

A regular day and night meeting of the Board of Supervisors of Albemarle County, Virginia, was held on June 19, 2019, at 1:00 p.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia. The night meeting was held at 6:00 p.m.

PRESENT: Mr. Norman G. Dill, Mr. Ned Gallaway, Ms. Ann Mallek, Ms. Diantha H. McKeel, Ms. Liz A. Palmer and Mr. Rick Randolph.

ABSENT: None.

OFFICERS PRESENT: County Executive, Jeff Richardson, Deputy County Executive, Doug Walker, County Attorney, Greg Kamptner, Clerk, Claudette Borgersen, and Senior Deputy Clerk, Travis O. Morris.

Agenda Item No. 1. Call to Order. The meeting was called to order at 1:00 p.m., by the Chair, Mr. Gallaway.

Agenda Item No. 2. Pledge of Allegiance.
Agenda Item No. 3. Moment of Silence.

Agenda Item No. 4. Adoption of Final Agenda.

Mr. Gallaway asked that Item 8.2 from the Consent Agenda be reviewed by Mr. Richardson prior to *Matters From the Public*.

Ms. McKeel requested that the Board discuss drafting a letter to the MPO about HDAP and the Zan Road Bridge during *Matters Not Listed on the Agenda* at the end of the meeting.

Ms. Mallek **moved** that the Board adopt the final agenda, as amended. The motion was **seconded** by Mr. Dill.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.
NAYS: None.

Agenda Item No. 5. Brief Announcements by Board Members.

Mr. Randolph informed the Board that he, along with Mr. Kamptner, Ms. Mallek, and Mr. Bill Fritz attended a workshop on Friday, June 14, in Spotsylvania County held by the High Growth Coalition. He said the very productive discussion focused on impact fees and there was draft legislation in the General Assembly that would address impact fees.

Ms. Mallek added that this was the most effective meeting held by the High Growth Coalition in 10 years and she was excited to see how much progress people have made.

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Ms. Mallek said she was incredibly excited that the Virginia Supreme Court upheld the right of Virginia to ban mined uranium as this was the best thing for clean water they have had in a long time.

Ms. Mallek said she attended a Defense Affairs Committee meeting of the Chamber of Commerce this morning, at which Wayne Wolfrey from Rivanna Station made a report. She said design for the addition to the NGIC building and the addition of 244 workspaces was complete and funded and all it needs was a check written by Congress. She explained that it has to be adopted by a budget and cannot be funded by a continuing resolution. She encouraged others to write to Congress and request that they pass a budget, commenting that this as a great step forward for this community.

Ms. Mallek reported that a group of about 150 people gathered in Crozet on Friday, June 14, at the corner of Jarman's Gap and Crozet Avenue to dedicate a beautiful, 80-foot tall, flagpole with a huge Albemarle County flag. She read the flagpole dedication as follows: "Below it hangs the flag of Virginia, prisoners of war, and Crozet." She recounted that there was singing along with Fire and Rescue people and it was great fun. She read the Spirit of Crozet as follows: "We fly our banners high in honor of our volunteer civic spirit and our tradition of neighbors helping neighbors in the fire, rescue, and police services, and in the armed forces. In gratitude to those who serve, and in memory of those who proudly passed this legacy to us, this flagstaff is dedicated on Flag Day, June 14, 2019."

Ms. Mallek reported that she attended a farewell to David King at the winery immediately after the flag ceremony, attended by over 1,000 people who remembered him fondly. She said there were people from Europe and Texas and from all over Virginia, and it really showed the impact that he and his family had on strengthening the agricultural economy. She noted that representatives from the Sheriff's office were in attendance to express thanks for Mr. King's work with the drone program. She said the family has helped hundreds of nonprofits through fundraising polo games for 15 years. She said Mr. King would be missed but the boys and Ellen King would carry on and do great for everyone.

Mr. Randolph announced that the Batteau Festival was taking place today, June 19, in Scottsville.

Ms. Mallek expressed disappointment that they did not find out about this ahead of time because she would like to go and asked that in the future the Board be notified ahead of time.

Agenda Item No. 6. Proclamations and Recognitions:

Item No. 6a. Proclamation Recognizing Alzheimer's & Brain Awareness Month.

Mr. Dill read into the record and **moved** to adopt the following proclamation:

Alzheimer's & Brain Awareness Month

- Whereas,** Alzheimer's disease is a progressive, degenerative brain disease, tragically robbing individuals of their memories and every 65 seconds, someone develops Alzheimer's, and by 2050 someone in the United States will develop the disease every 33 seconds; and
- Whereas,** in Virginia, over 150,000 people have Alzheimer's or related dementia and in the United States, there are 5.8 million people living with Alzheimer's disease and unless a cure is found it is estimated that as many as 14 million will have the disease by 2050; and
- Whereas,** nearly two-thirds of those with Alzheimer's disease are women and Alzheimer's is the 6th leading cause of death in the United States; and
- Whereas,** the Alzheimer's Association is the world's leading voluntary health organization in Alzheimer's care, support and research, with the vision of a world without Alzheimer's disease; and
- Whereas,** The Longest Day on June 21st, a sunrise-to-sunset event symbolizing the challenging journey of those living with the disease and their caregivers, offers everyone the opportunity to get involved in the fight.

NOW, THEREFORE, BE IT RESOLVED, that we, the Albemarle County Board of Supervisors, do hereby, Proclaim **June as Alzheimer's & Brain Awareness Month** in the County of Albemarle and calls upon all residents to show their support on The Longest Day, **June 21, 2019** by wearing purple and engaging in a day of activities, honoring the strength, passion and endurance of people facing Alzheimer's disease; and

BE IT FURTHER RESOLVED, that we offer support to those living with Alzheimer's disease, and recognize those who care and provide for them sharing their loved one's emotional, physical and financial strains; and honor their compassion, remember those we have lost, and press toward the next great scientific breakthrough.

Signed this 19th day of June 2019.

The motion was **seconded** by Ms. McKeel. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.
NAYS: None.

Ms. Monique Bruce, Chair of the Alzheimer's Association of Central Virginia, accepted the proclamation. She thanked the Board and recounted at how at her organization's quarterly meeting, they discussed how special it was to have the community get behind them and support volunteerism. She said they are determined to find a cure and, again, appreciate this type of support.

Item No. 6b. Resolution of Appreciation for Ron White

Ms. Mallek read into the record and **moved** to adopt the following resolution:

Resolution of Appreciation for Ron White

- WHEREAS,** Ron White has faithfully served the County of Albemarle over the last 19 years as the Chief of Housing providing mentorship, and leadership on affordable housing issues and building and maintaining relationships with other departments, development partners, and funding partners that reflects the community's vision; and
- WHEREAS,** Ron's leadership and efforts with the Housing Committee in creating the County's Affordable Housing Policy resulted in proffers of approximately \$1.5 million and the potential for 1,000 affordable housing units; and
- WHEREAS,** Ron applied for and received over \$4 million in Community Development Block Grants resulting in improved housing for approximately 200 families, sewer connections for 75 families, and 39 new housing units being built; all benefiting families with low to moderate

income; and

WHEREAS, Ron has diligently worked with developers, both non-profit and for-profit, in accessing low-income housing tax credits that created approximately 250 affordable rental units, and preserved approximately 150 affordable rental units; with sixty of the new units being developed in partnership with the City of Charlottesville and thirty of those units were restricted to homeless individuals;

NOW, THEREFORE, BE IT RESOLVED, that we, the Albemarle County Board of Supervisors hereby honor Ron White and commend him for his many years of exceptional service to the County of Albemarle, the Department of Housing, Albemarle County residents, the broader community in which we live, and the Commonwealth of Virginia with knowledge that Albemarle County is strengthened and distinguished by Ron's leadership, dedication, commitment, professionalism and compassion in meeting community needs.

Signed this 19th day of June, 2019

The motion was **seconded** by Ms. McKeel. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.
NAYS: None.

Mr. Ron White addressed the Board and thanked them for the recognition. He recognized the presence of his wife in the audience. He said that he worked at the Virginia Department of Housing and Community Development prior to coming to Albemarle, where he had the opportunity to work with jurisdictions and other housing agencies across the state. During this time, he recognized that if he were ever to change employment and go somewhere else, it would be to Albemarle County, primarily because of the work the County has always done with partners to address affordable housing issues. He said he was honored when that opportunity came up in 2000. He said since that time they have expanded on these partnerships and created new ones, many of which are with the private for-profit sector, whereas in the past, they worked primarily with the nonprofit sector. He recognized the work of the Albemarle Housing Improvement Program, Piedmont Housing Alliance, Habitat for Humanity, Albemarle County Service Authority, and the private development community and their funding agencies. He thanked the Board for the trust they had in him in implementing many initiatives to improve housing conditions of the County's lower income residents.

Mr. Walker addressed the Board and recognized the contributions of Mr. White, noting the incredible amount of detail that goes into assuring that outcomes are achieved and that the County remains in good standing with federal and state agencies. He observed that Mr. White makes the work appear to be easy and complimented him for his work and attention to detail. He said the County was held in extremely high regard by DHCD and HUD, in large part due to the attention Mr. White pays to their rules and regulations.

Mr. Gallaway remarked that when he came to serve on the Board, it became clear that the work Mr. White has done over the years was having current relevant impact. On behalf of the Board, he expressed appreciation to Mr. White for his service and for everything he has done for the County.

Item No. 8.2. Proposed Change to Thomas Jefferson Holiday.

Mr. Richardson stated that the County Office Building serves a variety of uses; was co-located and shared with the County schools. He noted that the school administrative offices are located on the third floor, County offices are on the first floor, and Human Resources was located near the visitor's entrance. He said that the Employee Advisory Committee has been examining the pros and cons of not being open on the holiday, given that schools are open, the building was open, and the Department of Human Resources was open. He said that HR officials observed that many residents came in for services on this day, particularly related to taxes, as the holiday falls during tax season. He said the Committee considered having this as a floating holiday, and HR has agreed that this was feasible beginning in 2020. He described this as a win-win, as employees would be able to schedule the holiday in advance and the County Office Building would be open to the public for one additional day during the year. He stated that this would not prevent the County from taking appropriate measures to recognize Thomas Jefferson's contributions to the community. He added that Community Development reports that they have had complaints from builders, realtors, and permit applicants that the offices are closed on this day. Mr. Richardson said this was not a holiday recognized across the state, and, therefore, was looked at from a customer service standpoint.

Ms. Palmer said she has been hearing about this problem since she came on the Board in 2014. She expressed appreciation to Mr. Richardson for taking the time to recognize Mr. Jefferson's contributions to this community and the fact that they would still be celebrating his birthday.

Ms. McKeel said she was looking forward to the next Founder's Day at Monticello, which many of them attend every year, and looks forward to hearing back from Mr. Richardson on the recommendations.

Ms. Mallek remarked that Thomas Jefferson had expressed that people were not to celebrate his birthday.

Mr. Randolph observed that there was much focus on the third President but little on the fifth, James Monroe, who was also a resident of the County. He said Mr. Monroe had a non-partisan, apolitical approach to government, was involved in the purchase of Florida from Spain, and developed warmer relations with Canada, which are things they could look upon fondly today. He said they need to recognize Thomas Jefferson, though they should acknowledge other presidents with a local connection who are equally deserving of recognition, including both Roosevelts. He expressed support for the changes recommended by Mr. Richardson as a way to improve service to the public.

Introductions. Mr. Gallaway recognized that he had skipped the introduction portion of the meeting. He recognized the presence of the presiding security officers, Officer Peter Schellinger and Office Dana Reeves, and County staff at the dais.

Mr. Richardson said the question might arise as to why they are considering a change to the Jefferson holiday now. He explained that the County's fiscal year runs from July 1–June 30, and he was informed by Human Resources that this item would have to come before the Board by their second meeting in June at the latest.

Mr. Dill suggested that since they will be open, they should use it as an opportunity to celebrate his birthday, such as a greeter at the door or a representative from Monticello.

Agenda Item No. 7. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Craig Decker addressed the Board regarding Agenda Item #8.2 and expressed concerns about eliminating the Jefferson's Birthday holiday, which would have significant ramifications. He encouraged the Board to wait, provide time for input and see what City Council was doing on June 21. Mr. Decker explained the reasons why he was opposed to losing Jefferson's Holiday: the demotion of Jefferson's place in history and subsequent repudiation, particularly in light of Council's actions; the need for more citizen and employee input prior to a decision to eliminate it; the undermining of the Jefferson brand and an evaluation by staff on its consequences; an increase in division in the community; and public perception if the County departs from the City's position in the event they decide not to eliminate it.

Mr. Philip Van Cleave, President of the Virginia Citizens Defense League, addressed the Board regarding Agenda Item #9, and expressed opposition to the proposal in support of the Governor's position on gun legislation, which he views as political. Mr. Van Cleave stated that none of the provisions would have stopped the Virginia Beach or Virginia Tech incidents but having more armed citizens and employees would. He suggested that if the Board wants to pass a law, that it does something useful, and this proposal does not. He asked that the Board oppose the resolution.

Mr. David Garth addressed the Board on behalf of Agenda Item #9, and said he speaks on behalf of more sensible gun laws, noting that the problem is the people who have them and use them to kill other people. He noted that Americans kill more Americans with guns than any other industrialized nation, and our laws have provided for greedy and angry people to kill for profit and revenge. He stated that they could require background checks for every gun purchase and enforce those requirements. He stated that he grew up in Crozet said he learned to hunt quail and rabbits with a shotgun, and at the time the rule was that one could not have more than three shells in their shotgun, nobody said that was unconstitutional, and he does not believe it would be unconstitutional today. He said they could have laws like this that protect human life if they exercised the will to do what was right, and he expressed support for new regulations for the use of guns.

Mr. Rod Gentry, Chair of the Economic Development Authority and resident of Rivanna District, addressed the Board. He expressed appreciation to the Board for leading the way, along with the Department of Economic Development, to support Project Patriot in Crozet. He said this was one of the first private-public partnerships of its kind in Albemarle, which will change the way Crozet grows in the future and create a vibrant and wonderful downtown, which most residents support. He said the project will enable the County to cooperate with the developer to get things done that would not be possible or feasible for the County or the developer to do itself. He said it was a grand opportunity to provide leadership, help Crozet plan for the future, and to make Crozet and the County a better place.

Mr. Rick Bayless, resident of Woodbrook and former resident of Crozet, addressed the Board. He said his kids attended Crozet, Henley, and Western Albemarle schools as well as PVCC. He said he was here to talk about school safety. He stated that he was worried for his grandkids who are almost ready to enter school; and they need to do something to protect them. He expressed concern that they would do something that would not really improve the situation. He recognized that strong drugs were outlawed in the 1920s and 1930s because they were in the same kind of desperate situation and now realize they made a mistake with marijuana, which has some value and was starting to become legal and cheaper. He recognized that the country has a heroin epidemic. He stated that gun free zones would not prevent someone who was desperate and someone willing to commit murder would not observe this rule. He said that Governor Northam was just going after votes and was going to cop out just to do something, though

it would not make any difference. He asked that the Board do something that would actually protect his grandkids and their grandkids.

Mr. Dave Stoner, resident of Greenwood, former Chair, Crozet CAC, and member of Downtown Crozet Initiative, addressed the Board. He said he was speaking on behalf of the Initiative, a 501(c)3 organization formed to help revitalize and create a vibrant Downtown Crozet. He encouraged the Board to approve the agreement between the County and Crozet New Town Associates for a number of reasons and characterized it as a smart investment that would create real dividends, including the creation of a public plaza, around which real economic development would happen bringing tax revenue and job creation. He said it focuses development in the growth area, in accordance with the Crozet Master Plan, which helps to alleviate pressure in the outlying portions of the growth area, particularly along Route 250. He thanked Ms. Mallek for her leadership and for championing Crozet issues for many years, Doug Walker and Roger Johnson, who have run with the concept and turned it into a real proposal, and Frank Stoner of Milestone Partners/Crozet Newtown Associates, who has worked with the community tirelessly for years and obtained community input to put together a plan the community could be behind. He said the Downtown Crozet Initiative (DCI) looks forward to working with the County and Milestone Partners/Crozet Newtown Associates to see the vision of a revitalized Downtown centered around the new plaza in The Square.

Mr. Stoner urged the Board to support the Governor's resolution on gun violence. He expressed agreement with the remarks made by Mr. Carter. He said he was a gun owner and grew up hunting, and said he knows everyone could do more.

Mr. Doug Bates, member of Downtown Crozet Initiative and Crozet CAC addressed the Board. He said that Frank Stoner presented the outlines of this plan at a meeting of the Crozet CAC and the reception was very strong and positive. He said they have been waiting for an identity for a very long time, which the plaza could give them. He remarked that he has observed the growth planning process over a number of years, with a design of growth areas and a vision of having things done in an orderly and planned way, and he thinks this actually works and presents an opportunity for the other growth areas to model.

Regarding the issue of guns, Mr. Bates said he was a gun owner but wants everyone who owns a gun to be identified and registered, expressing support for the Governor and the Board.

Mr. Emil Groth addressed the Board and said that the timing and action of the Governor seems political and he hopes the Board would not jump on the bandwagon of supporting this for political reasons. He said they do not know what the Governor was proposing, as he was throwing things around, and it was a political diversion. He said that they cannot control the people that are going to use weapons to hurt other people, as it was a cultural thing, a moving away from God, and a moral issue. He said unfortunately, people have been hurting other people forever, and taking away rights from people who are responsible does not help matters. He said that gun-free zones are like putting a kick me sign in high school and was looking for trouble. He expressed support for allowing school personnel who are qualified to obtain concealed carry weapons.

Mr. Sean Tubbs, of the Piedmont Environmental Council, addressed the Board. He thanked the Board for all the opportunities to make comments. He said the ability to speak publicly on a topic was one of the ways our system of government remains vibrant. He said that skeptical questions are crucial ingredients for a successful democratic process, especially during times of change and policy change. He noted that they are in a new era in the County in regard to economic development, as economic development policy was changing other aspects of government, including land use items, which has raised questions from many of his colleagues about transparency. He recognized that this agenda includes Project Patriot and a performance agreement with Habitat, which are the products of lawful closed-door meetings, and expressed his understanding of the need for some negotiations to be confidential. He acknowledged that the Board has listed the topics of closed meetings, something that was very useful, in response to concerns raised earlier this year. He noted that there have been cases in Virginia where economic development projects did not go so well, they do not want to happen here, and they want these projects to work. He expressed faith in the motivations of the County's Department of Economic Development to promote and encourage its own brand of economic development. He emphasized that his organization was not complaining about economic development and supports efforts to secure badly needed infrastructure, such as the plaza in Crozet, which would catalyze the Comprehensive Plan. He commented that a transparent government requires skeptics to be heard and listened to, especially when taxpayer money was at risk. He said that government requires checks and balances, which at the local level means venues for questions and concerns to be raised.

Ms. Helen Cauthen, President of the Central Virginia Partnership for Economic Development, informed the Board that CVPED has moved to a new office at University of Virginia Research Park and love their new digs. She congratulated the Board on its exciting work at yesterday's joint meeting with the EDA and recognized their collaborative, thoughtful, and helpful questions. She said she would speak to Agenda Item #11, Public-Private Partnership with Crozet Newtown Associates. She characterized this as an exciting and innovative opportunity from which the County would gain a number of things, including commercial, retail, and residential space, a plaza as a central business district, road projects, and public

gathering space, all paid for by future revenues without increasing taxes. She said the public-private partnership was a viable way to accomplish the County's strategic goals and a wonderful example of how win-win could be achieved. She commended Ms. Mallek, Doug Walker, Roger Johnson, and Frank Stoner for their tireless work and for showing everyone how to develop innovative solutions to complex problems. She thanked Mr. Gallaway and Ms. Mallek for their service on the Virginia Career Works Piedmont Region Council, and Mr. Richardson for his service as a member of the partnership's executive committee and board.

Ms. Debbie Garth, resident of the Jack Jouett District in Charlottesville, addressed the Board. She encouraged the Board to have the gun issue and vote come to the floor so all points of view could be heard as everyone must talk in order to solve this problem. She urged the Board to encourage elected representatives to bring the issue to the floor.

Ms. Lori Schweller, attorney and member of the Habitat for Humanity Board, addressed the Board. She expressed support for the performance agreement (Agenda Item #10). She thanked Supervisors for their many hours of work and for carefully considering the terms of the agreement. She thanked Greg Kamptner, Doug Walker, Kristy Shifflett, Meagan Nedostup, Stacey Pethia, and many others on staff who have worked very hard. She invited people to read the recitals to see how the agreement would support the Comprehensive Plan; affordable housing was a pressing issue for our community and the nation. She said the project was special because it was designed by current residents of Southwood to ensure it satisfies all of their priorities. She said the project was designed as a mixed-use and mixed-income development, with the first phase being a \$94 million project funded by private donors, government agencies, and \$3.875 million potential funding from County taxpayers. She said the County was blessed with an energetic and innovative Habitat, with a CEO, staff, and volunteers whose ambitions for the citizens they serve was unparalleled in the Commonwealth and serves as a model nationwide and even internationally. She said the leveraging of the asset of the parcel on Old Lynchburg to sell to private developers for market rate and low-income housing tax credit development was a creative and brilliant attribute. She said this cash infusion would fund the land development and preparation necessary prior to the vertical construction the County intends to fund. She noted that creative local developers are also contributing to make the development happen through their purchases and not the other way around. She thanked the Board for its vision, support, and work for the community.

