ordinance the functions of County government that it deems to be essential in order for it to continue during the COVID-19 disaster and, in doing so, observes that State and local government is complex, and the powers, duties, and obligations imposed on localities by the State to promote the public health, safety and welfare of their residents are numerous and varied, and that they extend well beyond merely those functions related to survival during a disaster; and

WHEREAS, this ordinance is solely in response to the disaster caused by the COVID-19 pandemic, promotes and protects the public health, safety, and welfare of the residents of the County, the City of Charlottesville, and the Commonwealth of Virginia, and is consistent with the laws of the Commonwealth of Virginia, the Constitution of Virginia, and the Constitution of the United States of America.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that:

Sec. 1. Purpose

The purpose of this ordinance is to ensure the continuity of the government of the County of Albemarle, Virginia, during the novel coronavirus ("COVID-19") disaster, which is currently a pandemic, by identifying the many essential governmental functions that must continue and establishing regulations to ensure these functions continue by providing for: (1) the succession of elected officials and appointed officers; (2) meeting procedures that allow the County's public bodies, whose members are elected or appointed, to meet and conduct business in a manner that is safe for the members of the public bodies, staff, and the public, and allow the public to participate in these meetings to the fullest extent practicable given the current circumstances; (3) provide alternative deadlines for certain matters that are different than those provided by State law or the County Code; (4) establish the method for resuming normal governmental operations; and (5) other matters related to the foregoing.

The requirements, procedures, deadlines, and other provisions of this ordinance vary from those that apply to County government under normal governmental operations. However, for the reasons explained in the recitals, these alternative regulations are deemed to be essential in order to ensure the continuity of government during the COVID-19 disaster without further risking the health and lives of the public and County officers, appointees, and employees resulting from exposure to the COVID-19 virus and its further spread. The regulations that apply during normal governmental operations will be followed to the extent they can be in a manner that is consistent with State and Federal orders and declarations and without risking the health and lives of the public and County officers and employees.

Sec. 2. Authority

This ordinance ensures the continuity of government during the COVID-19 disaster and is authorized by Virginia Code § 15.2-1413, which enables the Board of Supervisors to provide by ordinance "a method to assure continuity in its government."

Sec. 3. Scope

This ordinance applies not only to the government of the County of Albemarle, Virginia, but also to the Albemarle County Public Schools, the County's authorities identified in this ordinance, public bodies established pursuant to a joint exercise of powers agreement or other agreements, and other public bodies and offices described in Section 4.

Sec. 4. Essential Governmental Functions

Under the county executive form of government, the "powers of the county as a body politic and corporate" are vested in the Board of Supervisors. *Virginia Code § 15.2-502*. Any actions of the Board in which it exercises its powers are essential governmental functions. By providing vital support for the Board, the activities of the Clerk of the Board and her office are also essential governmental functions.

The Board of Supervisors also finds that the essential governmental functions that must be performed in order to ensure the continuity of government during the COVID-19 disaster are those activities or functions of the County established by Virginia Code § 15.2-518 (departments of finance, social services, law enforcement, education, records, and health), those that the Board has previously deemed to be "necessary to the proper conduct of the business" of the County pursuant to Virginia Code § 15.2-518, the authorities that provide essential public services, the County public bodies that oversee the proper administration and enforcement of State laws and the County Code, and the other public bodies and offices that facilitate the proper administration and implementation of State laws and the County Code to the extent necessary and practicable during the COVID-19 disaster.