Mr. Will Devault-Weaver, a resident of the City, addressed the Board. He expressed support for the partnership agreement with Habitat as it allows residents to remain in the community and enjoy its benefits.

Mr. Gallaway closed the Matters from the Public portion of the meeting.

Agenda Item No. 8. Consent Agenda.

Mr. Kamptner said that Item 8.1 should have been pulled from the Consent Agenda; it will come back to the Board on July 3.

Ms. McKeel **moved** that the Board approve the Consent Agenda, as amended. The motion was **seconded** by Ms. Mallek.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.

NAYS: None.

Item No. 8.1. FY 2019 Appropriation.

By the above-recorded vote, this item was removed from the agenda.

Item No. 8.2. Proposed Change to Thomas Jefferson Holiday.

The Executive Summary forwarded to the Board states that former president of the United States, Founding Father, and principal drafter of the Declaration of Independence, Thomas Jefferson, was born in Albemarle County on April 13, 1743. Recognizing the cultural and historic significance of Mr. Jefferson's contributions to the County of Albemarle, the organization has long observed April 13th as an official holiday.

Currently, all local government employees are granted Thomas Jefferson's Birthday as one of their 12 holidays, except those employees following the State's Holiday schedule and those who follow the School Division's Holiday schedule.

County local government offices close on April 13th. If Mr. Jefferson's birthday falls on a weekend, local government offices are closed on the directly adjacent weekday. In 2019, April 13th fell on a Saturday and local government offices were closed Friday, April 12th in observation of the holiday.

Aside from the City of Charlottesville, no other local government office is closed in recognition of Mr. Jefferson's birthday. Albemarle County Public Schools do not close in observation of the Thomas Jefferson holiday.

Customer Service Issue

Albemarle County's Pillars of High Performance (the Pillars) provides the organizational standard for excellence in local government operations (Attachment A). The Public Service Covenant, illustrated within the Pillars as a Core Value, speaks to commitment to customer service as a component of local government's service to the public. Observation of Thomas Jefferson's birthday as an official holiday does not best enable staff to provide exemplary customer service.

Staff recognizes that the lack of commonality with the community in closing on April 13th can create confusion for the public and agency partners. In addition to the day not being a widely recognized holiday, there is a lack of consistency-the actual day of the week changes every year. It is not uncommon for several individuals to come to the County office building on this holiday looking for service only to be turned away. This is particularly sensitive given the timing of the holiday and its proximity to the tax deadline (April 15th).

Proposed Solution

To provide excellence in public service by ensuring accessibility to the public on standard work days while also ensuring employees receive a similar number of holidays throughout the year staff is proposing that a floating holiday be created in place of the Thomas Jefferson Birthday holiday.

The floating holiday would be granted January 1, 2020 and would have to be used by June 30, 2020. Providing a floating holiday in place of the Birthday holiday will allow for:

- employees to have a choice regarding what day to take
- honoring needs for diverse employees
- work-life balance

If approved by the Board the change to a floating holiday would take effect for the upcoming FY 21. The required changes to P86: the Leave Policy would be made by Human Resources staff and brought back to the Board for approval.

Recognizing Mr. Jefferson

It is important to note that the floating holiday as proposed does not prevent interested staff from taking time off to participate in local celebrations of Mr. Jefferson's birthday, nor does it prevent the County from taking other appropriate measures to recognize his contributions to this community.

No impact to the budget is anticipated.

Staff recommends that the Board:

- approve the proposed 2019-2020 Holiday Schedule (Attachment B) with proposed change incorporated
- approve the proposed change to the Thomas Jefferson Birthday holiday including:
 - local government offices open for regular business on April 13th
 - replacement of the birthday holiday with a floating holiday for staff.

By the above-recorded vote, the Board approved the proposed 2019-2020 Holiday Schedule with proposed change incorporated; approved the proposed change to the Thomas Jefferson Birthday holiday including: 1) local government offices open for regular business on April 13th and replacement of the birthday holiday with a floating holiday for staff.

**HOLIDAY SCHEDULE
2019-2020**

Local Government Employees	
Thursday, July 4, 2019	Independence Day
Monday, September 2, 2019	Labor Day
Monday, November 11, 2019	Veterans Day
Thursday & Friday, November 28-29, 2019	Thanksgiving
Tuesday & Wednesday, Dec. 24-25, 2019	Winter Holiday
Wednesday, January 1, 2020	New Year's Holiday
<i>Wednesday, January 1, 2020-Tuesday, June 30, 2020</i>	<i>Floating Holiday available for use</i>
Monday, January 20, 2020	Martin Luther King Jr. Day
Monday, February 17, 2020	President's Day
Monday, May 27, 2019	Memorial Day

Item No. 8.3. Circuit Court Agreement and Supplemental Funding Request.

The Executive Summary forwarded to the Board states that Albemarle County is part of the Sixteenth Judicial District of Virginia and is served by a Circuit Court, General District Court, Juvenile and Domestic Relations Court, and Magistrate's Office. In addition to Albemarle County, the 16th District includes the City of Charlottesville, and Culpeper, Fluvanna, Goochland, Greene, Louisa, Madison and

Orange Counties. Currently, Albemarle County's Circuit Court is served by one full time judge, Cheryl Higgins, whose salary and benefits are covered by the State Compensation Board ("Comp Board"). As is usual and customary in Virginia, the County also supports expenditures of the court that are not covered by the Compensation Board, such as the salary and benefits of a full-time legal assistant for Judge Higgins.

Recently, due to increasing caseloads, the State appointed a second judge, Claude Worrell, to assist the localities of Albemarle, Greene, and the City of Charlottesville. As with other judges appointed to the district, the salary and benefit costs associated with the new judge will be covered in full by the State Comp Board. Judge Worrell has approached the localities to which he is assigned with a request to fund a full-time legal services assistant to assist him with administrative duties customarily required with circuit court operations. Further, given that he will be sitting two days in Albemarle County and one day in the City of Charlottesville, Judge Worrell has requested a permanent office in the County's court complex and that his new legal assistant be a part of the County's pay plan.

Staff has drafted a cost-sharing Agreement for the Board's consideration (Attachment A). The Agreement outlines the hiring of a Legal Services Assistant who will be employed by Albemarle County (similar to Denise Hodges who serves Judge Higgins), subject to a fully executed cost-sharing Agreement between the City of Charlottesville, Greene County, and Albemarle County in which Greene County and Charlottesville agree to contribute to Albemarle 40% and 20%, respectively, of all costs incurred by Albemarle in connection with providing Legal Assistant services, including the costs of providing office space and supplies.

Based on the costs to the County of providing a Legal Assistant for Judge Higgins, staff estimates the total cost of a new assistant, including benefits, office and supply costs, at approximately \$80,000 per year, with approximately \$48,000 to be contributed by Charlottesville and Greene, for a net cost to Albemarle of approximately \$32,000 in FY 20. These amounts are approximate, and exact amounts will be determined prior to staff's submission of an appropriation request based on approval of the Agreement by all parties. Because this expense was not anticipated in the FY 20 budget, OMB recommends the use of the FY 20 Reserve for Contingency for the County's portion of this cost for the first year.

Staff recommends that the Board adopt the attached Resolution (Attachment B) approving the Agreement. Once the Agreement is fully executed by all the parties, staff will request the Board approve an appropriation request for the position and will request that the Board authorize staff to proceed with the recruitment of a Legal Services Assistant for Judge Worrell, with a start date of July 1, or as soon thereafter as possible.

By the above-recorded vote, the Board adopted the following Resolution approving the proposed Agreement:

**RESOLUTION APPROVING AN AGREEMENT
BETWEEN THE COUNTY OF ALBEMARLE,
THE CITY OF CHARLOTTESVILLE, AND GREENE COUNTY**

WHEREAS, the Board finds it is in the best interest of the County to enter into a cost-sharing Agreement between the County, the City of Charlottesville, and Greene County to fund a Legal Services Assistant position to support Judge Claude Worrell in his service to the County, the City of Charlottesville, and Greene County.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby authorizes the County Executive to execute an Agreement between the County of Albemarle, the City of Charlottesville, and Greene County, once it has been approved as to substance and form by the County Attorney.

This agreement, made this _____ day of _____, 2019, by and between THE COUNTY OF ALBEMARLE, a political subdivision of the Commonwealth of Virginia, ("Albemarle"); THE COUNTY OF GREENE, a political subdivision of the Commonwealth of Virginia ("Greene"); and THE CITY OF CHARLOTTESVILLE, a political subdivision of the Commonwealth of Virginia ("Charlottesville").

WITNESSETH:

WHEREAS, Albemarle, Greene, and Charlottesville are all located in the 16th Judicial Circuit of the Commonwealth and are served by the circuit courts thereof; and

WHEREAS, by formal action of the State of Virginia, the Honorable Claude Worrell has been appointed to serve the 16th Judicial Circuit. He is expected to devote 40% of his time to Albemarle, 40% to Greene, and 20% to Charlottesville, generally resulting in 2 days, 2 days and 1 day each week, respectively; and

WHEREAS, Albemarle, Greene, and Charlottesville have determined that Judge Worrell needs a legal services assistant and that it is lawful and appropriate that they provide for such assistance for Judge Worrell; and

WHEREAS, the costs for a legal services assistance include salary and benefits, and any necessary administrative support to the judge and the legal assistant, for an estimated yearly total cost of \$80,000; and

WHEREAS, based upon the existing caseload, it has been determined that it is most efficient that Judge Worrell have his principal office in Charlottesville; and

WHEREAS, Albemarle, Greene and Charlottesville have determined that, based upon the time and resources spent in each jurisdiction, the localities agree to contribute a pro rata portion of the cost of providing a legal assistant as follows: Albemarle 40%; Greene 40%; City of Charlottesville 20%.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth hereinafter, and pursuant to the provisions of Virginia Code Section 15.2-1300, *et seq.*, the localities hereby agree as follows:

- (1) All references to Judge Worrell are presumed to apply also to any successor in office, meaning a judge who replaces Judge Worrell in largely the same duties and for the same localities.
- (2) Albemarle agrees to provide a legal services assistant for Judge Worrell, providing him with salary and benefits, and any necessary administrative support to the judge and the legal services assistant (collectively, "Legal Assistance"). Legal Assistance may be provided in any manner that Judge Worrell and Albemarle agree.
- (3) Greene agrees to pay Albemarle 40% of the cost of providing Legal Assistance.
- (4) Charlottesville agrees to pay Albemarle 20% of the cost of providing Legal Assistance.
- (5) Until a planned renovation makes available suitable chambers space at Albemarle County Circuit Court ("Courthouse"), Judge Worrell will be provided with chambers in the Levy Opera House, the Jessup House, or another building agreeable to Albemarle, Charlottesville, and Judge Worrell. Upon suitable chambers space becoming available at the Courthouse, Judge Worrell's chambers will be transferred to the Courthouse.
- (6) Each year, Albemarle shall propose to Greene and Charlottesville, no later than February 1 of each year, a budget that sets forth each's share of the estimated cost of Legal Assistance for the next fiscal year. Thereafter, Albemarle shall bill Greene and Charlottesville for each's share no later than September 30. Greene and Charlottesville shall remit payment to Albemarle on or before January 1.
- (7) This agreement will be effective upon the execution of the final of the 3 localities, and remain in effect until the parties mutually decide to terminate the agreement. One party may elect to unilaterally remove itself from this agreement; notice of unilateral termination must be made not later than June 1, to be effective on the July 1 of the following calendar year. Notice is considered given on the date it is actually received by the office of the chief executive officer of the other localities.
- (8) The obligations set forth herein are subject to all the localities approving an annual appropriation sufficient to cover their respective obligations.

IN WITNESS WHEREOF, Albemarle, Greene, and Charlottesville have executed this agreement as of the dates below.

COUNTY OF ALBEMARLE:

Jeffrey B. Richardson
County Executive

Date

COUNTY OF GREENE:

Mark B. Taylor, Esq.
County Administrator

Date

CITY OF CHARLOTTESVILLE:

Dr. Tarron J. Richardson
City Manager

Date

Item No. 8.4. Third Addendum to the County Attorney Employment Agreement.

By the above-recorded vote, the Board approved the Third Addendum to the County Attorney's Employment Agreement:

THIRD ADDENDUM TO THE COUNTY ATTORNEY EMPLOYMENT AGREEMENT

This Third Addendum to the County Attorney Employment Agreement, is entered into by and between the **ALBEMARLE COUNTY BOARD OF SUPERVISORS** (the “Employer”) and **GUSTAV GREGORY KAMPTNER** (the “Employee”).

The parties agree to the following amendment to the County Attorney Employment Agreement entered into by and between the Employer and the Employee on April 13, 2016 (the “Agreement”), as thereafter amended by the First Addendum approved by the Board on June 14, 2017, and the Second Addendum approved by the Board on July 11, 2018 (which made only an annual salary adjustment) to the County Attorney Employment Agreement:

1. The first sentence of Section Five (“Compensation”), paragraph (A) (“Salary”), is amended to state: “The Employer shall pay the Employee, and the Employee shall accept from the Employer, an annual salary of \$173,698 effective July 1, 2019, payable in installments as provided for County employees generally.”

2. Except as amended above, the Agreement, as amended by the First Addendum, shall remain in full force and effect and the Employer and Employee hereby ratify and confirm all provisions, terms, and conditions set forth in the Agreement, the First Addendum, and this Addendum.

IN WITNESS THEREOF, the Albemarle County Board of Supervisors has caused this Third Addendum to the County Attorney Employment Agreement to be signed and executed in its behalf by its Chair and the Employee has signed and executed this Third Addendum, both in duplicate, the day and year first above written.

ALBEMARLE COUNTY BOARD OF SUPERVISORS

Ned L. Gallaway, Chair
Albemarle County Board of Supervisors

Gustav Gregory Kamptner, County Attorney

Item No. 8.5. Amended Perrone Robotics Performance Agreement.

The Executive Summary forwarded to the Board states that Perrone Robotics, Inc. (Perrone), based in Crozet, Virginia, was founded in 2003 and develops mobile autonomous robotics solutions.

Perrone currently is developing an autonomous shuttle service for County residents in collaboration with JAUNT, Inc. (“JAUNT”), a public service corporation providing transportation services in the Albemarle County, the City of Charlottesville, and Nelson County.

Before launching the autonomous shuttle service for County residents, Perrone and JAUNT have identified a need to acquire and equip a vehicle with appropriate equipment to operate autonomously and to conduct a pilot program to test the safety and operation aspects of an autonomous vehicle. If testing is successful, Perrone will conduct a three-month pilot program shuttling members of the public on one or more routes in and around Crozet with a professional safety-trained driver on board supplied by JAUNT, to be followed by related data collection and feedback.

At its December 5, 2018 meeting, the Board adopted a resolution stating in part that this project will promote economic development because it may enable Perrone to expand its business and further anchor its headquarters in Albemarle County.

This project also may inform County staff about impacts to the County’s long-term plans, such as the Comprehensive Plan, and the Capital Improvement Plan, as well as to the future built environment in the County’s Development Areas.

The 2018 Performance Agreement incorporated an element whereby the County contemplated creating a Public Service Corporation (PSC) for oversight of the Crozet Autonomous Shuttle. It became legally impractical for the County to create a PSC. JAUNT created a public body called Smart Mobility in lieu of a PSC. Because of complications in creating a PSC, as well as additional safety testing, the Crozet Shuttle launch is being extended four months, to July 31, 2019.

The attached First Amended Economic Development Performance Agreement amends the deadlines for various milestones, and provides that JAUNT may create the public service corporation or other lawful entity whose purpose is to provide the autonomous shuttle service.

Approval of the Amended Performance Agreement will not require additional funding.

Staff recommends that the Board adopt the attached Resolution (Attachment B).

By the above-recorded vote, the Board adopted the following Resolution amending the deadlines for various milestones and provides that JAUNT may create the public service corporation or other lawful entity whose purpose is to provide the autonomous shuttle service:

**RESOLUTION APPROVING A FIRST AMENDED AGREEMENT BETWEEN
THE COUNTY OF ALBEMARLE, THE ALBEMARLE COUNTY ECONOMIC DEVELOPMENT
AUTHORITY, AND PERRONE ROBOTICS, INC.**

WHEREAS, the County entered into an Agreement with the Albemarle County Economic Development Authority and Perrone Robotics, Inc. for Perrone Robotics, Inc., in collaboration with JAUNT, Inc., to develop and test an autonomous vehicle, and if testing is successful, to launch a three-month pilot program to use the vehicle to shuttle members of the public on one or more routes; and

WHEREAS, the Board finds it is in the best interest of the County to enter into a First Amended Agreement to extend the deadlines for various milestones and to provide that JAUNT may create the public service corporation or other lawful entity whose purpose is to provide the autonomous shuttle service.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby authorizes the County Executive to execute the First Amended Agreement between the County of Albemarle, the Albemarle County Economic Development Authority, and Perrone Robotics, Inc., once the Agreement has been approved as to substance and form by the County Attorney.

**FIRST AMENDED ECONOMIC DEVELOPMENT
PERFORMANCE AGREEMENT**

THIS FIRST AMENDED AGREEMENT is made and entered into on June 19, 2019, by and among the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "County"), the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "EDA"), and **PERRONE ROBOTICS, INC.**, a Delaware corporation ("Perrone"), and its successors and assigns.

Recitals

- R-1** Perrone has its headquarters in Crozet, Virginia, has created high-skill jobs in the County and has developed and is commercializing its autonomous software platform to be used in autonomous vehicles ranging from cars and sport utility vehicles to one of the world's largest mining trucks, as well as small, mobile robots for personal and professional use; and
- R-2** Perrone desires to develop and launch an autonomous shuttle service for County residents in collaboration with JAUNT, Inc., a public service corporation authorized to provide, and currently providing, transportation services in Albemarle County, the City of Charlottesville, and Nelson County ("JAUNT"); and
- R-3** Before launching an autonomous shuttle service for County residents, Perrone and JAUNT have identified a need to acquire and equip a vehicle with appropriate equipment to operate autonomously, conduct a pilot program to ensure that the safety and operational aspects of an autonomous vehicle are tested and, if testing is successful, launch an approximately three-month pilot program shuttling members of the public on one or more routes in and around Crozet with a professional safety-trained driver on board supplied by JAUNT, followed by related data collection and feedback (collectively, the "Project"); and
- R-4** The County and the EDA have determined that the Project will promote economic development because it may enable Perrone to expand its business and further anchor its headquarters in Albemarle County; and
- R-5** The County has also determined that the Project may inform County staff about impacts to its long-term plans, such as the Comprehensive Plan, the Capital Improvement Plan, as well as to the future built environment in the County's Development Areas; and
- R-6** The County is willing to transfer funds to the EDA, and the EDA is willing to transfer funds to Perrone, in the form of a grant, to support the Project, subject to the terms and conditions of this Agreement; and
- R-7** The County, the EDA, and Perrone desire to amend the deadlines for various milestones established in the original Agreement, dated December 7, 2018, because of the delay and legal impediments for the County Board of Supervisors to establish the legal entity described in Section 6 by March 1, 2019.

Terms and Conditions

The parties agree as follows:

- 1. Authority.** The County is authorized to transfer funds to the EDA pursuant to Virginia Code § 15.2-1205, which enables the County to give funds to any County-created authority, and the EDA is such an authority. The EDA is authorized to transfer funds to Perrone pursuant to Virginia Code § 15.2-4905(13), which gives the EDA the power to make grants to a business for the purposes of promoting economic development.

2. **Grant.** The County agrees to appropriate a grant to the EDA in the amount of \$238,000.00 on or before December 12, 2018, or as soon thereafter as legally possible. The EDA agrees to grant the \$238,000.00 to Perrone as soon as possible after the funds are appropriated to the EDA (the “Grant”).
3. **Term of this Agreement.** The term of this Agreement is from the date first hereinabove written until December 31, 2019.
4. **Purposes for Which the Grant may be Used.** Perrone may use the Grant solely for the Project, which is composed of the following elements:
 - A. **Setup and Testing Phases.** The first phases of the Project are the setup and testing phases. These phases include Perrone acquiring an appropriate shuttle vehicle, equipping the vehicle with appropriate equipment to operate autonomously, and testing the vehicle at Perrone’s test track facility in Crozet. Once the safety and operational aspects of the shuttle vehicle have been tested, initial trial runs will be conducted with a professional safety-trained driver on board as supplied by JAUNT, on one or more routes in and around Crozet. The following milestones apply to these phases:
 1. Complete setup operations. On or about February 22, 2019

This milestone includes coordinating route options and obtaining insurance for the Project.
 2. Establish a broader preliminary phased plan. On or about March 7, 2019

This milestone includes meeting with UVA to discuss its future involvement, discussing future phases, and developing materials for broader rollout concepts.
 3. Complete Neighborhood Electric Vehicle (“NEV”) shuttle outfitting, testing, and training. On or about July 24, 2019

This milestone includes outfitting and testing an NEV for autonomous shuttling, training ambassadors for operations, and establishing a shuttle schedule for the pilot phase.
 - B. **Pilot Phase.** The pilot phase of the Project consists of operating the NEV shuttle to transport members of the public on one or more selected routes in the Crozet area with a professional safety-trained driver on board supplied by JAUNT. The following milestones apply to this phase:
 1. Hold the NEV shuttle launch event, which begins the 92-day NEV shuttle operation period. On or about July 31, 2019

This milestone includes organizing the event for launching the shuttle for the pilot phase and holding the launch event.
 2. Complete NEV shuttle operation period. On or about October 31, 2019

This milestone includes advertising and/or publishing routes if they may change, operating the shuttle on weekdays and weekends during established hours, and collecting feedback.

5. **Project Review Phase.** Following the conclusion of the pilot phase of the Project, Perrone, the County, JAUNT, and the Entity, as defined in Section 6, will review the Project between October 31, 2019 and on or about November 15, 2019. The project review phase includes the following:
 - A. **Feedback.** Perrone, in collaboration with JAUNT and the Entity, will evaluate the feedback collected regarding the testing, adoption, and use of the autonomous shuttle, and the possibility of the future launch of additional shuttles throughout the County. The evaluation of the feedback will be shared among Perrone, the County, the EDA, and JAUNT.
 - B. **Data Collection.** Perrone, in collaboration with the County, JAUNT, and the Entity, will gather data regarding, among other things, usage of the shuttle, traffic flows and congestion, weather conditions, risk mitigation strategies, feasibility of other shuttle routes, energy usage, repair and maintenance costs, and similar data to further improve and refine transportation services in Albemarle County using autonomous shuttles.
6. **The County's Obligation.** Subject to approval by the County's Board of Supervisors, exercising its sole legislative discretion, the County will create a public service corporation or other lawful entity (the "Entity") by no later than March 1, 2019 or, in the alternative, JAUNT may create the Entity by no later than June 30, 2019. The purpose of the Entity is to provide autonomous shuttle service in the County and in the remainder of JAUNT's service area in collaboration with Perrone and JAUNT. This section shall not be construed as the County's Board of Supervisors contracting away its legislative powers and discretion.
7. **Donation of Vehicle.** Upon request by the County or the Entity, Perrone will donate the vehicle acquired for the Project to the County, or to the Entity, within 60 days after receipt of the request. For the avoidance of doubt, when such vehicle is donated, Perrone will own and retain all intellectual property rights to its MAX software platform and the hardware design for the vehicle. The MAX software and hardware design will be licensed on a royalty-free basis, not sold, in connection with the donation.
8. **Perrone's Reporting Obligation.** Perrone shall provide information regarding the Project to the County and the EDA as follows:
 - A. **Periodic Reports.** Perrone shall provide, at its expense, detailed verification reasonably satisfactory to the County and the EDA of Perrone's progress on the milestones described in Sections 4 and 5. The progress reports shall be provided within three business days before or after February 21, 2019 and the 21st day each month thereafter through, and including, November 21, 2019. The February 21, 2019 progress report shall describe the actions taken by Perrone between the date of this Agreement and the date of the progress report. Each subsequent progress report shall identify the progress towards the milestones described in Sections 4 and 5 since the prior progress report.
 - B. **Other Information Requested by the County or the EDA.** The County and the EDA may request any other information regarding the status of the Project as either party may reasonably require.
9. **Perrone's Repayment Obligations.** Perrone shall repay all or a portion of the grant to the EDA which shall, in turn, promptly return the grant funds to the County, in any of the following circumstances:
 - A. **Failure to Launch.** If Perrone fails to timely complete the setup and testing phases as described in Section 4(A) and fails to timely complete the pilot phase by October 31, 2019 unless extended pursuant to Sections 16 or 17, with completion criteria to be reasonably agreed to by the parties in writing, Perrone shall repay the entire \$238,000.00 grant to the EDA.

B. Shortened NEV Shuttle Operation Period. For each day the NEV shuttle does not transport members of the public for two consecutive dates out of every seven-day week on the dates scheduled for the services, as agreed to in writing by the parties, during the 92-day pilot phase, not including dates on which the shuttle may be out of service for routine or emergency maintenance for any reason, including safety or weather reasons, Perrone shall repay \$2,587.00 of the grant to the EDA.

C. Maintain Headquarters. If Perrone fails to maintain its corporate headquarters in Albemarle County for three years after the date of this Agreement, Perrone shall repay the entire \$238,000.00 grant to the EDA. Nothing in this subsection requires Perrone to repay the grant if it opens other offices or research and development facilities outside of Albemarle County provided that opening of the new offices or research and development facilities is not done by relocating more than fifteen percent (15%) of the number of Perrone employees in Albemarle County existing on the date of the opening of such office or facility.

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

If to Perrone, to:

Perrone Robotics, Inc.
5625 The Square
Crozet, VA 22932
Attention: Paul J. Perrone, Founder/CEO

If to the County, to:

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

If to the Authority, to:

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

Any correspondence that is not required by this Agreement may be sent First Class in the United States Mail or by email to email addresses provided by the parties.

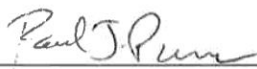
- 11. Nonappropriation.** The obligation of the County to appropriate funds to the EDA as a grant as provided in Section 2 is subject to, and dependent upon, appropriations being made from time to time by the County's Board of Supervisors. Under no circumstances shall this Agreement be construed to establish an irrevocable obligation on the County to contribute the funds.
- 12. Non-severability.** If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the entire Agreement is unenforceable.
- 13. Entire Agreement.** This Agreement states all covenants, promises, agreements, conditions, and

understandings between the County, the EDA, and Perrone regarding the EDA's grant to Perrone described in Section 2.

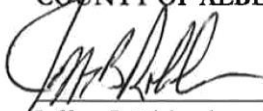
14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without giving effect to its principles of conflict of laws.
15. **Dispute Resolution.** If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and if the dispute is not settled through negotiation in 30 days; the parties agree first to try in good faith to settle the dispute by mediation, also within 30 days; before resorting to litigation. If the parties are unable to agree on a mediator, an experienced mediator shall be randomly selected. The mediation process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.
16. **Amendments.** This Agreement may be amended by a written amendment signed by the authorized representatives of the parties.
17. **Force Majeure.** In the event that Perrone's timely performance of Section 4(A) or 4(B) of this Agreement is interrupted or delayed by any occurrence not occasioned by the conduct of Perrone, 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 Perrone or other circumstances beyond the reasonable control of Perrone, then performance of Section 4(A) or 4(B) of this Agreement shall be excused for Perrone for a period of time as is reasonably necessary after the occurrence to remedy the effects thereof.

WITNESS, the following authorized signatures:

PERRONE ROBOTICS, INC.


Paul J. Perrone, Chief Executive Officer

COUNTY OF ALBEMARLE, VIRGINIA


Jeffrey B. Richardson, County Executive

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


W. Rod Gentry, Chairman

Item No. 8.6. RSWA Support Agreement for McIntire Road Recycling Center.

The Executive Summary forwarded to the Board states that the County, the City of Charlottesville (City), and the Rivanna Solid Waste Authority (RSWA) entered into an Agreement dated August 23, 2011, providing the terms of the County's and City's shared financial support for, and the RSWA's operation of, recycling services at the McIntire Road Recycling Center (McIntire). There have been seven (7) amendments to this agreement to extend the term of the agreement. The current agreement amendment, Amendment No. 7, expires on June 30, 2019. The County desires an additional extension of services through June 30, 2020. The attached Amendment No. 8 (Attachment A), includes a provision for an automatic one-year renewal beyond June 30, 2020, unless terminated in writing by the City or the County on or before April 30 prior to the expiration of the agreement. The Amendment was approved by the RSWA Board and is provided to the Board of Supervisors for its approval.

Amendment No. 8 to the Local Government Support Agreement for Recycling Services (Attachment A) continues the current funding arrangement and services at McIntire from July 1, 2019 through June 30, 2020, with an automatic one-year renewal, unless terminated by the City of the County as set forth above. City Council is expected to consider this amendment at its June 17, 2019 meeting.

The extension of this agreement is funded in the County's adopted FY20 Budget.

Staff recommends that the Board adopt the attached Resolution (Attachment C) to approve the Amendment No. 8 to Local Government Support Agreement for Recycling Programs.

By the above-recorded vote, the Board adopted the following Resolution to approve the Amendment No. 8 to Local Government Support Agreement for Recycling Programs:

**RESOLUTION APPROVING AMENDMENT NO. 8 TO LOCAL GOVERNMENT
SUPPORT AGREEMENT FOR RECYCLING PROGRAMS**

WHEREAS, the County, the City, and the Rivanna Solid Waste Authority ("RSWA") entered into an Agreement dated August 23, 2011 providing the terms of the County's and City's shared financial support

for, and the RSWA's operation of, the Recycling Services through June 30, 2012, with an option for the County and the City to extend the agreement for two successive one-year periods; and

WHEREAS, the County and the City exercised their first option to extend the term of the Agreement through June 30, 2013; and

WHEREAS, the County, the City and the RSWA entered into Amendment Nos. 1, 2, 3, 4, 5, 6 and 7 to extend the term of the Agreement through December 31, 2013, June 30, 2014, June 30, 2015, June 30, 2016, June 30, 2017, June 30, 2018, and June 30, 2019, respectively; and

WHEREAS, the County desires an additional extension of the term of the Agreement through June 30, 2020; and

WHEREAS, the County desires that this agreement automatically renew unless terminated in writing by the City or the County.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby approves the Amendment No. 8 to Local Government Support Agreement for Recycling Programs and authorizes the County Executive to sign the Amendment subject to it being approved as to content and form by the County Attorney.

**AMENDMENT NO. 8 TO
LOCAL GOVERNMENT SUPPORT AGREEMENT FOR RECYCLING PROGRAMS
AMONG
THE CITY OF CHARLOTTESVILLE
THE COUNTY OF ALBEMARLE
AND
THE RIVANNA SOLID WASTE AUTHORITY**

This **Amendment No. 8** to the **Local Government Support Agreement for Recycling Programs** (this "Amendment") is made this 25th day of June, 2019 by and among the **City of Charlottesville, Virginia** (the "City"), the **County of Albemarle, Virginia** (the "County") and the **Rivanna Solid Waste Authority** (the "Authority", individually a "Party", and together referred to as the "Parties").

WHEREAS, the City, the County and the Authority entered into a certain Local Government Support Agreement for Recycling Programs dated August 23, 2011 (the "Original Agreement") providing the terms of the City's and County's shared financial support and Authority's operation of the Recycling Services; and,

WHEREAS, the Original Agreement provided that such financial support and operations continue through the Authority's fiscal year ending June 30, 2012, with the City and County retaining an exclusive option to extend the Original Agreement for two successive one-year periods by giving prior written notice to the Authority; and,

WHEREAS, the City and County exercised their first option to extend the term of the Original Agreement through June 30, 2013, but the County elected not to exercise its second option to extend the term through June 30, 2014 and instead requested, with the concurrence of the City, an extension of the Original Agreement through December 31, 2013; and,

WHEREAS, the City, the County and the Authority entered into Amendment No. 1 to the Original Agreement dated June 5, 2013 extending the term of the Original Agreement through December 31, 2013; and,

WHEREAS, the City, the County and the Authority entered into Amendment No. 2 to the Original Agreement dated October 23, 2013 extending the term of the Original Agreement through June 30, 2014; and,

WHEREAS, the City, the County and the Authority entered into Amendment No. 3 to the Original Agreement dated January 28, 2014 extending the term of the Original Agreement through June 30, 2015; and,

WHEREAS, the City, the County and the Authority entered into Amendment No. 4 to the Original Agreement dated July 1, 2015 extending the term of the Original Agreement through June 30, 2016; and,

- WHEREAS,** the City, the County and the Authority entered into Amendment No. 5 to the Original Agreement dated June 6, 2016 extending the term of the Original Agreement through June 30, 2017; and,
- WHEREAS,** the City, the County and the Authority entered into Amendment No. 6 to the Original Agreement dated July 14, 2017 extending the term of the Original Agreement through June 30, 2018; and,
- WHEREAS,** the City, the County and the Authority entered into Amendment No. 7 to the Original Agreement dated July 5, 2018 extending the term of the Original Agreement through June 30, 2019 (the Original Agreement, as amended by Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5, Amendment No. 6 and Amendment No. 7, hereinafter, the “Agreement”), and,
- WHEREAS,** the County desires an additional extension of the term of the Agreement through June 30, 2020, and the City is agreeable to an extension for such period.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. **Amendment to Section 4.** Section 4 of the Agreement, entitled “Term of Agreement,” is amended and restated as follows:

4. **Term of Agreement**

This Agreement shall be effective upon execution and the financial participation requirements shall be retroactive to July 1, 2011 and shall continue to June 30, 2020. Subsequent to June 30, 2020, this agreement will automatically renew for additional one (1) year terms unless terminated by the City or County by written notice received by the Authority not later than April 30 prior to the expiration date of the Agreement.

2. **Miscellaneous.** Capitalized terms used herein shall have the meanings ascribed to them in the Agreement unless otherwise specifically defined herein. Except as expressly modified hereby, all other terms and conditions of the Agreement shall remain unchanged and shall continue in full force and effect. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the dates below.

CITY OF CHARLOTTESVILLE:

Dr. Tarron Richardson
City Manager

Date

COUNTY OF ALBEMARLE:

Jeffrey Richardson
County Executive

Date

RIVANNA SOLID WASTE AUTHORITY:

William I. Mawyer, Jr., P.E.
Executive Director

Date

Item No. 8.7. Request for Special Exception to Building Height for SDP201900012.

The Executive Summary forwarded to the Board states that the subject properties for the “Stonefield” development are zoned NMD (Neighborhood Model District) pursuant to approved ZMA200100007 and the updated application plan approved in conjunction with ZMA201300009. Special exceptions to vary from the provisions contained in the approved Code of Development for properties in the NMD district may be granted by the Board of Supervisors, pursuant to County Code §§ 18-8.5.5.3 and 18-33.49.

The applicant (Mike Meyers, 30 Scale) has requested a special exception to vary the Code of Development that was approved in conjunction with ZMA200100007 (Stonefield, formerly Albemarle Place):

1. Special Exception request to modify (increase) the maximum number of stories in Block D2 from five (5) stories to six (6) stories pursuant to County Code §18-8.5.5.3(a)(1).

Please see Attachment B for staff’s full analysis.

Staff recommends that the Board adopt the attached Resolution (Attachment C) to approve the special exception request.

By the above-recorded vote, the Board adopted the following Resolution to approve the special exception request for SDP201900012:

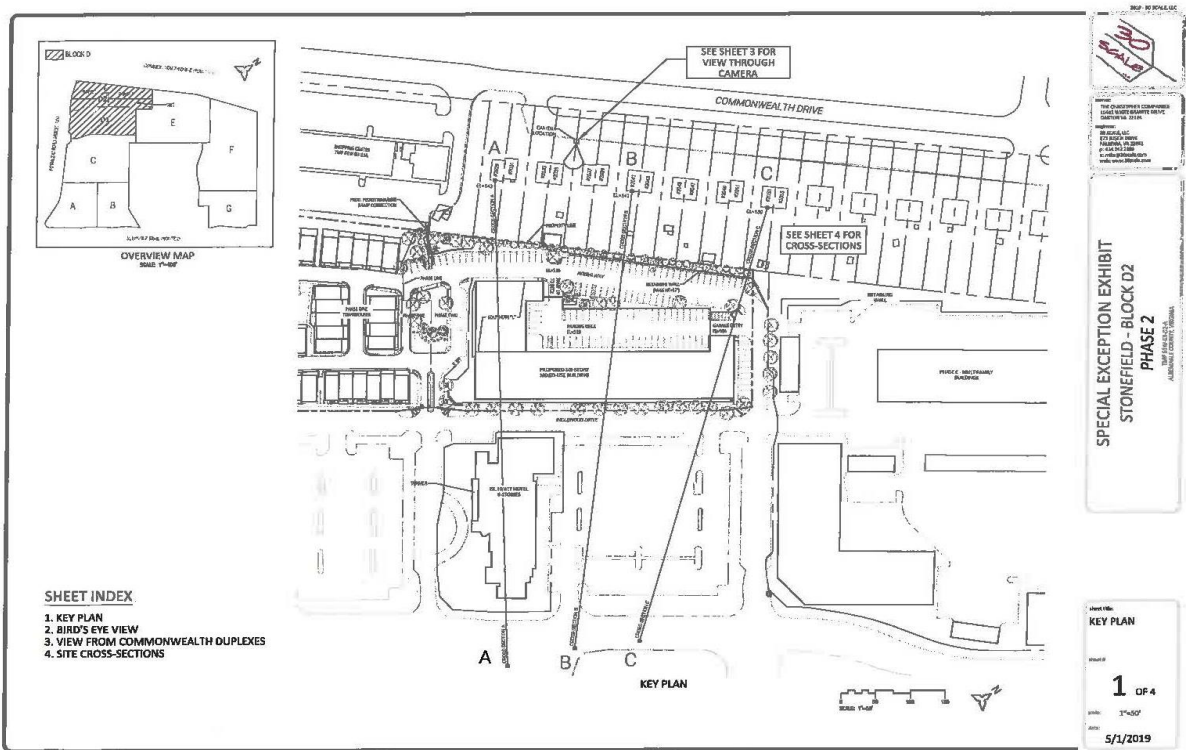
RESOLUTION TO APPROVE SPECIAL EXCEPTION TO VARY THE
CODE OF DEVELOPMENT FOR ZMA2001-7 STONEFIELD
(FORMERLY ALBEMARLE PLACE)