- A. Essential governmental functions provided by County offices and departments. The following offices and departments provide essential governmental functions as described below:
1. County Executive's Office. The County Executive is the administrative head of the County, whose duties include executing and enforcing all Board resolutions and orders, that all laws of the Commonwealth required to be enforced through the Board, or some other County officer subject to the control of the Board, are faithfully executed, and performing other duties as may be required by the Board and as may be otherwise required by law. *Virginia Code § 15.2-516.* The functions of the Office of Equity and Inclusion and the Communications and Public Engagement Office, which exist within the County Executive's Office, are included in this designation. The Office of Management and Budget and the Project Management Office are also within the County Executive's Office, but their functions are identified separately below.
 2. County Attorney's Office. The County Attorney is the legal advisor to County government whose duties are to advise the Board and "all boards, departments, agencies, officials and employees" of the County on civil matters, draft or prepare ordinances, and defend or bring actions in which the County or any of its boards, departments, agencies, officials, or employees are a party; and in any other manner advising or representing the County, its boards, departments, agencies, officials and employees. *Virginia Code § 15.2-1542(A).*
 3. Department of Finance. The Finance Director's duties include administering the financial affairs of the County, including the budget; assessing property for taxation; collecting taxes, license fees, and other revenues; being the custodian of all public funds belonging to or handled by the County; supervising the expenditures of the County and its subdivisions; disbursing County funds; keeping and supervising all accounts; and performing other duties as the Board of Supervisors requires. *Virginia Code § 15.2-519.*
 4. Economic Development Office. Under normal governmental operations, this office is responsible for promoting the economic development of the County and the region, consistent with the County's Economic Development Strategic Plan, and providing staffing assistance to the Economic Development Authority. During the COVID-19 disaster, promoting the economic development of the County and the region and providing economic assistance to County businesses are essential functions of this office, and its services will also include any additional State or Federal assistance or services programs, either on its own or in its work with the Economic Development Authority.
 5. Department of Community Development. Under normal governmental operations, this office oversees a wide range of functions related to the physical development of the County. During the COVID-19 disaster, developing proposed plans for the physical development of the County, ensuring that its zoning, subdivision, and water protection regulations are current and continue to be reasonable, administering and enforcing the Albemarle County Zoning, Subdivision, and Water Protection Ordinances, and administering and enforcing the Virginia Uniform Statewide Building Code and other related codes are essential functions.
 6. Department of Facilities and Environmental Services. This department maintains and operates the County's buildings, manages the lands owned by the County, manages County capital projects and administers related construction contracts, and oversees environmental-related County responsibilities including, but not limited to, ensuring the County's compliance with the County's Clean Water Act permit, and its obligations as a municipal separate storm sewer system (MS4) program.
 7. Department of Fire Rescue. This department provides fire protection and emergency medical services and, through the Fire Marshal, administers and enforces the Virginia Fire Prevention Code.
 8. Department of Human Resources. This department provides human resources support for the County and Albemarle County Public Schools. The department provides services in seven key human resources functional areas: (1) recruitment/staffing support; (2) classification and compensation; (3) benefits and leave administration; (4) training and development; (5) employee relations; (6) workplace safety; and (7) teacher licensure and certification.

9. Department of Parks and Recreation. This department maintains and operates the County's parks and provides numerous recreational programs, which during normal governmental operations, are essential to the public health and welfare. During the COVID-19 disaster, ensuring that the County's parks are protected and maintained are essential functions.
 10. Department of Social Services. This department provides a range of: (1) child welfare services including child protective services, family support, family preservation services, a foster care program, and adoption services; (2) economic assistance for those in need, including administering the supplemental nutritional assistance program (SNAP), the temporary assistance to needy families (TANF) program, energy assistance, and auxiliary grants; (3) self-sufficiency services, including services related to employment training, career services, and child care services; (4) health care services, including administering the Medicaid program; (5) adult and elder care services, including adult protective services; (6) housing assistance; and (7) language assistance. During the COVID-19 disaster, these services will also include as essential functions any additional State or Federal assistance or services program.
 11. Office of Management and Budget. This office, which is part of the County Executive's Office, has the following responsibilities: (1) developing and implementing the County's operating and capital budgets; establishing budget policies, and monitoring departmental and agency budgetary and program performance; (2) preparing the five-year Financial Plan, five-year Capital Improvement Plan, and the long range Capital Needs Assessment; (3) developing and managing the performance management system; and (4) managing the local government grants application and awards process.
 12. Police Department. This department provides law enforcement and community safety services.
 13. Project Management Office. This office, which is part of the County Executive's Office, provides planning, organizational, and management responsibilities for the County's project portfolio, including organizational projects, strategic plan objectives, and technology solutions. During the COVID-19 disaster, one of this office's essential functions is having a critical role in planning, organizing, and managing a range of projects related to the County's response to the COVID-19 disaster.
 14. Department of Information Technology. This department provides, manages, and supports the use of critical technology that allows the County to operate and communicate internally and with the public.
- B. Albemarle County Public Schools. Under the County Executive form of government, the County is required to have a "department of education." *Virginia Code § 15.2-518*. The "department of education" is composed of the Albemarle County School Board, the Superintendent of the "school division," and the "officers and employees thereof." *Virginia Code § 15.2-531*. Article VIII, Section 1 of the Constitution of Virginia states: "The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained."
- C. Authorities. The following authorities and their boards provide essential governmental functions:
1. Albemarle Conservation Easement Authority. The Albemarle Conservation Easement Authority ("ACEA") was created as a parks and recreational facilities authority by resolution adopted by the Board of Supervisors on November 20, 1989 pursuant to the Public Recreational Facilities Authority Act (*Virginia Code § 15.2-5600 et seq.*). The ACEA was called the Public Recreational Facilities Authority until its name was changed by resolution adopted by the Board of Supervisors on July 11, 2018. The ACEA's articles of incorporation state that its purpose is to accept, hold, and administer open-space land and interests therein under the Open-Space Land Act (*Virginia Code § 10.1-1700 et seq.*). *Amended Articles of Incorporation adopted July 11, 2018*. The types of interests held include open-space easements that are donated by landowners, easements acquired by the County under its Acquisition of Conservation Easements ("ACE") program, and easements created pursuant to Rural Preservation Developments allowed under the County's zoning regulations. Monitoring and enforcing these easements are essential functions.