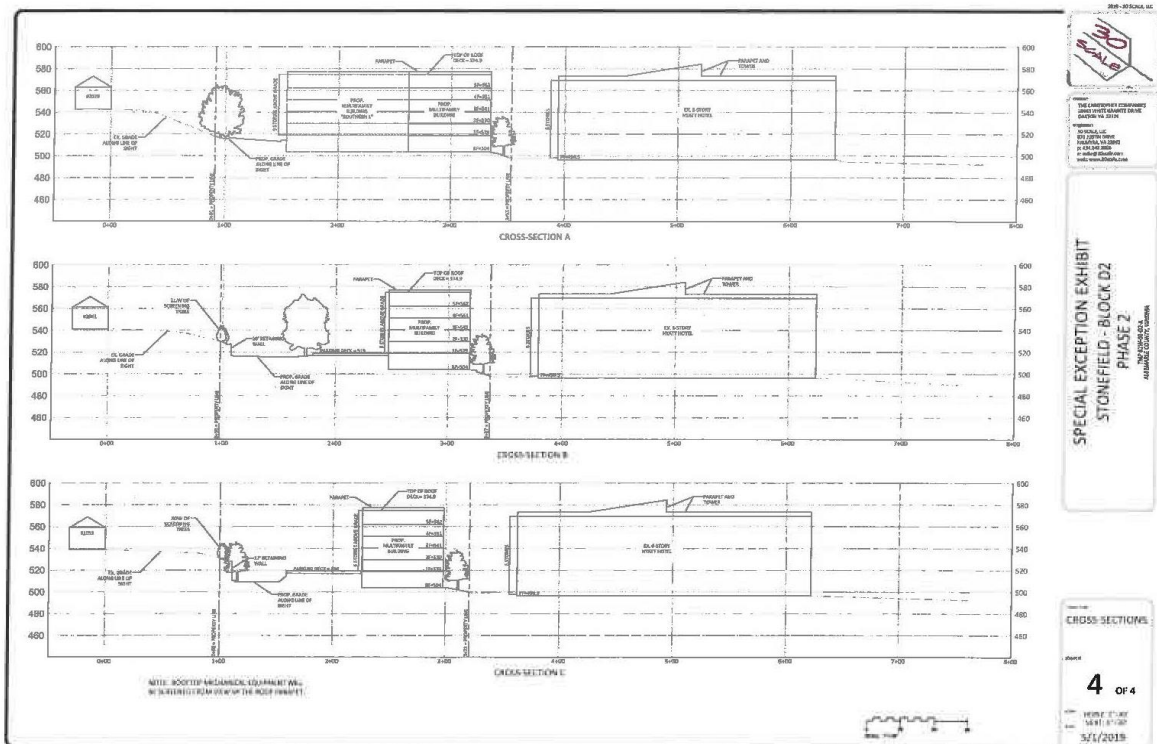
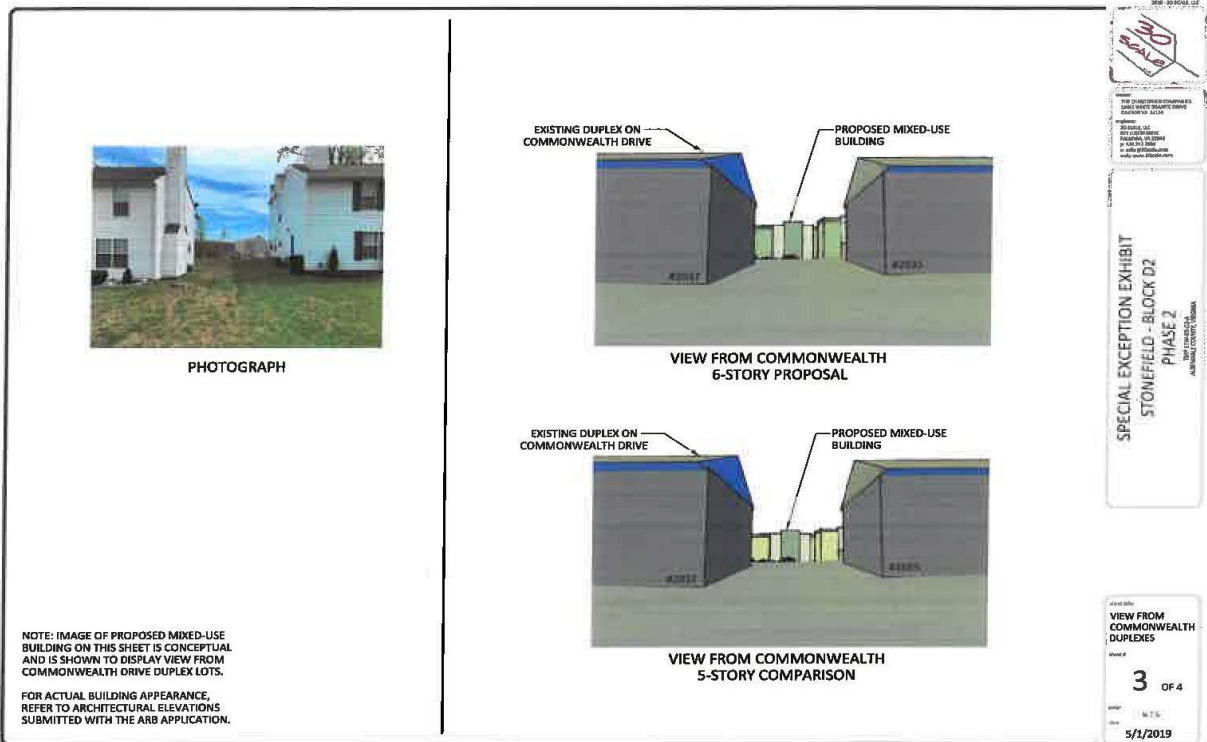
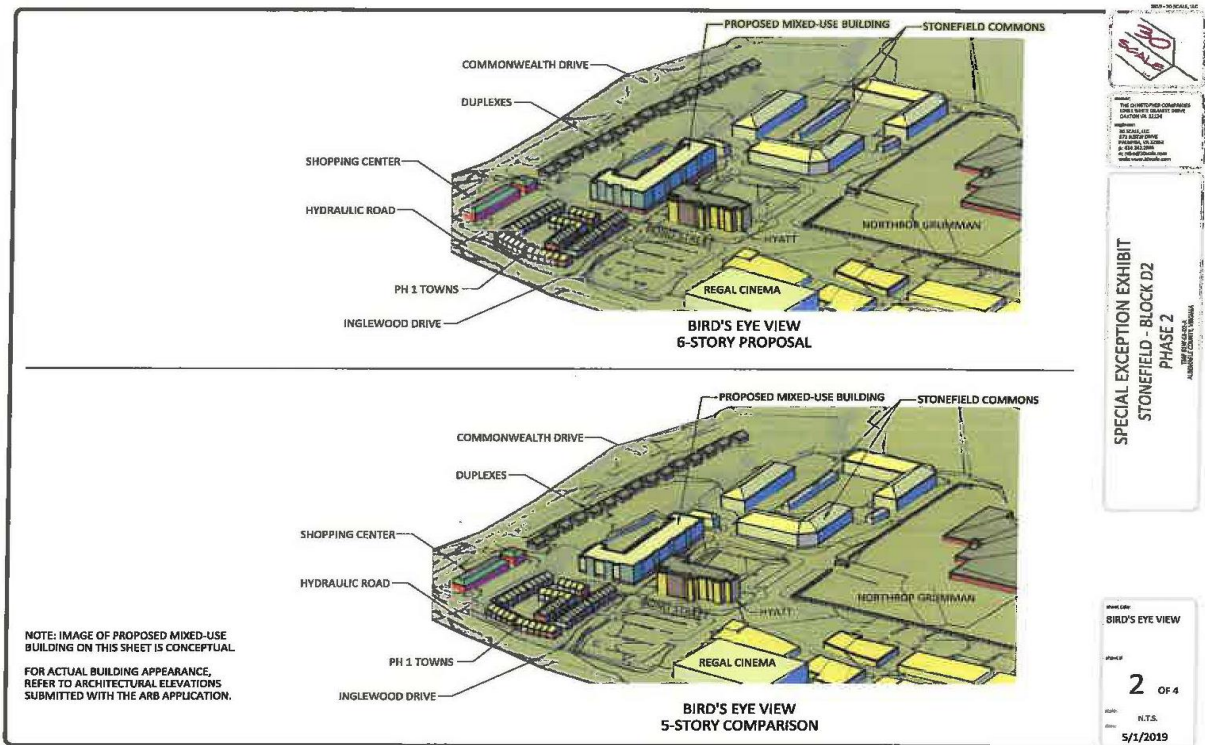
WHEREAS, the Owner of Tax Map Parcels 061W003D2000A0; 061W003D2000A0; 061W003D202200; 061W003D202300; 061W003D202400; 061W003D202500; 061W003D202600; 061W003D202700; 061W003D202800; 061W003D202900; 061W003D203000; 061W003D203100; 061W003D203200; 061W003D203300; 061W003D203400; 061W003D203500; 061W003D203600; 061W003D203700; 061W003D203800; 061W003D203900; 061W003D204000; 061W003D204100; 061W003D204200; 061W003D204300; 061W003D204400; 061W003D204500; 061W003D204600; 061W003D204700; 061W003D204800; 061W003D204900; 061W003D205000; 061W003D205100; 061W003D205200; 061W003D205300; 061W003D205400; 061W003D205500; 061W003D205600; 061W003D205700; 061W003D205800; 061W003D205900; 061W003D206000; 061W003D206100; 061W003D209000; 061W003D209100; 061W003D209200; 061W003D209300; 061W003D209400; 061W003D209500; 061W003D209600; 061W003D209700; 061W003D209800; 061W003D209900; 061W003D210000; 061W003D210100; 061W003D210200; 061W003D210300; and 061W003D210400 filed a request for a special exception to vary the Code of Development approved in conjunction with ZMA2001-7 Stonefield (formerly Albemarle Place) to modify the maximum number of stories in Block D2 from five (5) stories to six (6) stories.

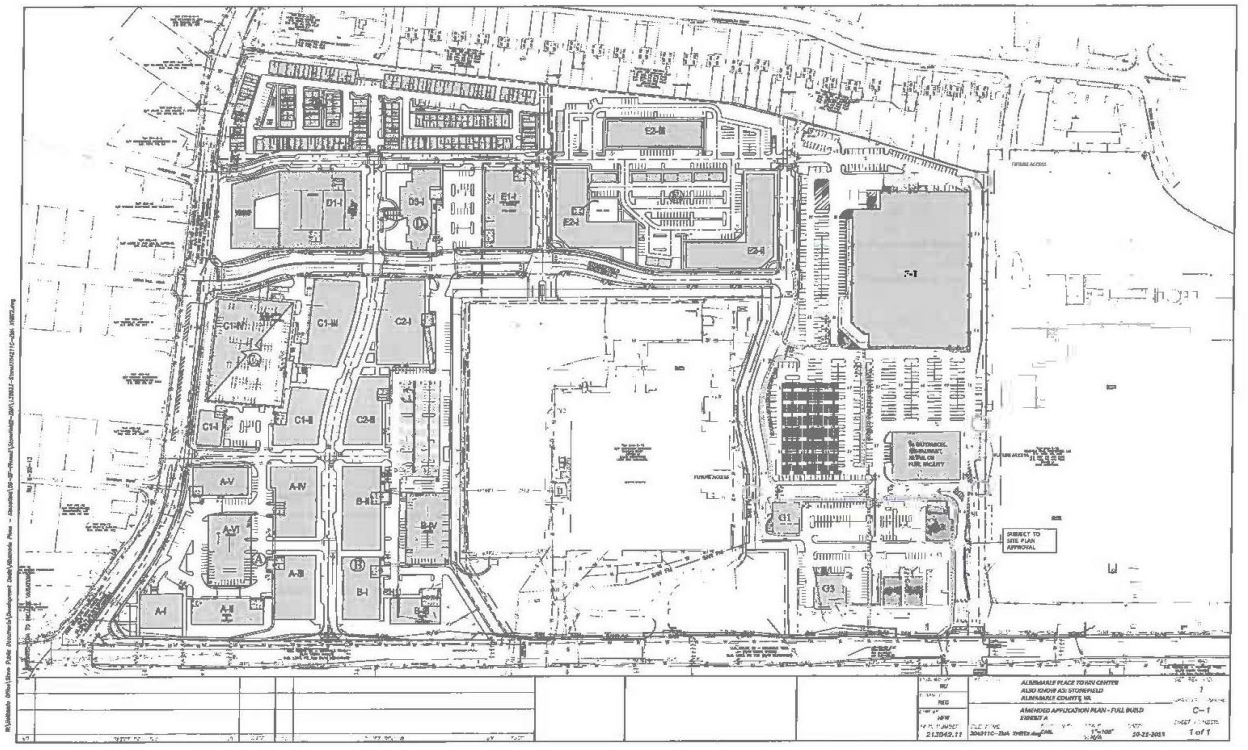
NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the Memorandum prepared in conjunction with the special exception request and the attachments thereto, including staff's supporting analysis, and all of the factors relevant to the special exceptions in Albemarle County Code §§ 18-8.5.5.3, 18-33.5, and 18-33.49, the Albemarle County Board of Supervisors hereby approves the special exception to vary the Code of Development approved in conjunction with ZMA2001-7 Stonefield (formerly Albemarle Place) as described above, subject to the conditions attached hereto.

ZMA2001-7 Stonefield (formerly Albemarle Place) – Special Exception Conditions

1. The special exception applies to Block D2 as depicted on the application plan that was approved in conjunction with ZMA201300009 entitled “Amended Application Plan – Full Build, Exhibit A,” prepared by W/W Associates, dated October 21, 2013.
2. All rooftop mechanical equipment must be fully screened from the view of adjacent properties and adjacent public streets.
3. A vegetative screening buffer of evergreens, which must be six feet in height when planted to the satisfaction of the Planning Director, must be provided adjacent to the parcels along Commonwealth Drive.
4. The development must be in general accord with the application plan for this Special Exception Request entitled “Key Plan”, prepared by 30 Scale LLC, dated May 1, 2019.







Item No. 8.8. ZMA201900013 Willow Glen Proffer Amendment – Deferral.

By the above-recorded vote, the Board deferred ZMA201900013, Willow Glen Proffer Amendment, to July 3, 2019, at the request of the applicant

Item No. 8.9. Albemarle County 2019 1st Quarter Building Report, ***was received for information.***

The report states that during the first quarter of 2019, 216 building permits were issued for 530 dwelling units. There were 2 permits issued for a mobile home in an existing park, at an exchange rate of \$2,500, for a total of \$5,000. There were no permits issued for the conversion of an apartment to a condominium.

Item No. 8.10. Albemarle County 2019 1st Quarter Certificate of Occupancy Report, ***was received for information.***

The report states that during the first quarter of 2019, 117 certificates of occupancy were issued for 121 dwelling units. There were two permits issued for a mobile home in an existing park, at an exchange rate of \$2,500, for a total of \$5,000. There were no certificates of occupancy issued for the conversion of an apartment to a condominium.

Item No. 8.11. Copy of letter dated May 28, 2019 from Ms. Leah H. Brumfield, Designee of the Zoning Administrator, to Mr. Michael Matthews **RE: OFFICIAL DETERMINATION OF USE – Westminster Canterbury of the Blue Ridge Adult Daycare Center at TMP 07800-00-00-055A6 (“Westminster-Canterbury”), *was received for information.***

Agenda Item No. 9. Resolution Supporting the Governor's Call for a Special Session on Gun Violence.

Mr. Kamptner informed the Board that on June 4, the Governor made a proclamation calling a special session. He said subsequent news releases from the Governor's office have identified the topics to be discussed including gun safety, with a proposal to expand local authority to regulate firearms in government buildings. He noted that there are existing statutes that make it a crime or otherwise prohibit the carrying of firearms within certain types of buildings. He said the Virginia Municipal League has proposed an amendment to the statute that applies to courthouses that would make it a crime to carry a firearm into a local government building; however, their new proposal was to make this a local option.

Ms. Mallek acknowledged that she heard the different points of view expressed by speakers today. She remarked that constituents of hers have informed her that when attendees at Board meetings are openly carrying firearms, they leave because they feel a sense of intimidation, so essentially they are not able to participate in local government because they are afraid. She stated that if the Board prohibits firearms in government buildings then many more citizens would be able to participate in their government. She said she has also been contacted by lifelong gun owners who have asked that the technical aspects of what a shotgun and a semi-automatic are was correctly laid out and to not approve magazines that allow for massive damage and killing.

Mr. Dill remarked that the primary responsibility of the Board was for the health and welfare of the citizens of the County and to do whatever they can in that regard. He noted that they try to protect citizens from getting killed on the road by drunk driving and to protect children from infectious diseases, though they do not always select the best solution possible. He said that guns present a similar kind of issue, and they need to try to figure out what does and what does not work. He acknowledged that they would not prevent all gun deaths, but they could have some impact, with some mental health issues being a factor and they are very interested in legitimate studies of what works and what does not. He recognized that when Australia banned assault weapons, the number of deaths went down dramatically. He said that to say that nothing works and that they should not have any gun control at all was not something he agrees with, as there are things they could do.

Ms. Palmer remarked that it would be very refreshing to hear a full discussion on the floor of the statehouse, and it was well worth the Board's resolution to support that effort.

Mr. Randolph remarked that this discussion has not been allowed to take place on a national level because of lobbying by one organization to preempt a democratic discussion about a public health menace. He stated that when he underwent basic training at Fort Jackson in 1970, Army drill sergeants were clear that every trainee understand the fundamental distinction between the guns used for hunting at home and the weapons trainees were holding in their hands, requiring 20 pushups if a soldier referred to an M16 as a gun. He emphasized that weapons are instruments of warfare designed to murder people and have been used in locality after locality, including Blacksburg. He characterized gun violence as an epidemic, applauded the Governor for trying to address this, and said that that some people should not have guns to begin with because they have not been trained as to how to manage them. He advocated for sensible safeguards against gun violence and an open discussion about this threat to American safety and welfare and noted that he let the Governor know last week that the Board would support his effort to have an open discussion. He asked how many people have to die to justify government acting with gun violence.

Ms. McKeel reminded the Board of how she had read statistics related to gun violence at past meetings.

Mr. Gallaway echoed the remarks of Ms. Palmer and Ms. Garth and said that everyone in Virginia deserves to know where state representatives are on this issue and to have a conversation, although he hopes it would go beyond canned political lineups and the previous arguments from both sides so the level of discourse would involve what could be done to make a real difference. He noted that for three years, the Board has supported legislation prohibiting the carrying of specified loaded weapons in public places.

Ms. Mallek expressed hope that more funding for mental health programs, which has been undergoing research in the General Assembly for five years, would result from this discussion.

Mr. Randolph **moved** that the Board adopt the proposed resolution supporting the Governor's Call for a Special Session on Gun Violence, as amended. The motion was **seconded** by Ms. Palmer.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.
NAYS: None.

RESOLUTION SUPPORTING THE GOVERNOR'S CALL FOR A SPECIAL SESSION ON GUN VIOLENCE

WHEREAS between January 1, 2019 and June 6, 2019 in the United States, there have been at least 158 mass shootings, defined to be a single incident in which four or more people were killed or wounded; and

WHEREAS, on May 31, 2019, 12 of our fellow Virginians were killed, and an additional five were wounded, in a mass shooting at the Virginia Beach Municipal Center; and

WHEREAS, in the aftermath of the Virginia Beach mass shooting, Governor Northam has called for a special session of the General Assembly to be held on July 9, 2019 for the purpose of addressing gun violence in the Commonwealth; and

WHEREAS, the Governor has stated that he will propose during the special session several ideas to control gun violence, including universal background checks, a ban on assault weapons to include suppressors and bump stocks, extreme risk protective orders, reinstating the one-gun-a-month law, child access prevention, requiring people to report lost and stolen firearms, and expanding local authority to regulate firearms, including in government buildings.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Supervisors of the County of Albemarle, Virginia (the "Board") that it supports the Governor's call for the special session described above; and

BE IT FURTHER RESOLVED that allowing localities to regulate firearms in government buildings as proposed by the Governor will allow the local duly-elected governing bodies to decide for their respective

communities whether and to what extent firearms may be possessed, carried, or transported in local government buildings, and the Board respectfully requests that this proposed authority be expanded to include not only local government buildings, but all local government property; and

BE IT FURTHER RESOLVED that the Board encourages the Governor and the General Assembly to consider during the special session the Commonwealth's obligation to provide adequate and appropriate mental health, education, and training resources that support reducing gun violence.

Agenda Item No. 10. Performance Agreement Among the County, the Economic Development Authority, and Habitat for Humanity.

The Executive Summary forwarded to the Board states that the Southwood Mobile Home Park ("Southwood") is located on Hickory Street south of I-64 and east of Old Lynchburg Road in the Southern Urban Neighborhood and is located in one of the County's Development Areas. Southwood currently has 341 mobile homes and more than 1,500 residents and is the County's largest concentration of substandard housing. Habitat for Humanity of Greater Charlottesville, Inc. ("Habitat") purchased Southwood in 2007 with a stated intention of redeveloping the site into a 700 to 800-unit, mixed income, mixed-use development, removing all 341 mobile homes and replacing them with a variety of housing unit types including site-built homes.

On October 5, 2016, the Board of Supervisors adopted a resolution supporting a collaborative redevelopment process with Habitat for Southwood (the "Collaboration Resolution" (Attachment B)). On September 8, 2017, the Board's work session on its Strategic Plan included a discussion of Southwood. At its January 10, 2018 meeting, the Board approved an action plan and authorized the County Executive to sign a performance agreement on behalf of the County in which the County agreed to contribute \$675,000 to Habitat in two installments. The purpose for the County's contribution to Habitat was to assist Habitat in its costs to prepare and submit a complete rezoning application for Phase 1 of the redevelopment of Southwood ("Phase 1"). The rezoning application was submitted to the County and is identified as ZMA 2018-00003 ("ZMA 2018-03"). Phase 1 pertains to approximately 32.5 acres within Southwood. The total developable acreage within Habitat is approximately 80 acres.

The Board and the Planning Commission held a joint work session on ZMA 2018-03 on August 7, 2018. Most recently, the Planning Commission held a work session on ZMA 2018-03 on June 4, 2019. Public hearings on ZMA 2018-03 before the Planning Commission and the Board are tentatively scheduled for July 23, 2019 and August 21, 2019, respectively.

As an extension of the Board's October 5, 2016 Collaboration Resolution, County staff has been meeting with Habitat representatives to develop terms by which the County would provide financial support for the construction of affordable dwelling units within Phase 1. The Collaboration Resolution states that "strategic investments in Southwood are intended to result in significant returns including, but not limited to, high-quality affordable housing units, additional employment opportunities, increased tax base, and reduction in the high demand for County services," and that "the Southwood redevelopment project represents an essential public/private partnership opportunity that is consistent with the Comprehensive Plan and the County's broader strategic goals, the success of which is greatly influenced by the extent and quality of active engagement between representatives of Habitat and representatives of the County, including County staff." Lastly, the Board resolved in the Collaboration Resolution that "the effective redevelopment of Southwood according to the core values of non-displacement and sustainability is a critical component of successfully working with a concentration of the County's most vulnerable population that could serve as a blueprint for future revitalization and redevelopment of the County's aging suburban infrastructure."

The proposed Performance Agreement (the "Agreement") is the culmination of these meetings and discussions.

Habitat for Humanity is a 501(c)(3) charitable institution that is eligible to receive contributions of public funds appropriated by localities pursuant to Virginia Code § 15.2-953. In addition, the Board is enabled by Virginia Code § 15.2-1205 to give County funds to the EDA, and the EDA is authorized by Virginia Code § 15.2-4905(13) to give funds to any corporation for the purposes of promoting economic development. The County's contributions in FY 20 and subsequent fiscal years would be subject to appropriation by future Boards.

The following is a summary of the proposed Agreement (Attachment A):

- **The Property:** 32.5 acres composed of Tax Map Parcels 07600-00-00-051A0, 09000-00-00-001A0, and 090A1-00-00-001E0. These parcels are located in an Opportunity Zone.
- **The Project:** Habitat has a rezoning application pending to rezone the 32.5 acres composing Phase 1 to the Neighborhood Model District. Habitat intends to develop a mixed income, mixed use, development on the Property in which safe, clean, stable, affordable housing will also be provided for rent and for purchase by persons of various income levels. Habitat proposes to create 75 Habitat-built or Habitat-contracted affordable dwelling units ("ADUs") homes in Phase 1, Block A, for sale or rent, with the possibility of an additional 80 or more Low Income Housing Tax Credit or other ADUs in Block B. Non-displacement of the current Southwood residents is a major element of the Project.

- **Public and Private Investment:** Habitat states that the total public and private investment in Phase 1 will be approximately \$94,000,000 and that the total public and private investment for the entire Southwood redevelopment will be approximately \$250,000,000.
- **Maximum County Contribution:** \$3,200,000, in a combination of periodic contributions as milestones are reached, and the rebate of real property taxes collected.
- **The Key Recitals:** The key Recitals are:
 - Recital 3 identifies those parts of the County's Comprehensive Plan promoted by the Project.
 - Recitals 6 and 7 state the animating public purposes of the Agreement and summarize the County incentives to achieve the animating public purposes.
 - Recital 10 summarizes the relationship between affordable housing and economic development.
 - Recital 11 disassociates the Agreement from the pending rezoning (though the Agreement is of no effect if the rezoning is not approved).
 - Recital 12 states the enabling authority for the County and the EDA to enter into the Agreement.
- **Prerequisites to County Funds Transferring:** Section 4(A) provides that before any County funds (lump sum contributions or real property tax rebates) transfer to Habitat, Habitat must satisfy the County that the Project is economically viable, based on specific information required to be provided by Habitat.
- **"Lump Sum" Fund Transfers from the County to Habitat, Through the EDA:** Section 4(B)(1) delineates the lump sum transfers from the County to Habitat that may reach \$1,800,000 if Habitat reaches all of the identified milestones. Section 4(B)(3) requires that, aside from the first \$100,000 transfer which may be used for planning work and applications, all other transfers be applied only to actual ADU construction.
- **Real Property Tax Rebate Transfers from the County to Habitat, Through the EDA:** Section 4(C) states that the County will transfer to Habitat the equivalent of up to \$1,400,000 in real property taxes collected from the Property over the first 10 years of the Project. Section 4(C)(3) establishes that the County will transfer 100% of the real property taxes collected through Calendar Year 2024, reduced to 50% thereafter. Section 4(C)(5) requires that these transfers may be applied only to actual ADU construction, then to Habitat debt to construct those ADUs, then to be deposited in an escrow account to be applied only to actual ADU construction in subsequent phases of Southwood's redevelopment.
- **Protecting the County's Contributions:** Numerous provisions are included in the Agreement to protect the County's contributions:
 - Section 4(D) authorizes the County to suspend transfers if Habitat is not in compliance with any term of the Agreement.
 - Section 4(E)(1) identifies eight circumstances when Habitat must return transfers to the County in their entirety (e.g., the \$300,000 transferred if LIHTC credits awarded must be returned if those credits are later voided or those ADUs are not occupied before June 30, 2027).
 - Section 4(E)(2) identifies two circumstances when Habitat must return transfers to the County on a prorated basis when the number of ADUs fall short of the minimum required in the Agreement (e.g., \$20,000 for each ADU less than the 75 Habitat-built or Habitat-contracted ADUs agreed to).
 - Section 4(F) authorizes the County to record an instrument against any portion of the Property to secure the return of County transfers if Habitat fails to make a timely return.
- **Habitat's Obligation to Provide ADUs:** Section 5(A) requires Habitat to provide a minimum of 75 Habitat-built or Habitat-contracted ADUs within the Project. Section 5(B) requires Habitat or a third party to construct 80 or more LIHTC ADUs within the Project, provided that if credits are not awarded in the 2020 application cycle, Habitat must diligently pursue until June 30, 2021 the construction of 80 or more LIHTC or other ADUs within the Project. Section 5(C) requires Habitat to ensure the long-term affordability of ADUs within the Project for up to 40 years.
- **Other Habitat Obligations:** The other provisions within Section 5 impose a number of other obligations on Habitat, including the following: - Section 5(D) requires Habitat to diligently fundraise until the Project is 100% funded - Section 5(E) requires Habitat to develop and implement a non-displacement plan that must be submitted to and approved by the County's Housing Planner. - Section 5(F) requires Habitat to provide a housing mixture plan showing a mixture of owned and rented housing for a range of area median income levels from 20% AMI and up; the housing mixture plan must be submitted to and approved by the County's Housing Planner - Section 5(G) requires Habitat to develop and implement neighborhood design guidelines consistent with the Comprehensive Plan and the Master Plan; if not addressed in the rezoning, the guidelines must be submitted to and approved by the County's Planning Director. - Section 5(H) requires Habitat to

develop and implement minimum external standards (e.g., roof pitches, window types, building materials) for ADUs to ensure they blend with market rate units; the standards must be submitted to and approved by the County's Planning Director. - Section 5(I) requires Habitat to develop and implement minimum internal standards (e.g., minimum square footage, kitchen features); the standards must be submitted to and approved by the County's Housing Planner - Section 5(K) requires Habitat to have a professional staff in its employment or under contract with the skills, experience, and capacity to successfully complete the Project; the professional staff must include, at a minimum, a fundraiser and a project manager/developer with experience

- **Other Provisions in the Agreement:** Section 6 provides that the Agreement is contingent upon the Board's approval of ZMA 2018-00003 by June 30, 2020. Section 7 addresses the possibility of non- appropriation by the Board in future years. Section 9 is labeled "Miscellaneous" and addresses a range of issues typical in agreements.

Funds for the County's possible financial contribution in FY 20 pursuant to the Agreement are available in the Housing Fund in the FY 20 Budget and would be appropriated at the agreed upon intervals when Habitat reaches required milestones. All of the County's financial contributions are subject to non- appropriation by the Board.

Staff recommends that the Board adopt the Resolution (Attachment B) to approve the Agreement.

Mr. Kamptner, County Attorney, said he would provide an overview of the Southwood development project, noting that a draft performance agreement has been available for about a week and a half, with some final revisions just made that were highlighted and underlined on Pages 13-16. He reminded the Board that the property totals about 120 acres, of which 88 acres represents developable land abutting Old Lynchburg Road and Hickory Street. He noted that the performance agreement was for Phase I, which consists of 32.5 acres of various tax map parcels. He said the Southwood neighborhood currently consists of 341 mobile homes and approximately 1,500 residents, with parcels being owned by a subsidiary of Habitat for Humanity. The future plan was to create a mixed-use and mixed-income residential community that would eventually expand to remaining pieces of property in subsequent phases, with a potential buildout of 700–800 dwelling units, of which approximately one-half considered as affordable. He reminded the Board that it passed a resolution on October 5, 2016 that recognizes the importance of the redevelopment of this property for a number of reasons, particularly because it was identified as a priority area in the Comprehensive Plan and was consistent with the County's broader strategic goals, as it appears in the Strategic Plan as one of the ways the County could revitalize aging, urban neighborhoods. He said in January 2018, the Board committed \$675,000 to assist Habitat for Humanity with its application and preliminary design work to develop and submit a rezoning application package. He said in September 2018, grant applications for \$2.25 million were submitted and have since been awarded, with some additional work to be done. He said that brings us to today with the next step in this ongoing process where the Board is considering the performance agreement.

Mr. Kamptner reminded the Board of why it was collaborating with Habitat for Humanity on Phase I. He said the project supports the construction of 75–155 affordable dwelling units, enables redevelopment of substandard housing, the performance agreement calls for non-displacement of existing residents, it would be a public-private partnership in a \$94 million investment for Phase I and up to \$250 million total if subsequent phases are carried out. He said this project also helps the County achieve its Comprehensive and Strategic Plan objectives. He noted in summary, the performance agreement calls for the County to commit \$3.2 million in additional funding, in addition to the \$2.2 million grant award, with future contributions to be made as milestones are achieved, and an additional \$1.4 million in real property tax rebates as the real estate tax revenue received by the County increases within the project area.

Mr. Kamptner stated that the recitals in the agreement lay the foundation for the County's approach and justifies the expenditure of public funds. He noted that Recital 3 identifies several elements of the Comprehensive Plan and Master Plan that applies to this part of the County, Recitals 6 and 7 identify the animating public purposes for the agreement, and Recital 10 identifies the relationship between affordable housing and economic development, as identified in the recently completed regional housing study. He clarified that this agreement and the County's commitment are not the quid pro quo for the rezoning application that would come before the Planning Commission in July and to the Board in August, and makes it clear that if the Board decides not to rezone the property, the agreement has no force or effect. He noted that Recital 12 identifies the various provisions in the Code of Virginia that authorizes the Board and Economic Development Authority (EDA) to do what was proposed in the performance agreement. He said for this project the EDA serves as a conduit and would not have an active role. He said Habitat must take steps which the County must be satisfied with before any County funds are transferred to Habitat, as outlined in Section 4a, which identifies five sets of records that must be submitted up front.

Mr. Kamptner next reviewed how the County's cash contributions would be triggered. He said the \$1.5 million over three or more years would be released once certain milestones have been met, as well as a separate \$300,000 contribution if Block B develops in a way such that a light tech or other project with 80+ affordable units are approved and comes to fruition. He stated that the County's contributions must be applied first to an affordable dwelling unit construction; Habitat envisions the affordable units to be built by 2026 at the latest. He said the next contribution could be used to satisfy Habitat's debt resulting from affordable dwelling unit construction, and lastly funds would go to an escrow account to be

applied in later phases, if applicable. He said that Section 5 contains the obligations which must be met by Habitat, including the construction of at least 75 affordable dwelling units in Phase I, 80+ light tech or other affordable dwelling units, and a June 2021 sunset provision, which was tied into the fact that the project was within an opportunity zone; with investment opportunities for investors tapering off as the years progress.

Mr. Kamptner stated that the other obligation within this block was the long-term affordability and that the contracted affordable life of units was 40 years for light tech units, 30 years for other affordable dwelling units, and 10 years for up to 15 flexible structures such as carriage houses and accessory units. He noted that claw back provisions apply if certain milestones are not attained, in order to protect taxpayers. He continued that Habitat was required to submit plans, guidelines and standards, as specified in Sections 5E-5K. He then reviewed the plans, with the first for non-displacement and the second was for housing mixture, which describes the range of housing types, ownership or rented, and was designed to fit within ranges of the average median income.

Mr. Kamptner noted that Stacey Pethia, the County's Housing Planner, would look to see how Habitat prioritizes households at the lower ranges of the AMI to make sure that housing opportunities are available to them. He said the guidelines would also cover amenities they expect under neighborhood design guidelines, including roof slope and siding, to make sure the market-rate units reasonably mix in with the affordable units, as called for in the Comprehensive Plan. He explained that the minimum internal standards are the minimum elements of livability the County would expect in an affordable dwelling. He noted that the standards would be reviewed for approval by the Housing Planner or Director of Planning. He said Habitat would also be required to maintain a professional team. He noted that the agreement has non-appropriation and non-severability clauses, with the non-appropriation clause being vital as it does not bind future Boards to the agreement.

Mr. Kamptner then presented a slide (copy on file) with the proposed revisions contained on Pages 13–16 and invited questions.

Mr. Randolph referenced Section 5K and asked if the County could have a copy of the agreement with Habitat International. Mr. Kamptner responded "yes". Mr. Randolph noted that the Executive Director of Habitat also agreed that the County would have a copy of the agreement.

Mr. Dill asked who would serve on the professional committee. Mr. Kamptner responded that Section 5K provides that professional staff would be under contract by Habitat, with the skills, experience, and capacities to successfully complete the project. He said the professional staff shall include a minimum of a fundraiser and a project manager/developer having experience in developing a mixed-income residential housing project of at least 70 dwelling units. He said the new language requires Habitat to maintain an affiliated agreement with Habitat for Humanity International, which would have staff members that have a minimum certification from the Association of Fundraising Professionals or a comparable certification who would provide fundraising services or consultation for the project.

Ms. McKeel and Ms. Palmer expressed appreciation for the changes.

Ms. Palmer said she was impressed with what the Office of the County Attorney has done with the agreement, how the Planning Commission and Board drilled down into the details to make sure they are all comfortable, and how responsive everyone has been to the concerns of the Planning Commission and Board. She said she was very comfortable voting in support of the project.

Mr. Kamptner commented that the May 21 work session of the Planning Commission as being very good.

Mr. Randolph echoed the remarks of Ms. Palmer and expressed appreciation for the work put in by Mr. Kamptner and staff. He remarked that given the amount of taxpayer dollars involved, he wanted to be sure beyond a reasonable doubt that they have the highest level of protection and adequate capacity from Habitat to achieve what was expected in terms of raising money. He also recognized Stacey Pethia and David Benish for their work.

Ms. Mallek remarked that they knew this would be very challenging for Habitat, and she was grateful they stuck with it. She added that she supports the policy of non-displacement.

Mr. Randolph **moved** that the Board adopt the proposed Resolution to approve the June 19, 2019 revised performance agreement between the County of Albemarle, Economic Development Authority, and Habitat for Humanity of Greater Charlottesville, Inc. The motion was **seconded** by Ms. Palmer.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.
NAYS: None.

Ms. McKeel asked if annual reports could include the status of what was happening in that area and the community.

Ms. Palmer remarked that this was a great idea as there was so much development going on in the area and the Board would really have to watch and put money in to address transportation issues.

Ms. Mallek suggested staff also provide annual reports on the other growth areas.

**RESOLUTION TO APPROVE THE PERFORMANCE AGREEMENT AMONG THE
COUNTY OF ALBEMARLE, THE ALBEMARLE COUNTY ECONOMIC DEVELOPMENT AUTHORITY,
AND HABITAT FOR HUMANITY
OF GREATER CHARLOTTESVILLE, INC.**

WHEREAS, the Board of Supervisors finds that it is in the best interest of the County to enter into a Performance Agreement (the "Agreement") with the Albemarle County Economic Development Authority (the "EDA"), and Habitat for Humanity of Greater Charlottesville, Inc. ("Habitat for Humanity"), regarding the County's financial contribution to Habitat for Humanity, through the EDA, to be used for the construction of affordable dwelling units by Habitat for Humanity or builders acting under contract with Habitat for Humanity within the Southwood Neighborhood.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Albemarle County, Virginia hereby approves the Agreement with the EDA and Habitat for Humanity, and authorizes the Chair to execute the Agreement on behalf of the County once it has been approved as to substance and form by the County Attorney.

AGREEMENT

THIS AGREEMENT is made and entered into on July 1, 2019, by and between the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "County"), the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**, (the "Authority"), a political subdivision of the Commonwealth of Virginia, and **HABITAT FOR HUMANITY OF GREATER CHARLOTTESVILLE, INC.**, a Virginia corporation and a 501(c)(3) (Section 501(c)(3) of the Internal Revenue Code) entity ("Habitat").

Recitals

1. **The Property.** Southwood Charlottesville LLC, a limited liability company wholly-owned by Habitat, is the owner of approximately 32.5 acres composed of Tax Map Parcels 07600-00-00-051A0, 09000-00-00-001A0, and 090A1-00-00-001E0, located in the Scottsville Magisterial District of Albemarle County (the "Property").
2. **The Project.** Habitat intends to develop a mixed income, mixed use, development on the Property in which safe, clean, stable, affordable housing will also be provided for rent and for purchase by persons of various income levels (the "Project"). The Project is also known as "Phase 1" of Habitat's intended redevelopment of the neighborhood commonly known as "Southwood," which is composed of approximately 80 developable acres that will provide safe, clean, stable, affordable housing within a mixed income, mixed use, development.
3. **The Project is Consistent With, Promotes, and Implements the County's Comprehensive Plan.** The Project is consistent with, promotes, and implements several policies, objectives, and strategies of the Albemarle County Comprehensive Plan:
 - A. **Growth Management Chapter.** The Growth Management chapter of the Comprehensive Plan includes the following statement: "Promoting the Development Areas as the place where a variety of land uses, facilities, and services exist and are planned to support the County's future growth, with emphasis placed on density and high-quality design in new and infill development." Strategy 1b of the Growth Management chapter states: "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. **Housing Chapter.** The Housing chapter of the Comprehensive Plan includes Objective 4: "Provide for a variety of housing types for all income levels and help provide for increased density in the Development Areas."
 - 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," Objective 6: "Increase local business development opportunities, including support for entrepreneurial and startup businesses," and Strategy 1a: "Promote new employment activities in the Development Areas and encourage developers of commercial and industrial projects to incorporate the Neighborhood Model principles."
 - D. **Affordable Housing Policy.** The Affordable Housing Policy in the Comprehensive Plan includes the following statement: "It shall be the policy of Albemarle County to support affordable housing for those who live and/or work in the County." Strategy 4 of the Affordable Housing Policy states: "Expand existing partnerships/programs and create new alliances with the private sector including nonprofit and for-profit housing providers and lenders."
 - E. **Southern and Western Urban Neighborhoods Master Plan.** The Southern and Western Urban Neighborhoods Master Plan states: "Redevelopment of the Southwood Mobile Home Park should

be as a mixed-income, mixed use community. A mixture of housing types for different income levels is expected. A retail and/or services area should be provided for the neighborhood.” Southwood is listed as one of three priority areas in the Master Plan.

4. **The Project is Consistent With, Promotes, and Implements Habitat's Core Values.** The Project is consistent with, promotes, and implements several core values of Habitat, including the following:
 - A. **Non-displacement.** Facilitating healthy rehousing choices for each current resident of Southwood.
 - B. **Net Increase in Affordable Housing.** Causing a significant increase in the overall local affordable housing stock responsive to the evolving regional need.
 - C. **Community Engagement.** Creating a plan of development resulting from extensive interaction with Southwood residents – taking into account their needs, desires, and abilities – and other stakeholders in the community, including surrounding neighbors, County officials, and others.
 - D. **Asset-based Approach.** Building on existing community assets by being responsive to what is already good about Southwood, both socially and physically.
 - E. **Self-help Model.** Basing redevelopment strategies on Habitat's central belief that a “hand up” is better than a “hand out.” Redevelopment will include substantial opportunities for current residents and other low-income residents of the area to earn the chance to build and purchase Habitat homes and/or otherwise participate in the rebuilding of the Southwood community.
 - F. **Fiscal Responsibility.** Managing the redevelopment process in a financially sustainable way that allows Habitat to continue with its core mission of building affordable homes into the future.
5. **The Investment in the Project.** The amount of funding and private investment by Habitat and other contributors, including the County and the Authority, in the Project is estimated to be \$94,000,000.00. For the entirety of the development and redevelopment of the Southwood neighborhood beyond the Project, the amount of funding and private investment by Habitat and others is estimated to be \$250,000,000.00.
6. **The Animating Public Purposes of this Agreement.** The animating public purposes for the County to enter into this Agreement include:
 - A. **Supporting Affordable Housing.** Providing funding to facilitate the construction of safe, clean, stable, affordable housing for persons of various income levels.
 - B. **Promoting Economic Development.** Promoting the economic development and the increased vitality of the Southwood neighborhood and the County's southern urban ring.
 - C. **Enhancing the County's Tax Base and Jobs Base.** Enhancing the County's tax base and jobs base by facilitating the redevelopment of the existing Southwood neighborhood into a mixed use development that, when developed will include commercial uses, affordable housing for persons of various income levels, and market-rate housing.
7. **The Incentives to Enable the County to Achieve the Animating Public Purposes.** To further incentivize and financially support Habitat in its construction of affordable dwelling units within the Project, the County Board of Supervisors agrees, subject to the terms and conditions of this Agreement, to:

- A. **Provide Cash Contributions.** Appropriate funds to the Authority, to be transferred to Habitat, in an amount of up to \$1,800,000.00 for the construction of affordable dwelling units within the Project, when specific milestones are achieved by Habitat during Fiscal Years 2020 through 2022, or later.
- B. **Rebate the Equivalent of a Portion of the Incremental Increase in Real Property Tax Revenue.** Rebate to Habitat an amount equal to varying percentages of the increase in the incremental real property tax revenue generated within the Project for a period of 10 years or until \$1,400,000.00 is rebated to Habitat, whichever occurs first, for the construction of affordable dwelling units within the Project.