2. Albemarle County Broadband Authority. The Albemarle Broadband Authority (“ABBA”) was created as a wireless service authority “to provide qualifying communications services as authorized by Article 5.1 (Virginia Code § 56-484.7:1 *et seq.*) of Chapter 15 of Title 56 of the Virginia Code.” Facilitating the ongoing deployment of broadband infrastructure and services in the underserved areas of the County is an essential function.
3. Albemarle-Charlottesville Regional Jail Authority. The Albemarle-Charlottesville Regional Jail Authority (“Jail Authority”) was created as an authority under the Jail Authorities Law (Virginia Code § 53.1-95.2 *et seq.*) by agreement among the County, the County of Nelson, and the City of Charlottesville on November 15, 1995. The Jail Authority replaced the Regional Jail Board as the operator of the Albemarle-Charlottesville Joint Security Complex.
4. Albemarle County Service Authority. The Albemarle County Service Authority (“ACSA”) was created as an authority under the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 *et seq.*). The ACSA’s articles of incorporation state that its purpose is to undertake projects for distributing and selling potable water to retail customers, collecting wastewater from retail customers, and delivering the wastewater to the Rivanna Water and Sewer Authority. *Amendment to the ACSA Articles of Incorporation, dated December 16, 1985; County Code § 2-701.*
5. Economic Development Authority of Albemarle County, Virginia. The Economic Development Authority (“EDA”), officially identified as the “Economic Development Authority of Albemarle County, Virginia,” was created as an industrial development authority (now, an economic development authority) by ordinance adopted by the Board of Supervisors on May 12, 1976 pursuant to the Industrial Development and Revenue Bond Act (Virginia Code § 15.2-4900 *et seq.*). *County Code § 2-600.* The EDA has all of the powers of such an authority under the Act. The EDA operates in cooperation with the County pursuant to a Memorandum of Understanding and the Albemarle County Economic Development Strategic Plan, also known as Project ENABLE (Enabling a Better Life Economically). During the COVID-19 disaster, promoting the economic development of the County as it is enabled to do pursuant to Virginia Code § 15.2-4900 *et seq.*, providing economic assistance to County businesses within the scope of its enabling authority, and providing any services related to any additional State or Federal assistance or services program either on its own or in its work with the Economic Development Office, are essential functions.
6. Rivanna Solid Waste Authority. The Rivanna Solid Waste Authority (“RSWA”) was created on November 5, 1990 by the Solid Waste Organizational Agreement entered into between the County and the City of Charlottesville, together with a concurrent resolution of the Charlottesville City Council and the Albemarle County Board of Supervisors and the RSWA’s articles of incorporation, all pursuant to what is now the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 *et seq.*). The RSWA’s articles of incorporation state that its purposes are to “develop a regional refuse collection and disposal system, as such terms are defined in Virginia Code Section 15.2-5101 of the Virginia Water and Waste Authorities Act, including development of systems and facilities for recycling, waste reduction and disposal alternatives with the ultimate goal of acquiring, financing, constructing, and/or operating and maintaining regional solid waste disposal areas, systems and facilities, all pursuant to the Virginia Water and Waste Authorities Act.” *Concurrent Resolution of the City Council of the City of Charlottesville, Virginia and the Board of Supervisors of the County of Albemarle, Virginia to Amend and Restate the Articles of Incorporation of the Rivanna Solid Waste Authority, dated November 6, 2009.*
7. Rivanna Water and Sewer Authority. The Rivanna Water and Sewer Authority (“RWSA”) was created on June 7, 1972 by the City of Charlottesville and the County pursuant to what is now the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 *et seq.*). The RWSA’s articles of incorporation state that its purpose “is to acquire, finance, construct, operate and maintain facilities for developing a supply of potable water for the City of Charlottesville and Albemarle County and for the abatement of pollution resulting from sewage in the Rivanna River Basin, by the impoundment, treatment and transmission of potable water and the interception, treatment and discharge of wastewater, together with all appurtenant equipment and appliances necessary or suitable therefore and all properties, rights, easements or franchises relating thereto and deemed necessary or convenient for their operations. *Concurrent Resolution of the City Council of the City of Charlottesville, Virginia and the Board of Supervisors of the County of Albemarle, Virginia to Amend and Restate the Articles of Incorporation of the Rivanna Solid Waste Authority, dated May 5,*