These incentives are in addition to the \$675,000.00 in funding previously provided by the County through the Authority pursuant to a Performance Agreement dated January 10, 2018, and \$2,250,000.00 through a pair of grants of State and Federal funds awarded to the County and to Habitat for the Project.

8. **Habitat's Acceptance of the Incentives and Related Obligations.** Habitat agrees to accept the funding and the rebate of real property taxes from the County and the Authority described in this Agreement as an incentive for Habitat to construct, or contract to construct, a minimum of 75 Habitat-built or Habitat-contracted homes qualifying as affordable dwelling units, and to diligently pursue a minimum of 80 additional affordable dwelling units within the Project, as provided in this Agreement. Habitat also agrees to accept the obligations stated in this Agreement as a condition to it accepting the funding and the rebate of real property taxes as described in this Agreement.
9. **This Agreement Memorializes the Incentives and the Obligations.** The County, the Authority, and Habitat desire to state their agreement to Habitat's milestones and obligations, and the County's and the Authority's incentives and obligations in this Agreement.
10. **The Relationship Between Affordable Housing and Economic Development.** There is a direct relationship between affordable housing and a positive economic benefit to the County and the region.
- A. **The Comprehensive Regional Housing Study and Needs Assessment.** "The Comprehensive Regional Housing Study and Needs Assessment," prepared by the Central Virginia Regional Housing Partnership of the Thomas Jefferson Planning District Commission (March 2019) (the "Report") includes the following:
1. **A Description of the Regional Economy.** In the context of the ability to afford housing, the Report describes the regional economy as follows: "The regional economy is largely split between high-wage professions requiring at least a college degree and lower-wage service jobs in restaurants, retail, hospitality and other sectors. Many service businesses offer only part-time employment without benefits, often on irregular schedules. Even two or three such jobs are not enough to afford most local housing. Accessing jobs requires car ownership or lengthy commutes on public transit, where available." *Report, page 66.*
 2. **The State of Housing in the Region.** The Executive Summary to the Report details the regional rental and ownership housing markets and following is a sampling of those details: (i) housing prices have increased rapidly over the past 20 years and wages have not kept up; (ii) some of the strongest job growth in the region has taken place in the service sectors where wages are relatively low and hours are often limited; (iii) a number of factors have contributed to the rise of rents for older apartments and houses that traditionally would have been affordable to low and moderate income households; (iv) 9,000 renter households in the City of Charlottesville and Albemarle County, excluding student households, are paying more than 30 percent of their income for housing costs, the accepted affordability standard established by the United States Department of Housing, including over 4,000 renter households that are paying at least half of

their income for housing; (v) the waiting list for Housing Choice Vouchers are estimated to be as high as 1,866 in the City of Charlottesville and 1,350 in Albemarle, Fluvanna, Louisa, and Nelson Counties, and wait times are estimated to be five to eight years; (vi) approximately 7.5 percent of the homeowners in the urban localities within the region are spending one-half or more of their income on housing costs; (vii) long commutes (“drive till you qualify”) add transportation to the costs of homeownership in the rural localities in the region; (viii) Habitat receives 180 to 205 applications annually from households seeking to invest in building a home; and (ix) the Albemarle Housing Improvement Program, which provides home repairs for low and moderate income households, has a waiting list of 292 households in the City of Charlottesville and Albemarle County that need emergency repairs and rehabilitation for their homes. *Report, Executive Summary, pages 3-7.*

3. **The State of Housing’s Impact on the Region’s Economy.** The Report summarizes the lack of affordable housing on the region’s economy: “These housing problems have many consequences for the region’s economy. Employers report difficulties in recruiting and retaining workers. Turnover and absenteeism are higher than desirable, in part, because of the burdens of those long commutes. Those who must recruit workers with specialized skills often find they are forced to pay higher salaries than their counterparts pay in other parts of the state. Economic development professionals across the region report difficulties in recruiting new businesses due to concerns about their ability to move and attract workers to a market with such high housing costs.” *Report, Executive Summary, pages 7-8.*

B. **Other Studies and Reports.** Many studies and reports link affordable housing to economic development. “The Role of Affordable Housing in Creating Jobs and Stimulating Local Economic Development: A Review of the Literature,” prepared by the Center for Housing Policy (2011) reviews the studies conducted regarding the immediate and long-term economic benefits provided by affordable housing. In sum, the report finds a direct link between affordable housing and economic development, concluding that the studies reviewed demonstrate that “development of affordable housing increases spending and employment in the surrounding economy, acts as an important source of revenue for local governments, and reduces the likelihood of foreclosure and its associated costs. Without a sufficient supply of affordable housing, employers – and entire regional economies – can be at a competitive disadvantage because of their subsequent difficulty attracting and retaining workers.”

11. **This Agreement is Contingent Upon, But Not in Exchange for, Approval of ZMA 2018-00003.** This Agreement is contingent upon the County Board of Supervisors approving ZMA 2018-00003 which, as currently proposed, would allow the uses and densities to enable the 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 2018-00003, the Board may and will exercise its full legislative powers and discretion as authorized by law.
12. **Enabling Authority.** The County and the Authority are authorized to enter into this Agreement and to make the cash contributions and transfers as provided in this Agreement to Habitat pursuant to the following:
- A. **Virginia Code § 15.2-953.** Virginia Code § 15.2-953 enables the County to give funds to any charitable institution that provides services to residents of the County, that provides housing for persons 60 years of age or older, and to provide funds to the Authority for the purposes of promoting economic development.
- B. **Virginia Code § 15.2-959.** Virginia Code § 15.2-959 enables the County to engage in research, studies, and experimentation in housing alternatives, including the rehabilitation of existing housing stock and the construction of additional housing.

C. **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 Authority.

D. **Virginia Code § 15.2-4905(13).** Virginia Code § 15.2-4905(13) enables the Authority 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 authority which have not been pledged or assigned for the payment of any of the Authority's bonds.

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

The parties agree as follows:

1. **Purposes.** The recitals state the general purposes and intentions of the parties for entering into this Agreement and provide general descriptions as to how those purposes and intentions will be achieved. In sum, the County and the Authority desire to support, and Habitat desires to provide, safe, clean, stable, affordable housing for persons of various income levels. In addition, by supporting affordable housing, the parties intend to promote the economic development and the increased vitality of the Southwood neighborhood and the County's southern urban ring by enhancing the County's tax base and jobs base as described in the recitals.

2. **Definitions.** The following terms are defined for this Agreement:

"Affordable housing" means housing affordable to households with income not exceeding 80 percent of the area median income established by the United States Department of Housing and Urban Development adjusted by family size. In the context of this Agreement, "affordable housing" also means housing affordable to households with income not exceeding percentages less than 80 percent of the area median income.

"Affordable dwelling unit" or "ADU" means a dwelling unit that qualifies as affordable housing and is, or is intended to be, occupied for persons qualifying for affordable housing.

"Fiscal Year" means the County's fiscal year which runs from July 1 of the Calendar Year to June 30 of the following Calendar Year.

"Habitat-contracted ADU" means an affordable dwelling unit that will be constructed by a third party pursuant to a construction contract between it and Habitat.

"Low Income Housing Tax Credits" means low income housing tax credits awarded by the Virginia Department of Housing and Community Development as the administrator of the federal Low-Income Housing Tax Credit (LIHTC) program, is sponsored by the United States Treasury Department, and authorized by federal law to encourage the development of affordable rental housing by providing owners a federal income tax credit.

"Project" means Habitat's intended 32.5 acre development and redevelopment of the Property to establish a mixed income, mixed use, development on the Property in which safe, clean, stable, affordable housing will also be provided for rent and for purchase by persons of various income levels. The Project is also known as "Phase 1" of Habitat's intended redevelopment of the neighborhood commonly known as "Southwood."

"Property" means Albemarle County Tax Map Parcels 07600-00-00-051A0, 09000-00-00-001A0, and 090A1-00-00-001E0.

“Southwood” means the real property in Albemarle County owned by Southwood Charlottesville LLC composed of Tax Map Parcel Numbers 07600-00-00-051A0, 09000-00-00-001A0, 090A0-00-00-001C0, 090A0-00-00-00400, 090A1-00-00-001D0, and 090A1-00-00-001E0, which in the aggregate is approximately 123 acres in size, 80 acres of which are developable, and of which the Project is a part. In the appropriate context in this Agreement, “Southwood” may refer to the current neighborhood within these described lands, or its future redevelopment.

3. **Term of this Agreement.** The term of this Agreement is from July 1, 2019 until the last period of affordability expires pursuant to Section 5(C)(1).
4. **Contributions by the County and the Authority.** The County agrees to appropriate to the Authority, and Authority agrees to transfer to Habitat, cash contributions as provided below:
 - A. **Prerequisites to Transferring the First Cash Contribution or Rebate.** Before the County appropriates the first Cash Contribution described in Section 4(B) or the first Rebate described in Section 4(C), Habitat shall provide to the County the following information which must demonstrate to the County’s satisfaction that the Project is economically viable:
 1. **Budget.** A project budget for the Project.
 2. **Funding Plan.** A plan showing how the Project and Southwood will be funded, with evidence satisfactory to the County, that it has or will have the financial ability to design and construct the Project, including proof that it has or will secure funds necessary, obtained commitments for any construction loans, received contributions, or received pledges.
 3. **Other Economic Information.** Any other information reasonably requested by the County to ensure to the County’s satisfaction the economic viability and Habitat’s ability to achieve a minimum of 75 Habitat-built or Habitat-contracted ADUs within the Project.
 4. **Habitat Professional Team.** A list of the persons filling professional positions employed by Habitat and who are assigned to the Project, and any consultants hired, having experience in large mixed-use, mixed income developments that meets the requirements of Section 5(K).
 5. **Non-Displacement.** A Non-Displacement Plan that meets the requirements of Section 5(E).
 - B. **Phased Cash Contributions.** The County and the Authority will contribute up to \$1,800,000.00 to Habitat in separate contributions (the “Cash Contribution”) as follows:
 1. **Milestones for the Cash Contributions.** Each Cash Contribution will be made in the stated sums when Habitat reaches the following milestones:
 - a. **Fiscal Year 2020 or later; \$100,000.00.** \$100,000.00 will be contributed to Habitat in Fiscal Year 2020 or later upon written request by Habitat to the County Executive, to support Habitat’s planning work and applications.
 - b. **Fiscal Year 2020 or later; \$300,000.00.** \$300,000.00 will be contributed to Habitat in Fiscal Year 2020 or later when Habitat provides written evidence that: (i) it or a third party has been awarded Low Income Housing Tax Credits for 80 or more rental units of affordable housing within the Project, specifically, within the area referred to as Phase 1, Block B in the documents submitted by Habitat for ZMA 2018-00003; or (ii) a developer obtains one or more building permits to construct 80 or more affordable dwelling units (ADUs) within the Project.

- c. **Fiscal Year 2020 or later; \$200,000.00.** \$200,000.00 will be contributed to Habitat in Fiscal Year 2020 or later when Habitat provides written evidence to the satisfaction of the County Executive that it has obtained actual donations, formal pledges, bank financing, and other forms of revenue, including revenue from parcel sales, when combined with the County's total contribution, to fund 75 percent (57) of 75 Habitat-built or Habitat-contracted ADUs within the Project.
 - d. **Fiscal Year 2021 or later; \$300,000.00.** \$300,000.00 will be contributed to Habitat in Fiscal Year 2021 or later when Habitat provides written evidence to the satisfaction of the County Executive that a final site plan has been approved by the County to enable construction of at least 20 Habitat-built or Habitat-contracted ADUs within the Project and that it has obtained actual donations, formal pledges, bank financing, and other forms of revenue, including revenue from parcel sales, when combined with the County's total contribution, to fund 85 percent (64) of 75 Habitat-built or Habitat-contracted ADUs within the Project.
 - e. **Fiscal Year 2021 or later; \$300,000.00.** \$300,000.00 will be contributed to Habitat in Fiscal Year 2021 or later upon Habitat providing written evidence to the County Executive that it has submitted to the County's Department of Community Development one or more complete building permit applications to construct the 37th Habitat-built or Habitat-contracted ADU within the Project.
 - f. **Fiscal Year 2022 or later; \$600,000.00.** \$600,000.00 will be contributed to Habitat in Fiscal Year 2022 or later when Habitat provides written evidence to the satisfaction of the County Executive that Habitat has obtained actual donations, formal pledges, bank financing, and other forms of revenue, including revenue from parcel sales, when combined with the County's total contribution, to fund 95 percent (72) of 75 Habitat-built or Habitat-contracted ADUs within the Project.
2. **How and When the Cash Contributions Will Be Transferred.** The County Board of Supervisors will appropriate each Cash Contribution to the Authority within 45 days after the County Executive determines to his satisfaction that the applicable milestone has been reached. The Authority will transfer each Cash Contribution to Habitat within 30 days after it is received from the County. The Authority has no responsibility to transfer any Cash Contribution to Habitat that the Authority has not received from the County. Each Cash Contribution from the Authority to Habitat is a grant.
 3. **Purposes for Which the Cash Contributions May be Applied.** Habitat shall use the Cash Contribution received from the Authority pursuant to Section 4(B)(1)(a) only to support Habitat's planning work and applications. Habitat shall use the Cash Contributions received from the Authority pursuant to Sections 4(B)(1)(b) through (f) only to construct or install the foundation, framing, windows and doors, roofing, exterior siding, drywall and other interior wall materials, insulation, rough and finish electrical, plumbing, and heating and cooling systems, underlayment, countertops and cabinets, trim, painting, appliances, flooring, kitchen appliances, finish work such as book shelves, and connections to utilities, and the like, for a Habitat-built or Habitat-contracted ADU. The Cash Contributions may not be used for site preparation or to construct or install within the Project any streets, utilities, common area improvements and amenities, or for any other purpose.
 4. **Determinations by the County Executive as to Whether a Milestone Has Been Reached.** Any determination by the County Executive as to whether a milestone has been reached by Habitat pursuant to Section 4(B)(1) shall be reasonably made and shall be binding on the Authority. The County Executive may delegate this responsibility to any County officer.

5. **Non-appropriation.** Any Cash Contribution to be made by the County and the Authority pursuant to this Section 4(B) in any Fiscal Year is subject to non-appropriation by the County Board of Supervisors as provided in Section 7.
 6. **Extinguishing an Obligation.** Any obligation of the County and the Authority to make a particular Cash Contribution pursuant to this Section 4(B) is extinguished if Habitat does not reach the corresponding milestone by June 30, 2025 or another date as extended by a written agreement of the parties. Habitat must submit any evidence that it has reached a milestone to the County Executive by July 31, 2025.
- C. **Rebated Real Property Taxes.** The County and the Authority will rebate up to \$1,400,000.00 to Habitat the equivalent of a portion of the increase in real property taxes collected from the Project in annual contributions as follows:
1. **Real Property Tax Baseline.** The "Real Property Tax Baseline" is the amount of real property taxes assessed by the County on the Property for the Calendar Year in which ZMA 2018-00003 is approved by the County Board of Supervisors.
 2. **Duration of the Rebate Period.** The "Rebate Period" begins in the Calendar Year following the Calendar Year in which the Real Property Tax Baseline is established and continues for 10 Calendar Years, or sooner, when \$1,400,000.00 has been rebated to Habitat pursuant to this Section 4(C).
 3. **Calculation of the Rebates.** The amount of the real property taxes that will be rebated to Habitat (the "Rebate") is as follows:
 - a. **Until the End of Calendar Year 2024.** One hundred percent of the increase in real property taxes collected by the County for the Property above the Real Property Tax Baseline will be rebated to Habitat until the end of Calendar Year 2024.
 - b. **Calendar Year 2025 and Thereafter.** Fifty percent of the increase in real property taxes collected by the County for the Property above the Real Property Tax Baseline will be rebated beginning in Calendar Year 2025 and until the Rebate Period ends.
 4. **How and When the Rebate Will Be Transferred.** Within 45 days after the full amount of the real property taxes have been paid for the Property for the applicable half of the Calendar Year, the County Board of Supervisors will semi-annually appropriate a Rebate to the Authority. The Authority will transfer the Rebate to Habitat within 30 days after it is received from the County. The Authority has no responsibility to transfer any Rebate to Habitat that the Authority has not received from the County. Each Rebate from the Authority to Habitat is a grant.
 5. **Purposes for Which the Rebates May be Used.** Habitat may use each Rebate received under this Section 4(C) as follows:
 - a. **First: Construct Affordable Dwelling Units.** Habitat shall first use the Rebate only to construct or install the foundation, framing, windows and doors, roofing, exterior siding, drywall and other interior wall materials, insulation, rough and finish electrical, plumbing, and heating and cooling systems, underlayment, countertops and cabinets, trim, painting, appliances, flooring, kitchen appliances, finish work such as book shelves, and connections to utilities, and the like, of a Habitat-built or Habitat-contracted ADU, until the 75th certificate of occupancy is issued for Habitat-built or Habitat-contracted ADUs within the Project. The Rebate may not be used for site preparation or to construct or install within the Project any streets, utilities, common area improvements and amenities, or for any other purpose.

- b. **Second: Apply to Habitat Debt to Construct Affordable Dwelling Units.** Any Rebate received by Habitat that can no longer be used as provided by Section 4(C)(5)(a) (because, for example, all Habitat-built or Habitat-contracted ADUs have been constructed in the Project), shall next be applied by Habitat to pay any debt incurred by Habitat to build Habitat-built or Habitat-contracted ADUs within the Project.
 - c. **Third: Rebates Deposited in Escrow Account for Affordable Dwelling Units in Subsequent Phases of Southwood.** Any Rebate to be received by Habitat that can no longer be used as provided by Sections 4(C)(5)(a) and 4(C)(5)(b) shall be deposited in an escrow account established by the County instead of being directly transferred to Habitat. Habitat shall inform the County Executive in writing, with any supporting evidence it may have or that may be requested by the County Executive, that the Rebates can no longer be used as provided by Sections 4(C)(5)(a) and 4(C)(5)(b). Any Rebates deposited in an escrow account may be withdrawn by Habitat upon prior approval by the County Executive for the sole purpose of using the Rebate to construct or install ADUs outside of the Project but within Southwood. The transfer schedule established in Section 4(C)(4) applies to Rebates that will be deposited in an escrow account to the extent that it is practicable, allowing adequate time for the County Executive to reasonably consider the information provided by Habitat.
6. **Non-appropriation.** Any Rebate to be made by the County and the Authority pursuant to this Section 4(C) in any Fiscal Year is subject to non-appropriation by the County Board of Supervisors as provided in Section 6 of this Agreement.
7. **Extinguishing an Obligation.** Any obligation of the County and the Authority to make a particular Rebate pursuant to this Section 4(C) is extinguished on December 31 of the tenth Calendar Year following the Calendar Year in which the Real Property Tax Baseline is established, or when the County and the Authority have rebated to Habitat \$1,400,000.00, whichever occurs first.
- D. **Suspending Transfers of Cash Contributions or Rebates.** The transfer of any Cash Contribution or Rebate from the Authority to Habitat shall be suspended at any time while Habitat is not in compliance with any obligation it has pursuant to Section 5.
- 1. **Decision.** The decision as to whether Habitat is not in compliance with any obligation it has pursuant to Section 5 shall be reasonably made by the County Executive.
 - 2. **Notice from the County to Habitat.** The County shall provide written notice to Habitat that Habitat is not in compliance with one or more obligations it has pursuant to Section 5. The notice shall identify the obligations that Habitat is not in compliance with and recommend corrective actions to return to compliance.
 - 3. **Resolution.** Habitat shall make good faith efforts to return to compliance with its obligations. If it disagrees with the County as to whether it is not in compliance with one or more of its obligations, Habitat may request to meet with the County pursuant to the dispute resolution procedure in Section 9(G) of this Agreement. The request must be made by Habitat in writing and be received by the County within 30 days after the date Habitat received the written notice from the County pursuant to Section 4(D)(2).
- E. **Returning the Cash Contributions and Rebates.** Habitat shall return any Cash Contribution and Rebate (collectively, "County Funds") to the Authority, which in turn shall return the County Funds to the County, in the following circumstances:

1. **Returns in Their Entirety.** Habitat shall return the County Funds in their entirety in any of the following circumstances:
 - a. **Planning and Other Support Funding.** The \$100,000.00 Cash Contribution transferred pursuant to Section 4(B)(1)(a) shall be returned to the Authority in full if the Cash Contribution is not fully expended for Habitat's planning work and applications on or before June 30, 2021.
 - b. **Tax Credits Awarded or Other Affordable Housing Project.** The \$300,000.00 Cash Contribution transferred pursuant to Section 4(B)(1)(b) shall be returned to the Authority in full if: (i) the LIHTC credits that were awarded are voided or the award of the credits is rescinded before any LIHTC ADU is occupied on or before June 30, 2027; (ii) the developer obtaining one or more building permits to construct 80 or more ADUs fails to obtain from the County at least one certificate of occupancy for an ADU within the Project on or before June 30, 2027.
 - c. **Final Site Plan Approval for 20 ADUs.** The \$300,000.00 Cash Contribution transferred pursuant to Section 4(B)(1)(d) shall be returned if there is no legal, valid, final site plan for 20 or more Habitat-built or Habitat-contracted ADUs within the Project on or before June 30, 2025.
 - d. **Building Permits Issued.** The \$300,000.00 Cash Contribution transferred pursuant Section 4(B)(1)(e) shall be returned if building permits expire such that the number of building permits issued by the County is below 37 on or before June 30, 2025.
 - e. **Funding Levels.** The Cash Contributions transferred pursuant to Sections 4(B)(1)(c), 4(B)(1)(d), or 4(B)(1)(f) shall be returned if the funding levels of 75 percent, 85 percent, or 95 percent for 75 Habitat-built or Habitat-contracted ADUs within the Project fall below those milestones before at least one certificate of occupancy is issued by the County for a Habitat-built or Habitat-contracted ADU within the Project.
 - f. **Cash Contributions Not Applied for Habitat-built or Habitat-contracted ADUs.** Any Cash Contributions transferred pursuant to Section 4(B)(1) shall be returned if the full amount is not applied solely to construct or install Habitat-built or Habitat-contracted ADUs as described in Section 4(B)(3).
 - g. **Rebates Not Applied for Habitat-built or Habitat-contracted ADUs or Other Specified Purposes.** Any Rebates transferred pursuant to Section 4(C)(1) shall be returned if the full amount transferred in any particular Calendar Year is not applied solely for the purposes described in Section 4(C)(5).
 - h. **Habitat Ceases to Operate.** If Habitat ceases to operate before the County issues the first certificate of occupancy for a Habitat-built or Habitat-contracted ADU within the Project, any County Funds shall be returned.
2. **Prorated Returns.** Habitat shall return the County Funds on a prorated basis in any of the following circumstances:
 - a. **Tax Credits Awarded or Other Affordable Housing Project.** The \$300,000.00 Cash Contribution transferred pursuant to Section 4(B)(1)(b) shall be returned in the prorated amount of \$3,750.00 for each certificate of occupancy not obtained from the County for an ADU within the Project by December 31, 2027 that is less than 80, provided that at least one certificate of occupancy has been issued for an ADU developed or installed as provided in Section 4(B)(1)(b). Example: If 70 certificates of occupancy for ADUs have been issued by

the County by December 31, 2027, 10 certificates of occupancy were not timely obtained and Habitat must return \$37,500.00.