2017. The RWSA operates five reservoirs at Ragged Mountain, Sugar Hollow, South Fork Rivanna, Totier Creek, Beaver Creek, along with five water treatment plants, and wastewater treatment plants.

- D. Public bodies existing under joint exercise of powers agreements. The following public bodies exist under joint exercise of powers agreements, and they and their boards exercise essential governmental functions:
1. Charlottesville-Albemarle Convention and Visitors' Bureau. The Charlottesville-Albemarle Convention and Visitors' Bureau ("CACVB") has existed in various forms for more than 20 years. Its current iteration was established by the County and the City on June 28, 2018, and it became effective July 1, 2018. Individually, both the County and the City are enabled by Virginia Code § 15.2-940 to "expend funds from the locally derived revenues of the locality for the purpose of promoting the resources and advantages of the locality." The purpose of the CACVB is to jointly promote the resources and advantages of the County and the City, including marketing of tourism and initiatives that attract travelers to the City and County, increase lodging at properties located within the City and County, and generate tourism revenues within the City and County. *Second Amended Agreement to Operate a Joint Convention and Visitors' Bureau, dated October 2, 2019.* The County and the City contribute funds to support the CACVB's facilities and operations from their respective transient occupancy tax revenues. During the COVID-19 disaster, the CACVB provides an essential function to support the County's hospitality business sector.
 2. Emergency Communications Center. The Emergency Communications Center ("ECC") was established by the County, the City of Charlottesville, and the University of Virginia on January 20, 1984. The ECC was established to provide a centralized dispatching facility for the respective parties' law enforcement and emergency service providers operating in the County and the City, and to provide a 911 emergency system. *Agreement By and Among the County of Albemarle, Virginia, the City of Charlottesville, Virginia, and the Rector and Visitors of the University of Virginia, dated January 20, 1984.* The ECC also provides coordination and assistance in emergency management for the Emergency Operations Plan adopted by its participating agencies.
- E. Other public bodies and offices. Other public bodies and offices of the County also exercise essential functions. They include, but are not limited to, the Planning Commission, the Architectural Review Board, the Board of Equalization, the Board of Appeals, the Board of Zoning Appeals, the Electoral Board, any advisory bodies established by the Board of Supervisors, and the office of the General Registrar.

Sec. 5. Succession

This section establishes the procedures to fill vacancies in elected and appointed offices arising during the COVID-19 disaster in order to ensure the continuity of County government. This section also applies to Albemarle County Public Schools and may be applied by the authorities and the other public bodies identified in Section 4 to the extent practicable. The Albemarle County School Board, in its discretion, may establish by resolution its own procedures to fill vacancies in elected offices arising during the COVID-19 disaster.

- A. Elected officials. When a vacancy occurs either on the Board of Supervisors or the Albemarle County School Board, the vacancy shall be filled according to the procedure generally established by Virginia Code § 24.2-228, as modified below:
1. Appointment by remaining members. When a vacancy occurs, the remaining members of the Board, within 45 days of the office becoming vacant, may appoint a qualified voter of the magisterial district in which the vacancy occurred to fill the vacancy. If a majority of the remaining members of the Board cannot agree, or do not act, the vacancy must be filled by judicial appointment as provided in Virginia Code § 24.2-227.
 2. If a qualified voter from the magisterial district cannot be found. If the Board is unable to find and appoint a qualified voter from the magisterial district in which the vacancy exists after a reasonable effort, it may appoint a qualified voter from any other magisterial district.

3. Duration of appointment. The person so appointed shall hold office only until the qualified voters fill the vacancy by special election pursuant to Virginia Code § 24.2-682 and the person so elected has qualified.
 4. Effect of being appointed. Any person appointed to fill a vacancy holds office the same way as an elected person, is authorized to exercise all powers of the elected office, and this includes having that person's vote be considered the vote of an elected member.
 5. Majority of seats are vacant. If four or more seats on the Board are vacant, the vacancies must be filled by judicial appointments as provided in Virginia Code § 24.2-227.
 6. Holding over. If, during the COVID-19 disaster, a general election cannot be held, any member whose term expires may continue to hold over in office until a successor is appointed.
 7. Temporary vacancies. If a member is unable to participate in any meeting of the Board for more than 30 days and the number of members available to meet and act falls below that required for a quorum as provided in Section 6, and action by the Board is determined to be essential to continue the functions of the County or the Albemarle County Public Schools, as applicable, the remaining members may, in their discretion, appoint a qualified voter to temporarily exercise the powers and duties of the office until the permanent member is able to participate.
- B. Appointed officers. This subsection applies to the County government and not to Albemarle County Public Schools, which is recommended to establish its own succession plan for appointed officers.
1. If the County Executive and the Deputy County Executive are incapacitated. If the County Executive and the Deputy County Executive are both incapacitated such that they cannot perform the duties of the County Executive, the Board of Supervisors may appoint any person it deems qualified to serve as Acting County Executive.
 2. If the County Attorney and the Deputy County Attorney are incapacitated. If the County Attorney and the Deputy County Attorney are incapacitated such that they cannot perform the duties of the County Attorney, the Board of Supervisors may appoint any person it deems qualified to serve as Acting County Attorney.
 3. If the Clerk and the Senior Deputy Clerk are incapacitated. If the County Clerk and the Senior Deputy County Clerk are incapacitated such that they cannot perform the duties of the County Clerk, the Board of Supervisors may appoint any person it deems qualified to serve as Acting County Clerk of the Board of Supervisors.
 4. If any department head and deputy department head or equivalent position are incapacitated. If any department head and any deputy department head, or any equivalent position are incapacitated, the County Executive may appoint any person he deems qualified to serve as the acting department head.

Sec. 6. Public Meetings

This section establishes the procedures for public meetings of the Board of Supervisors, the Planning Commission, the Architectural Review Board, the Board of Equalization, the Board of Appeals, the Board of Zoning Appeals, the Electoral Board, and any advisory bodies established by the Board of Supervisors. These procedures may also be applied by the Albemarle County Public Schools, the authorities, and the other public bodies identified in Section 4 to the extent this section is practicable for their public bodies. These procedures may be used during the COVID-19 disaster in order to ensure the continuity of government. References to the "Board" and the "Supervisors" in this section should be modified as appropriate when applied by public bodies other than the Board of Supervisors.

- A. The need to change how meetings are conducted during COVID-19. The Board fully endorses the statements in Virginia Code § 2.2-3700, which is the introductory section of the Virginia Freedom of Information Act, that the "affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government," and that unless an exception to open meetings is invoked "every meeting shall be open to the public." The regulations in this section for conducting public

meetings are necessary because the COVID-19 disaster makes it unsafe for public bodies, as well as their staff and the public, to physically assemble in one location or to conduct meetings in accordance with normal practices and procedures. Although the regulations in this section establish rules for conducting public meetings that are different from normal practices and procedures, the regulations are intended and designed to continue the policies expressed in Virginia Code § 2.2-3700.