- b. **Certificates of Occupancy Issued for Fewer than 75 Habitat-built or Habitat-contracted ADUs.** The Cash Contribution transferred pursuant to Section 4(B)(1)(c) through (f) shall be returned in the prorated amount of \$20,000.00 for each certificate of occupancy not obtained from the County for a Habitat-built or Habitat-contracted ADU within the Project by December 31, 2027 that is less than 75, up to the amount of Cash Contributions that it received. Example: If 70 certificates of occupancy for Habitat-built or Habitat-contracted ADUs have been issued by the County by December 31, 2027, five certificates of occupancy were not timely obtained and Habitat must return \$100,000.00.

3. **Milestones Reached, Failed, Re-attained.** Any Cash Contribution made pursuant to the milestones being reached pursuant to Section 4(B)(1)(c), (d), or (e), then returned by Habitat because Habitat thereafter no longer satisfied the milestone, shall be transferred again as provided in this Agreement if Habitat again timely reaches the milestone.

4. **Timing of Returns.** Habitat shall return any Cash Contribution or Rebate required by this Section 3(E) within 30 days after it receives a written demand for a return from the County. The Authority shall transfer any return to the County within 45 days after it receives the return from Habitat.

F. **Security Interest to Ensure the Return of County Funds.** If Habitat fails to timely return any County Funds as required by Section 4(E)(4), the County, in its sole discretion, may record an instrument against any portion of the Property owned by Southwood Charlottesville LLC or Habitat, or both, or any other real property owned by Habitat in Albemarle County, at the time of the proposed recordation to secure the return. Habitat shall sign the documents necessary to allow the County to record its instrument, and shall not otherwise prevent, or seek to prevent, the County from recording its instrument. The County instrument shall be subordinate to any instrument recorded by one or more financial institutions to secure its funding provided to Habitat. The County shall sign the documents necessary to subordinate its instrument to the instrument recorded, or to be recorded, by the financial institution, and will not otherwise prevent, or seek to prevent, the financial institution from recording its instrument. The County shall promptly and timely release any instrument that it records to secure the return of any portion of the County Funds, when Habitat is no longer obligated return any amount. Habitat shall not be responsible for any costs, including recording costs, incurred by the County for it to record any instrument under this Section 4(F). In its sole discretion, the County may designate the Authority to exercise the rights, powers, and obligations of the County pursuant to this Section 4(F).

5. **Obligations of Habitat.** Habitat will provide ADUs within the Project as follows:

A. Construct or Contract to Construct at Least 75 Affordable Dwelling Units. Habitat shall provide a minimum of 75 Habitat-built or Habitat-contracted ADUs within the Project.

B. **Construct or Install at Least 80 LIHTC Affordable Dwelling Units; Alternative.** Habitat, or a third party, shall construct or install a minimum of 80 LIHTC ADUs within the Project. If Habitat is unable to enter into a contract with a third party by June 30, 2020, or Habitat or the third party is not awarded Low Income Housing Tax Credits for 80 or more ADUs by June 30, 2020, Habitat shall diligently pursue until June 30, 2021 other third parties to seek and obtain an award of 80 or more LIHTC ADUs or to otherwise contract with a developer to construct or install 80 or more ADUs within the Project. If Habitat sells, leases, or otherwise transfers land in Block B in the Project to construct or install 80 or more LIHTC or other ADUs, all funds received by Habitat for the sale, lease, or transfer shall be used by Habitat for the Project. In addition:

1. **“Diligent pursuit” described.** In order for Habitat to be deemed by the County to be diligently pursuing a third party as required by this Section 5(B), Habitat shall, at a minimum, continuously market sufficient land within the Project to allow 80 or more ADUs to be constructed and to market the land for that purpose. The marketing shall continue until the land is conveyed to a developer for the purposes described herein, or until June 30, 2021, whichever occurs first. The land shall be marketed at a price that will allow it to be developed for affordable housing.
 2. **Appraisal.** If the County does not agree that the land is being so marketed at an appropriate price, it may request that an appraisal be prepared at its cost. The appraiser shall be selected by agreement of the County and Habitat.
 3. **Extinguishment of Obligation.** If Habitat is unable to obtain a buyer and developer by June 30, 2021 to construct or install 80 or more ADUs within the Project, the obligation of this Section 5(B) is extinguished.
 4. **Waiver by the County Board of Supervisors of the Obligation to Market the Land Until June 30, 2021.** Upon the written request by Habitat, the County Board of Supervisors may waive Habitat’s obligation to market the land until June 30, 2021 if Habitat has an interested purchaser who would not be constructing or installing 80 or more LIHTC or other ADUs in Block B in the Project, but would be developing a project that promotes the economic and community development of Southwood. In evaluating a request, the Board will consider any relevant criteria including, but not limited to: (i) whether the development will provide civic space for Southwood; (ii) whether the development will lease at affordable rates commercial space for Southwood residents and their businesses; (iii) enhanced open space for Southwood; (iv) funding for affordable housing within Southwood; and (v) other features, elements, improvements, or services that promote the economic and community development of Southwood. If the transfer of the land by Habitat to a developer is not completed, the June 30, 2021 deadline shall be extended an equivalent amount of time that the land was not actively marketed.
- C. **Ensure Long-term Affordability.** Habitat will ensure the long-term affordability of the ADUs within the Project as follows:
1. **Dwelling Units that are Habitat-built, Habitat-contracted, Habitat-sold.** Habitat-built, Habitat-contracted, and Habitat-sold ADUs shall qualify as affordable housing for a minimum of 40 years. Affordability may be achieved through deed restrictions, reserving in all ADUs a right of first refusal and granting the County a right of second refusal, by providing forgivable final mortgages, and other incentives. The period of affordability begins on the date that the certificate of occupancy is issued by the County for each ADU. To simplify tracking the periods of affordability, Habitat may group all the certificates of occupancy for ADUs issued in a Calendar Year to begin their period of affordability on January 1 of the next Calendar Year.
 2. **Dwelling Units Within Low Income Housing Tax Credit Projects.** LIHTC ADUs shall qualify as affordable housing for a minimum of 30 years. The period of affordability begins on the date that the certificate of occupancy is issued by the County for each ADU.
 3. **Dwelling Units that are Flexible Structure Types.** Flexible structure types, including modular housing and carriage units, serving as second dwelling units on a lot, shall qualify as affordable housing for a minimum of 10 years. For the purpose of Habitat satisfying its obligation to provide 75 or more Habitat-built or Habitat-contracted ADUs pursuant to this Agreement, only the first 10 flexible structure types will be counted toward Habitat’s obligation. The period of affordability begins on the date that the certificate of occupancy is issued by the County for each ADU.

4. **Dwelling Units Using Other Affordable Housing Strategies.** Dwellings qualifying as affordable housing using a combination of strategies, including those described above or any other strategies, including land banks or land trusts, shall qualify as affordable housing for a minimum of 30 years. The period of affordability begins on the date that the certificate of occupancy is issued by the County for each ADU. To simplify tracking the periods of affordability, Habitat may group all the certificates of occupancy for ADUs issued in a Calendar Year to begin their period of affordability on January 1 of the next Calendar Year.
- D. **Diligently Fundraise.** From the date of this Agreement and until the design and construction of the ADUs within the Project are 100 percent funded, Habitat shall actively and aggressively conduct a capital campaign to obtain contributions to pay for the cost of designing and constructing the ADUs within the Project.
1. **“Actively” conducting the capital campaign described.** In order for Habitat to be deemed to be “actively” conducting the capital campaign, the Habitat fundraiser required by Section 5(K) shall be dedicated exclusively to directing the capital campaign for its required duration. The fundraiser’s dedication to directing the capital campaign may be non-exclusive if Habitat demonstrates to the County Executive’s satisfaction that exclusive dedication to the capital campaign is not required for Habitat to meet its obligation under this Section 5(D). The County Executive shall not unreasonably withhold approval.
 2. **“Aggressively” conducting the capital campaign described.** In order for Habitat to be deemed to be “aggressively” conducting the capital campaign, the Habitat fundraiser required by Section 5(K) shall conduct the capital campaign in a manner that is systematic, ambitious, and energetic for its duration.
- E. **Develop and Implement a Non-Displacement Plan.** Habitat shall develop and implement a non-displacement plan for each current Southwood resident (the “Non-Displacement Plan”). The Non-Displacement Plan shall include at least 47 Habitat-built or Habitat-contracted ADUs, or market rate units, within the Project that will rehouse current residents and a plan for rehousing options for Southwood residents living in trailers or manufactured homes as they are impacted by the redevelopment of the Property for the Project. The Non-Displacement Plan shall meet or exceed the standards of the Residential Anti-Displacement and Relocation Assistance Plan developed by the Virginia Department of Housing and Community Development as required for the Vibrant Communities Initiative Grant. The Non-Displacement Plan is subject to review and approval by the County Housing Planner or another County officer designated by the County Executive (the “County Housing Planner”). As provided in Section 4(A)(5), Habitat must obtain approval of the Non-Displacement Plan before the County appropriates the first Cash Contribution described in Section 4(B) or the first rebate described in Section 4(C). The County Housing Planner shall act on the Non-Displacement Plan, including any amendment thereto, within 30 days after it is received. The County Housing Planner shall not unreasonably withhold approval of the Non-Displacement Plan. Any amendment to the Non-Displacement Plan is also subject to review and approval by the County Housing Planner.
- F. **Provide a Mixture of Housing.** Habitat shall provide for a mixture of ADUs within the Project. In combination with market rate dwelling units, the ADUs shall be a mixture of owned and rented dwellings, with tiers of affordability (*i.e.*, affordable to households with incomes not exceeding, for example, 20 percent, 40 percent, 60 percent, and 80 percent of the area median income established by the United States Department of Housing and Urban Development adjusted by family size) (the “Housing Mixture Plan”). Habitat must submit a draft Housing Mixture Plan to the County’s Department of Community Development by not later than July 15, 2019. The Housing Mixture Plan is subject to review and approval by the County Housing Planner or another County officer designated by the County Executive (the “County Housing Planner”). Habitat must obtain approval of the Housing Mixture Plan before the first final site plan, or the first subdivision plat submitted to the County after August 21, 2019,

within the Project that will include any dwelling units is approved by the County. The County Housing Planner must act on the Housing Mixture Plan, including any amendment thereto, within 30 days after it is received. The County Housing Planner shall not unreasonably withhold approval of the Housing Mixture Plan. Any amendment to the Housing Mixture Plan is also subject to review and approval by the County Housing Planner.

- G. Develop and Implement Neighborhood Design Guidelines.** Habitat shall develop and implement neighborhood design guidelines for the Project that are consistent with the Albemarle County Comprehensive Plan and the Southern and Western Urban Neighborhood Master Plan, or provide for this in the Code of Development and the Application Plan submitted in conjunction with ZMA 2018-00003. For purposes of this Agreement, neighborhood design guidelines pertain to matters such as pocket parks, street lighting, benches, and other elements that pertain to the livability of the neighborhood (the "Neighborhood Design Guidelines"). If the Neighborhood Design Guidelines are not addressed in the Code of Development or the Application Plan, they shall be subject to review and approval by the County Director of Planning or another County officer designated by the County Executive (the "County Director of Planning"). Habitat must obtain approval of the Neighborhood Design Guidelines before the first final site plan, or the first subdivision plat submitted to the County after August 21, 2019, within the Project that will include any dwelling units is approved by the County. The County Director of Planning must act on the Neighborhood Design Guidelines, including any amendment thereto, within 30 days after they are received. The County Director of Planning shall not unreasonably withhold approval of the Neighborhood Design Guidelines. Any amendment to the Neighborhood Design Guidelines that is not included in an amendment to the Code of Development or the Application Plan is also subject to the review and approval by the County Director of Planning.
- H. Develop and Implement Minimum External Standards.** Habitat shall develop and implement minimum external standards for ADUs within the Project to ensure that they will blend with market rate units with respect to materials and style such as roof pitches, foundations, window types, and building materials (the "Minimum External Standards"). The Minimum External Standards shall be subject to review and approval by the County Director of Planning or another County officer designated by the County Executive (the "County Director of Planning"). Habitat must obtain approval of the Minimum External Standards before the first building permit for any ADU is approved by the County. The County Director of Planning must act on the Minimum Internal Standards, including any amendment thereto, within 30 days after they are received. The County Director of Planning shall not unreasonably withhold approval of the Minimum External Standards. Any amendment to the Minimum External Standards is also subject to the review and approval by the County Director of Planning.
- I. Develop and Implement Minimum Internal Standards.** Habitat shall develop and implement, in conjunction with the County Housing Planner or another officer designated by the County Executive (the "County Housing Planner"), minimum internal standards for ADUs within the Project that may include, by mutual consent, such standards as those for minimum and maximum square footage, bedrooms, bathrooms, kitchen features including kitchen cabinets, countertops, dishwasher, garbage disposal, oven, stove, and laundry room with hookups (the "Minimum Internal Standards"). The Minimum Internal Standards shall be developed in concert with the minimum requirements of any other funding sources for an ADU within the Project but shall, in any event, meet minimum livability requirements. Habitat must obtain approval of the Minimum Internal Standards before the first building permit for any dwelling unit is approved by the County. The County Housing Planner must act on the Minimum Internal Standards, including any amendment thereto, within 30 days after they are received. The County Housing Planner shall not unreasonably withhold consent to the Minimum Internal Standards. Any amendment to the Minimum Internal Standards is also subject to the consent of the County Housing Planner. Any ADUs constructed under the Low Income Housing Tax Credit program shall meet the internal standards established by the United States Department of Housing and Community Development.

- J. **Reporting Obligations.** Habitat shall provide information regarding the Project to the County as follows:
1. **Annual Reports.** Habitat shall provide to the County, at Habitat's expense, a written report that verifies in a form and having a content reasonably satisfactory to the County Executive about Habitat's progress on the milestones and expenditures of the County Funds described in Section 4, the membership of Habitat's professional team as provided in Section 5(K) at the time of reporting, the status of its implementation of the Non-Displacement Plan as provided in Section 5(E), and the sales price of any parcel sold by Habitat in Phase 1, Block B. The report shall be provided to the County in June of each year until all County Funds have been transferred and expended in compliance with this Agreement.
 2. **Affordable Dwelling Unit Tracking.** Either in conjunction with the Annual Report described in Section 5(J)(1) or independently, Habitat shall provide to the County, at Habitat's expense, a written report stating: (i) the number of Habitat-built and Habitat-contracted ADUs within the Project; (ii) the number of LIHTC or other ADUs in Phase 1, Block B; (iii) for the Habitat-built and Habitat-contracted ADUs, the number of units that are owner-occupied, rented, and qualifying as flexible structures to monitor the status of the Housing Mixture Plan as provided in Section 5(F); (iv) for the Habitat-built and Habitat-contracted ADUs, the number of households within the various income levels described in Section 5(F) to monitor the status of the Housing Mixture Plan; and (v) the date the County issued the certificate of occupancy and the period of affordability for each ADU to monitor Habitat's commitment to ensure long-term affordability as provided in Section 5(D). The report shall be provided to the County in June of each year during the term of this Agreement.
 3. **Failure to Maintain a Reached Milestone and Noncompliance with Any Section 5 Obligation.** Habitat shall provide to the County, at Habitat's expense, a written report if, at any time, one of the milestones established in Section 3(A), having first been reached, is no longer satisfied (*e.g.*, the 75 percent fundraising milestone is no longer satisfied because a funding source has withdrawn), or if Habitat is in noncompliance with any requirement (including any approved plan) of this Section 5. The report shall be submitted within 30 days after the milestone is no longer satisfied or noncompliance with any requirement of this Section 5 is discovered.
 4. **Other Information Requested by the County or the Authority.** The County and the Authority may request any other information regarding the status of the Project as either party may reasonably require. Habitat shall provide the requested information within a reasonable period of time, not to exceed 30 days, unless otherwise agreed to by the County or the Authority.
- K. **Habitat Professional Team.** Until the County issues the certificate of occupancy for the 75th Habitat-built or Habitat-contracted ADU in the Project, Habitat shall have professional staff in its employment or under contract with the skills, experience, and capacity to successfully complete the Project. The professional staff shall include, at a minimum, a fundraiser and a project manager/developer having experience in developing a mixed income residential housing project of at least 70 dwelling units. Additionally, Habitat will maintain an affiliated agreement with Habitat for Humanity International which will have staff members with, at a minimum, certification from the Association of Fundraising Professionals or a comparable certification who will provide fundraising services or consultation for the Project."
- L. **Maintain Status as a Charitable Organization.** Habitat shall maintain its status as a charitable institution under the rules of the United States Internal Revenue Service until all County Funds have been transferred and expended in compliance with this Agreement.
- M. **Continue to Own Property.** Habitat or another entity wholly owned by Habitat including, but not limited to Southwood Charlottesville LLC, shall own land within the Project until all County Funds

have been transferred and expended in compliance with this Agreement. The County Board of Supervisors may, in its sole discretion, determine that a change in the legal status of Habitat as a corporation (*e.g.*, from a corporation to another entity) is not a change in ownership for purposes of this Agreement.

6. **This Agreement is Contingent Upon Approval of ZMA 2018-00003.** This Agreement is contingent upon the County Board of Supervisors approving ZMA 2018-00003 which, as currently proposed, would allow the uses and densities to enable the Project. If ZMA 2018-00003 is not approved by the County Board of Supervisors by June 30, 2020, this Agreement is void.
7. **Non-appropriation.** The obligation of the County to contribute County Funds as provided in this Agreement is subject to, and dependent upon, appropriations being made from time to time by the County Board of Supervisors. Therefore:
 - A. **Non-appropriation is not a Breach.** The failure of the County Board of Supervisors to appropriate County Funds to the Authority, and for the Authority to transfer County Funds to Habitat, or the County's failure to perform any term or condition pursuant to this Agreement resulting from the failure of the County Board to appropriate County Funds, is not a breach of this Agreement.
 - B. **Obligations in the Event of Non-appropriation.** During any Fiscal Year in which the County Board of Supervisors does not appropriate any County Funds, the other terms of this Agreement shall continue to apply. In particular, Sections 4(B)(3) and 4(C)(5) shall apply to any previously received County Funds that have not yet been expended; and Sections 5(C), 5(E), 5(F), 5(I), and 5(K) shall continue to apply to any Habitat-built or Habitat-contracted ADU in the Project for which Habitat has previously received County Funds.
 - C. **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 contribute the County Funds to Habitat as provided in this Agreement.
8. **Notices, Requests, Reports, and Correspondence.** Any notices, requests, reports, or other correspondence required by this Agreement must be given in writing, and they are deemed to be received upon receipt or refusal after their mailing in the United States Mail by certified mail, postage fully pre-paid or by overnight courier ("refusal" means to return or when the certified mail or overnight courier package is not accepted by the addressee):

If to Habitat, to:

President and Chief Executive Officer
Habitat for Humanity of Greater Charlottesville
919 West Main St
Charlottesville, VA 22903

If to the County, to:

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

If to the Authority, to:

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

The names of the persons to whom any correspondence is to be addressed to their attention shall change as the persons in those positions change without amending this Agreement. Any report or correspondence required by this Agreement, and correspondence that is not required by this Agreement, may be sent First Class in the United States Mail or by email to email addresses provided by the parties with the express consent of the recipient.