- B. Meeting format. Any meeting or activity that requires the Board to physically assemble may be held through real time electronic means (including audio, telephonic, video, or any other practical electronic medium) without a quorum physically assembled in one location. Nonetheless, this ordinance does not prohibit the Board from holding in-person public meetings provided that public health and safety measures as well as social distancing are taken into consideration, and that doing so does not violate any order or declaration from Governor Ralph S. Northam or the State Health Commissioner. In addition:
1. If the Board will physically assemble, but the public will not be allowed to attend. Subsections (C), (D), (E), and (F) apply to any meeting where the Board will physically assemble to conduct the meeting but the public is not allowed to attend for public health and safety reasons.
 2. If the Board will physically assemble and the public will be allowed to attend. The general laws for conducting a public meeting, including those in Virginia Code §§ 2.2-3700 *et seq.* and 15.2-1400 *et seq.*, and the Board's Rules of Procedure, apply to any meeting where the Board will physically assemble and the public will be allowed to attend, provided that any applicable public health and safety measures are followed.
- C. Agenda. The agenda for an electronic meeting should: (1) state that the meeting is being held pursuant to this ordinance; and (2) identify the opportunities for the public to access and participate in the electronic meeting. The failure to state these items on the agenda neither makes the electronic meeting illegal nor invalidates any action taken at the meeting.
- D. Notice. Before holding a regular electronic meeting, the Board of Supervisors must provide public notice at least three days in advance of the electronic meeting identifying how the public may participate or otherwise offer comment. The notice must: (1) state that the meeting is being held pursuant to this ordinance; and (2) identify the opportunities for the public to access and participate in the electronic meeting. Any notice provided before the effective date of this ordinance, for a public meeting or public hearing after its effective date, that complied with the law when it was given but which is inconsistent with this ordinance, including with respect to the location of the meeting or public hearing, is deemed to satisfy any notice requirements and no action taken at that meeting or regarding any public hearing is invalid for that reason.
- E. Statement by the Chair. At the beginning of the meeting, the Chair should: (1) state that the meeting is being held pursuant to and in compliance with this ordinance; (2) identify the Supervisors physically and electronically present; and (3) identify the opportunities for the public to access and participate in the electronic meeting. The failure to state these items neither makes the electronic meeting illegal nor invalidates any action taken at the meeting.
- F. Public participation. Any electronic meeting must be open to electronic participation by the public and closed to in-person participation by the public. In addition, for any matters requiring a public hearing, public comment may be solicited by electronic means in advance and must also be solicited through telephonic or other electronic means during the electronic meeting. The public comments received before the electronic meeting will be provided to the Supervisors at or before the electronic meeting and made part of the record for the meeting.
- G. Postponing certain matters. Any non-emergency public hearing and action item on the Board's agenda may be postponed to a later date provided that public notice is given so that members of the public are aware of how and when to present their views.
- H. Quorum. If three Supervisors are unable to participate in a public meeting because each of those three Supervisors is sick from the COVID-19 virus, and at least one temporary vacancy has not been filled pursuant to Section 5, a quorum of the Board of Supervisors to conduct business is reduced from four to three. If four or more Supervisors are unable to participate in a public meeting for the reasons stated above, the only action that the participating Supervisors may take is to adjourn the meeting until the temporary vacancies can be filled.

- I. Voting. State laws, as may be implemented in the County Code, may impose different voting requirements.
1. Vote required to act. Although most actions require the majority vote of those Supervisors present and voting, there are some actions that require a supermajority vote, the majority vote of the elected members, or impose some other requirement. These different voting requirements continue to apply unless: (1) one or more Supervisors is sick from the COVID-19 virus; (2) the sick Supervisors are unable to participate in the public meeting; (3) the temporary vacancy has not been filled pursuant to Section 5 and the voting requirement imposed by State law or the County Code cannot be complied with; and (4) a vote is required by the Board at that meeting in order to ensure the continuity of government. If all four of those prerequisites are satisfied, the Board may approve the matter on the affirmative vote of those Supervisors present and voting. Following are examples of different voting requirements for certain matters, and how they are addressed if the four prerequisites are satisfied:
- a. When the affirmative vote of the elected members is required. Article VII, Section 7 of the Constitution of Virginia and its statutory companion in Virginia Code § 15.2-1428 require, among other things, the affirmative vote of a majority of all members elected to the governing body on certain matters. As provided in Section 5(A)(4), and based on language in Virginia Code § 24.2-228, any appointed Supervisor's vote is considered to be the vote of an elected Supervisor.
- b. When a supermajority vote is required. Virginia Code § 15.2-2405 requires a two-thirds vote of the elected Supervisors to impose taxes in a service district. The Board is unique because it is a six-member Board and, for it, a majority vote is also a supermajority when a two-thirds vote is required. There are no service districts in the County. If another matter requires a supermajority under Virginia law, the Board may approve a matter by a majority of the Supervisors participating and voting.
- c. When the vote by those present and voting is required. The requirement that a matter be approved by a majority vote of those present and voting is common, one example being found in Virginia Code § 15.2-1427(A). For the purposes of this voting requirement, any Supervisor who is participating in the matter is "present."
2. Roll call vote. A roll call vote should be taken on all matters requiring a vote and must be taken on any action on an ordinance and any other matter requiring a roll call vote pursuant to State or Federal law.
- J. Closed meetings. In addition to the purposes for the Board to have a closed meeting in Virginia Code § 2.2-3711(A), the Board may have a closed meeting to discuss plans to protect the public health and safety as it relates to the COVID-19 disaster and the discussion may include briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to those matters, to the extent that this purpose is not otherwise covered by Virginia Code § 2.2-3711(A)(19) or any other purpose for a closed meeting in Virginia Code § 2.2-3711(A).
- K. Minutes. The minutes of all electronic meetings must comply with the requirements of Virginia Code § 2.2-3707(H), identify how the meeting was conducted, and the Supervisors participating, and specify what actions were taken at the meeting.
- L. Recordings. An audio recording of any electronic meeting must be made and retained as provided by law. This requirement does not apply to any public body, such as an advisory committee, that is not required to have minutes of its public meetings.
- M. Other requirements not modified. Any requirements for conducting a public meeting in Virginia Code §§ 2.2-3700 *et seq.* and 15.2-1400 *et seq.* that are not modified by this section, including those pertaining to special and emergency meetings, apply to conducting a public meeting.

Sec. 7. Deadlines

This section applies to the County government. State law and the County Code impose many deadlines by which the County, Board of Supervisors, and other public bodies must act. The following deadlines are extended, with the proviso that the Board of Supervisors and the County will

endeavor to the extent practicable to meet the deadlines established by State law and the County Code. Subsections (D), (E), and (F) may be applied by the Albemarle County Public Schools, the authorities, and the other public bodies identified in Section 4.

- A. The tax rates. It is the intention of the Board to meet all of the deadlines established by State law to fix the tax rates. However, the May 15 deadline established by Virginia Code § 58.1-3321(E) for fixing the real estate tax rate, and the June 30 deadline to fix other tax rates established by Virginia Code § 58.1-3001, are extended indefinitely as may be necessary in order to allow the tax rates to be fixed.
- B. The budget. It is the intention of the Board to meet all of the deadlines established by State law to approve the County's annual budget. However, the May 15 deadline established by Virginia Code § 22.1-93 requiring the Board to "prepare and approve an annual budget for educational purposes by May 15 or within 30 days of the receipt by the county . . . of the estimates of state funds, whichever shall later occur," and the July 1 deadline to approve the budget established by Virginia Code § 15.2-2503 ("the date on which the fiscal year begins"), are extended indefinitely as may be necessary in order to approve the County's annual budget.
- C. Land use applications. Any deadline established by State law or the County Code for action by the County, the Board of Supervisors, or any County public body within the scope of Chapter 14, Subdivision of Land, Chapter 17, Water Protection, or Chapter 18, Zoning, is extended indefinitely as may be necessary to allow any public body or County staff to act. Any provision in State law or the County Code to deem the failure of any County action to be timely taken to be approval of the pending matter is of no force or effect.
- D. Requests for records under the Virginia Freedom of Information Act. Any deadline by which a response to a request for records under the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*) is due, and the time for which the records sought may be inspected or produced, are extended indefinitely as may be necessary in order to respond to the request or allow any records to be inspected or produced.
- E. Hold harmless. The failure to meet any deadline imposed by State law, including the Prompt Payment Act, or the County Code does not constitute a default, violation, approval, recommendation or otherwise.
- F. Other deadlines may be extended. Any other deadlines not extended by this section may be extended by a separate ordinance.

Sec. 8. Procurement

This section pertains to procuring goods and services by the County. This section also may be applied by the Albemarle County Public Schools, the authorities, and the other public entities identified in Section 4 that do their own procurements, to the extent this section is practicable for their public entities. References to the "County Executive" and other County-specific references in subsections (A) and (C) should be modified as appropriate when this section is applied by public entities other than the County.

- A. Authority to modify requirements or procedures for procurements not directly related to the COVID-19 disaster. The County Executive is authorized to modify any requirement or procedure imposed pursuant to the Virginia Public Procurement Act (Virginia Code § 2.2-4300 *et seq.*), the Albemarle County Purchasing Manual, or by custom, that requires or allows any procurement-related documents to be hand-delivered or delivered by a carrier to the County Office Building, or that requires or allows bidders and vendors to physically assemble for bid openings and other steps in the procurement process. Requirements or procedures may be modified as follows:
 - 1. Documents. Any modification pertaining to documents should require electronic documents to be submitted by any person submitting an inquiry, or responding to a request for information, request for proposals, an invitation for bids, or any other solicitation.
 - 2. Physical assemblies. Any modification pertaining to physical assemblies should require any steps in the procurement process by which people would otherwise physically assemble to participate through electronic communication means or to be conducted in a location that complies with any County, State, and Federal orders or declarations regarding gatherings.

- B. Authority of the County Executive for COVID-19 disaster related procurements is unaffected. Subsection (A) does not affect the County Executive, acting as the Director of Emergency Management pursuant to Virginia Code § 44-146.21(C), to “enter into contracts and incur obligations necessary to combat such threatened or actual disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster, and proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and other expenditures of public funds, provided such funds in excess of appropriations in the current approved budget, unobligated, are available.”
- C. Notice. Modifications to requirements or procedures made under this section do not need to be published in the Albemarle County Purchasing Manual to be effective. Notice reasonably calculated to make the public aware of these changes, including on the Albemarle County Purchasing Department’s website, is sufficient.

Sec 9. Duration

This ordinance is effective immediately and expires not later than six months after the COVID-19 disaster ends. The COVID-19 disaster will be deemed to be ended when the Board of Supervisors adopts a resolution ending the declared local emergency.

Sec. 10. Method for Resuming Normal Governmental Authority and Operations

- A. When normal governmental authority and operations will resume. Normal governmental authority and operations will resume after the County Executive, acting as the Director of Emergency Management, reports to the Board of Supervisors that all emergency actions that can be taken by the County have been taken, the Board ends the local emergency, the Governor ends the state of emergency, and the State Health Commissioner advises that it is safe for people to once again gather in public so that normal governmental authority and operations, including normal public meetings (or words to that effect), may be re-established.
- B. Method to resume normal governmental authority. When the events in subsection (A) have occurred, normal government authority will resume as follows, subject to further amendment to this section as may be necessary:
1. Succession. The appointment of any person to the Board pursuant to Section 5(A)(2) or 5(A)(7) terminates and any resulting vacancy will be filled as provided by law.
 2. Public meetings. Section 6 will no longer apply.
 3. Deadlines. Section 7 will no longer apply, subject to the County Executive establishing revised guidelines to allow for a reasonable transition period back to full normal County operation.
 4. Procurement. Section 8 will no longer apply to any steps in the procurement process that have not already been completed or been substantially completed.

Sec. 11. Effect of this Ordinance on the Powers of the Director of Emergency Management

This ordinance does not affect the powers of the County Executive, acting as the Director of Emergency Management, pursuant to Virginia Code § 44-146.21 during the COVID-19 disaster. The intention of the Board of Supervisors is that this ordinance and any powers exercised by the Director complement one another.

Sec. 12. Effect of this Ordinance on Albemarle County Courts and Constitutional Officers

This ordinance does not apply to the Albemarle County Circuit Court, General District Court, or Juvenile and Domestic Relations District Court. This ordinance also does not apply to the offices of the Albemarle County Clerk of the Circuit Court, Commonwealth’s Attorney, or Sheriff.

Sec. 13. This Ordinance Supersedes Prior Continuity of Government Ordinances; Exception

This ordinance supersedes any previous continuity of government ordinance adopted by the Board of Supervisors, including the emergency ordinance for continuity of government, Ordinance No. 20-E(2) adopted by the Board of Supervisors on March 27, 2020, provided that Section 7(C) of that ordinance

pertaining to certain deadlines related to the tax on personal property employed in a trade or business continues until Ordinance No. 20-E(2) expires or the subject matter of Section 7(C) is superseded by another ordinance.

Sec. 14. Severability

It is the intention of the Board of Supervisors that any part of this ordinance is severable. If any part is declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, the unconstitutionality or invalidity does not affect any other part of this ordinance.

Sec. 15. Liberal Construction

Because its purpose is to ensure the continuity of government, this ordinance should be liberally construed to accomplish this purpose and to facilitate the performance of the governmental functions and related services determined by the Board of Supervisors, either expressed or implied, to be essential.

State law reference – Va. Code § 15.2-1413.