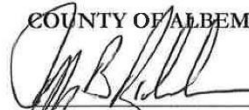
9. Miscellaneous

- A. No Goods or Services Received by the County.** The County Funds transferred by the Authority to Habitat pursuant to this Agreement are solely to enable Habitat to construct Habitat-built or Habitat-contracted ADUs in the Project. The descriptions of the services that will be provided by Habitat, in particular those stated in Recital 4 and in Section 5 of this Agreement state the public and charitable purposes that may be indirectly served by the County Funds, and are not a description of goods or services being procured by the County by this Agreement.
- B. Severability and Non-severability if the Agreement, or a Part Thereof, is Declared Invalid or Unenforceable.** If one or more provisions of this Agreement are determined by a court having competent jurisdiction to be invalid or unenforceable, the following apply:
- 1. Non-severable; No Power to Appropriate or Transfer.** If the provisions of this Agreement pertaining to the County's, the Authority's, or either's, power to appropriate or transfer the County Funds to Habitat are determined to be invalid or unenforceable, those provisions are non-severable and the entire Agreement is void and Habitat shall return to the Authority any County Funds it has received.
 - 2. Severable; Some Power to Appropriate or Transfer.** If one or more provisions of this Agreement, but not all, pertaining to the County's, the Authority's, or either's, power to appropriate or transfer the County Funds to Habitat are determined to be invalid or unenforceable, those provisions are severable and Habitat shall return to the Authority any County Funds it has received pursuant to any invalid or unenforceable provision. The parties agree to negotiate in good faith an amendment to this Agreement to delineate the parties' new rights and obligations.
 - 3. Severable; Other Provisions.** If any other provision of this Agreement other than those described in Sections 9(B)(1) and (2) is determined to be invalid or unenforceable, those provisions are severable and the remaining terms and conditions of this Agreement shall remain in force and have effect.
- C. Entire Agreement.** This Agreement states all of the covenants, promises, agreements, conditions, and understandings between the County, the Authority, and Habitat regarding the County's and the Authority's contribution of funds and Habitat's obligations.
- D. Governing Law.** This Agreement is to be governed by and construed in accordance with the laws of the Commonwealth of Virginia.
- E. 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.
- F. Amendments.** This Agreement may be amended by a written amendment signed by the authorized representatives of the parties.

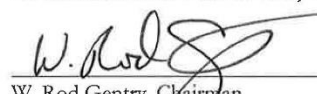
- G. Dispute Resolution.** If there is a dispute of any kind between any parties arising under this Agreement, upon the written request of a party:
1. **Designation of a Senior Representative; Negotiation.** Each of the parties to whom the dispute pertains will designate one or more senior representative to negotiate with the other parties' senior representative in good faith and as necessary to attempt to resolve the dispute without any formal proceedings.
 2. **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.
 3. **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.
 4. **When the Dispute Resolution Process is Not Required.** Nothing in this Section 8(G) will, however, prevent or delay a Party from instituting formal proceedings to: (i) avoid the expiration of any applicable limitations period; or (ii) seek declaratory and injunctive relief.
- H. Venue.** 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.
- I. Relationship of the Parties.** This Agreement is intended solely for the purpose of establishing the relative rights and obligations of the parties and does not create any type of partnership, joint venture, joint venture, purchaser-vendor, or employer-employee relationship.
- J. 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.
- K. No Waiver of Sovereign Immunity or Other Immunities.** This Agreement and any action taken by the County, the County Board of Supervisors, and the Authority 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 Board of Supervisors, or the Authority.
- L. Non-liability of County and Authority Officers and Employees.** No County Supervisor or other County officer or employee, and no Authority Director or other Authority officer or employee, shall be personally liable to Habitat if there is any default or breach by the County, the County Board of Supervisors, the Authority, or the Authority's Board of Directors pursuant to this Agreement.
- M. Force Majeure.** If Habitat's timely performance of any obligation in Section 5 of 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 Authority, or Habitat, 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 Authority, or Habitat, then performance of Section 5 is excused for a period of time that is reasonably necessary after the occurrence to remedy the effects thereof.

WITNESS, the following authorized signatures:

COUNTY OF ALBEMARLE, VIRGINIA


Jeffrey B. Richardson, County Executive


ECONOMIC DEVELOPMENT AUTHORITY
OF ALBEMARLE COUNTY, VIRGINIA


W. Rod Gentry, Chairman

Approved as to form:


County Attorney

HABITAT FOR HUMANITY OF GREATER
CHARLOTTESVILLE, INC.


Dan Rosensweig, President and CEO

ADDENDUM TO AGREEMENT

THIS ADDENDUM TO AGREEMENT ("Addendum") is made as of August 19, 2019, by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF THE COUNTY OF ALBEMARLE, VIRGINIA (EDA)**, a political subdivision of the Commonwealth of Virginia, and **HABITAT FOR HUMANITY OF GREATER CHARLOTTESVILLE, INC.**, a Virginia corporation and a 501(c)(3) (Section 501(c)(3) of the Internal Revenue Code) (**Habitat**). The EDA and Habitat are collectively referred to as the "Parties."

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:

Section 1. AUTHORITY

Pursuant to Section 9(F) (**Miscellaneous – Amendments**) of the Agreement between these Parties and the County of Albemarle, Virginia (the County), to support Habitat in developing Tax Map Parcels 07600-00-00-051A0, 09000-00-00-001A0, and 090A1-00-00-001E0 located in the Scottsville Magisterial District of Albemarle County by building affordable dwelling units and other improvements thereon (hereinafter the "Agreement"), the Parties hereto are authorized to enter into this written amendment to the Agreement.

Section 2. INDEMNIFICATION

Habitat agrees to indemnify, hold harmless, and defend the EDA, its 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, in connection with the performance of the Agreement and any amendments thereto and/or any act or omission of an officer, director, agent, employee, or representative of Habitat, its successors and assigns, or the County 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 Addendum and/or the Agreement as to acts or omissions occurring prior to the effective date of termination.

Section 3. INCORPORATION

All other terms and conditions of the Agreement remain unchanged and in force. This Addendum is intended to supplement the Agreement as it pertains to these Parties and does not supersede or negate the Agreement in whole or in part.

[SIGNATURES ON FOLLOWING PAGE]

[SIGNATURE PAGE TO ADDENDUM]

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

EDA:

ECONOMIC DEVELOPMENT AUTHORITY
OF THE COUNTY OF ALBEMARLE,
VIRGINIA

By: W. Rod Gentry

Name: W. Rod Gentry

Title: Chairman

Approved as to form:

Greg King
County Attorney

HABITAT:

HABITAT FOR HUMANITY
OF GREATER CHARLOTTESVILLE, INC.
a Virginia corporation

By: _____

Name: Dan Rosenweig

Title: President and CEO

Agenda Item No. 11. Authorization to Execute an Economic Development Agreement for a Public-Private Partnership (PPP) with Crozet New Town Associates, LLC.

The Executive Summary forwarded to the Board states that under the proposed Development Agreement, Albemarle County would be partnering with Crozet New Town Associates, LLC (Developer) in

a specific Public-Private Partnership (PPP) arrangement at the former Barnes Lumber site in Downtown Crozet. The County would be providing financial and in-kind support for the construction of a public plaza, a Main Street road network, and expansion of the Central Business District in Downtown Crozet. This project site has been planned for redevelopment since 2006 and has not organically happened. As a result, County staff is acting to catalyze the redevelopment of this site. The County is providing investment in infrastructure and support to promote the general redevelopment of this valuable and unique site. The justification for the County's participation in this arrangement includes an assertion that this project:

- Is consistent with the Comp Plan in areas of land use, economic development and transportation
- Supports redevelopment, placemaking, and economic development
- Grows the commercial tax base
- Supports site readiness for growth of a target industry
- Adaptively reuses a central business site
- Creates positive tax revenue growth

The Barnes Lumber redevelopment project will expand downtown Crozet in a manner consistent with the County Comprehensive Plan and the Crozet Master Plan. This project will contain mixed use development, build a central public plaza for gathering, create a Main Street, and utilize private investment for placemaking, redevelopment and growing the commercial base.

There are 5 prominent elements included in the proposed Development Agreement, to include predevelopment, road network, public plaza, financing and development.

Predevelopment

This project is contingent upon Crozet New Town Associates, LLC obtaining Board approval of a mutually exclusive rezoning of the project site. Crozet New Town Associates, LLC must also meet all other regulations, create a public plaza site plan for County approval, and provide a \$49,615 matching contribution for a Brownfield Environmental Planning Grant. The County agrees to promptly review road plans and work with VDOT for approval of such plans, launch and create a retail market study, include parking solutions in the upcoming Crozet Master Plan process, and participate in public engagement for the road and plaza.

Public Plaza

The County will provide a \$1,600,000 cash investment in public infrastructure, plus another \$1,600,000 in tax recompense to offset Crozet New Town Associates, LLC's cost to design, manage and construct an on-site downtown public plaza. The County will be responsible for contract approval of the construction, construction inspections, and plaza maintenance, and will eventually own the plaza.

Road Network

Crozet New Town Associates, LLC will be responsible for contributing \$2,000,000 to a VDOT Road Revenue Sharing Match and other Right of Way concessions. VDOT agreed to provide \$2,300,000 in a Revenue Sharing Match. The County will provide staffing from the Department of Facilities and Environmental Services to manage construction of the public road network, as well as maintenance of the road in the plaza area.

Financing

See budget impact section below.

Proposed Development

This Development Agreement exclusively contemplates Phase I and includes no additional or planned commitment for future phases. New Town Crozet Associates, LLC is proposing 58,000 square foot (SF) of retail, a 40,000 SF hotel, 28,900 SF of office space, and 52 residential units in Phase I.

Pursuant to the proposed Development Agreement, the County's Economic Development Authority (EDA) will provide Crozet New Town Associates, LLC with an upfront \$1,600,000 contribution toward construction of a public plaza. This funding is currently available in the County's Economic Development Fund and, if approved, would ultimately be appropriated by the Board to the EDA for this specific purpose.

In addition, it is contemplated that the County, through the EDA, will utilize Synthetic Tax Increment Financing (TIF) for the remainder of the public plaza construction. In this scenario, the operational definition of TIF is that when new buildings are constructed in the project area, property taxes will expectantly increase. The developer will pay all County taxes and then the County will contribute to the developer the incremental increase in property taxes paid. The developer then uses this contribution pay for the debt service of the developer's \$1,600,000 construction loan. The developer is responsible for all loan payments should there be a shortfall in County contributions. If the County contribution exceeds the developer's loan payment, the contribution overage will be applied to principal. The County stops making contributions when the loan is paid in full.

A corroborated Municap report projects the County will recoup the total \$3,200,000 investment through future tax revenue. Accordingly, the construction loan expenses should be recouped in 6-8 years, and the total remaining County contribution in an additional 2 years. Noteworthy, the total project is expected to generate \$25,300,000 in new tax revenue over 15 years.

Staff recommends that the Board adopt the attached Resolution (Attachment B) 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. Upon the Board's approval of the Resolution, staff will prepare an appropriation request in the amount of \$1,600,000 to the Economic Development Authority from the Economic Development Fund.

Mr. Roger Johnson, Director of Economic Development, presented. He reminded the Board that they started a strategic planning exercise known as Project ENABLE several months ago, which was approved. He said this tasked the Department of Economic Development to improve the economic vitality of the community without "killing the goose that laid the golden egg." He said the goose was gorgeous, bucolic, Albemarle County, and they feel this public-private partnership accomplishes the goal set forth by the Board in the Strategic Plan. He said he would be joined in the presentation by Frank Stoner of Milestone Partners and Newtown/Crozet Associates, as well as Doug Walker.

Mr. Stoner addressed the Board on the history of Barnes Lumber. He said there have been at least 15 plans for the property since 2008, some of which were submitted to the County for review. He said a plan submitted in 2011 included a mini pedestrian mall as well as large commercial buildings and parking lots. He noted that after Barnes Lumber went out of business, Carol Conley's property was foreclosed on and the bank commissioned a plan submitted in 2013 with a cluster of commercial uses, with the balance of the property to be mainly residential. He continued that in 2014, his firm submitted a mixed commercial and residential plan. He said all three plans maintained a continuous road from downtown to Parkside Village, as it was one of the tenets of the Master Plan and also desired by VDOT. He said the plan required a special use permit for the areas south and east of downtown, which his firm did not feel were viable for first floor commercial use.

Mr. Stoner said it was in conflict with the Comprehensive Plan and they realized that a new plan was needed, as decisions made would be there for many years to come. He said they learned that downtown could only be successful with strong community support; they needed to fully engage the community to create a unique destination that was authentically Crozet; they needed high-quality infrastructure and affordable rents as most businesses would be local; and they needed to focus on the commercial core first then wait for a market study to determine how much commercial the rest of downtown could actually support.

Mr. Stoner stated that they hired Dialog and Design as a consultant in 2015, which hosted a series of community meetings, interviewed dozens of residents, and selected 12 community members representing a diverse cross-section of the community, which became known as the Downtown Crozet Initiative, to get a better understanding of what people wanted and guide the public engagement process. He said the vast majority of participants favored a gridded network of streets, which was not captured by the Crozet Master Plan. He presented a slide with a map of the area and pointed out that the area in red was identified as one that could be rezoned without a special use permit requiring ground floor residential and was wholly compliant with the Downtown Crozet District zoning.

Mr. Stoner said the Downtown Crozet Initiative group was empowered in 2016 to interview and select a planning and landscape architecture firm to design a Phase I plan and a schematic design for a downtown plaza, which selected and hired the firm, Mahan Rykiel, to develop master plans and concepts for the plaza. He noted that this plan has the most support as it captures all the elements determined to be most important to residents during the public engagement process. He thanked the hundreds of Crozet residents who attended the more than 50 public engagement meetings since 2015 to share their ideas, especially the volunteers on the Downtown Crozet Initiative team, as well as County staff's efforts to find win-win solutions.

Mr. Doug Walker, Deputy County Executive, stated that he would address fundamental planning questions regarding where they are, where they want to go, and how they would get there. He said it was necessary to focus on the specific aspects of the location and described the site as being "in a state of disrepair that has been untouched for some period of time," with the exception of some investment by Perrone Robotics, and development has not moved forward as contemplated in the previous design work under the Comprehensive and Master Plans.

Mr. Walker said the Crozet central business district area remains unfinished, with a lack of public infrastructure and gathering places, and would remain so in the near term and potentially over the long term without this partnership. He stated that this was not the only example of a public-private partnership that has been driving development in the Crozet area. He reminded the Board of the County's \$8 million investment and the community's \$1.5 million investment in the Crozet Public Library downtown, which they hoped would spur other private investment, as well as the County's \$4 million investment along with VDOT in streetscape improvements that have changed the character of Crozet Avenue. He proposed that the Piedmont Place investment was a consequence of the County's recognition that this was a worthy place in which to make an investment.

Mr. Walker noted that this site represents over 31% of the buildable area, as reflected in the Master Plan, and was a significant next step in the development of Downtown Crozet. He listed the following potential benefits the project could help advance: implementing the Crozet Master Plan, accomplishing strategic goals, redevelopment placemaking, supporting retention of value-added jobs, seeking private investment for public good, and an increased commercial tax base. He noted that in addition to specific public partnership projects, the County was participating in a transportation revenue sharing project to upgrade The Square, including drainage and parking.

Mr. Walker stated that the project would maintain the special architectural character and iconic images that people associate with Crozet. He said this type of project was unique to the County, but not as unique to many other communities, large and small; trying to take advantage of changing demographics, dynamics, and economies to retain the characters they value and participate in change that would be helpful to the community, including residents, businesses, and visitors. He continued that they hope the County's investment in a public plaza or park would drive private investment in a way similar to the Charlottesville Downtown Mall, which was important to Charlottesville's identity and economy.

Mr. Roger Johnson next explained that a public-private partnership brings the public sector and the private enterprise together to jointly build infrastructure and to share the risk and cost of the design, construction, maintenance, financing, and operations of a project. He recognized the diligent work of staff and others to make sure this partnership project looks out for the interests of the community and noted that they continue to meet regularly to review technical issues and contract negotiations including hiring a private investigator to conduct background investigations on the three principal parties and an independent third party, Stantec, to review the development agreement to ensure the County's interests are looked after. He noted that Stantec's recommended changes have been included in the development agreement.

Mr. Johnson said he would break the project down into five elements: pre-development, the road, the plaza, financing, and the overall development. He presented a slide that listed aspects of both the private partner's and the County's role. He said that Mr. Stoner and his team would be responsible for rezoning, meeting the Architectural Review Board guidelines, creating and submitting the plan for the plaza, meeting an environmental planning grant match for a Virginia Brownfields agreement, making sure they clean up any contaminants, and the road plans. He said the County would be responsible for part of the Phase I rezoning, reviewing road plans, a retail market study that would include other areas of the County, a long-term parking solution, the public engagement process of the Crozet Master Plan, and plaza and road design. He presented a slide with the proposed grid network and future connections.

Mr. Johnson next reviewed the second element: the road. He said the developer would submit road plans for approval and provide \$2 million to the road revenue sharing match, with the remainder of funding expected from VDOT revenue sharing of \$2.3 million. He explained that the County would manage construction of the roads with VDOT to take over once the roads have been constructed, except for the plaza area and adjoining road network, which are expected to be of the same materials, which VDOT would not accept responsibility for. He said that either the County or a designee would be responsible for the actual road maintenance. He presented a bird's eye view of the proposed plaza, noting that it could be expanded into the road network for markets or festivals. He said the developer would build the plaza and create the site plan and borrow \$1.6 million for a construction loan, for a total expected cost of \$3.2 million or greater and create the plaza site plan.

Mr. Johnson said the County would also provide a \$1.6 million contribution for the public plaza, approve the construction contract, conduct inspections, be responsible for plaza maintenance, and leasing of the plaza until the construction loan was paid in full after which the County would take ownership of the plaza itself. He noted that tax increment financing uses future tax revenue to finance projects and the County would utilize synthetic tax increment financing (TIF). He explained that property taxes would increase as a result of the newly constructed buildings, the developer would pay all the County taxes, the County would rebate the incremental increase in taxes back to the developer, and the developer uses this to pay the \$1.6 million construction loan that he took out on the plaza. He said the developer was responsible for making up any shortfall in the County's contribution to pay for the loan while any overage would be applied to principal, with the County's contribution ending in 10 years once the loan has been paid in full. He noted that the 10 years may change somewhat and is just the maximum amount of years that banks will loan.

Mr. Johnson noted that the Board has allocated \$3.2 million to the economic development investment pool for a project of this nature. He said that Mr. Stoner had a Municap Report completed, which contains estimates and assumptions, and it was deemed that the construction loan would be paid back in six to eight years, with the County's total contribution to be paid back in eight to ten years. He noted that the project was estimated to generate \$25.3 million in new tax revenue over 15 years, and they have used the CRIM Model to estimate that over the life of this project from 2021–2048, the total combined net revenue estimate to the County was \$39 million after expenses. He emphasized that in addition to the road network and plaza, the County would get a commercial development. He noted this assumes that the developer would be held to environmental standards, as well as compliance with the architectural design standards and the Comprehensive Plan. He pointed out they would like to rezone Phase 2 in the future for the community and they were only talking about Phase I at this particular juncture but wanted to show you the grand plan over the coming years that may change.

Mr. Johnson next reviewed the overall development plan for Phase I. He said it would consist of 58,000 square feet of retail and would expect there to be a 40,000-square-foot hotel, 29,000 square feet of office space, and 52 residential units, with future phases to add 153,000 square feet of retail/commercial and 150 units. He said the developer would put \$2 million towards the road contribution and right-of-way, VDOT would contribute \$2.3 million for the road network, the County would contribute \$1.6 million for the plaza, the developer would borrow \$1.6 million, with the County paying the developer through a synthetic TIF increment financing until the loan was paid in full, and then Downtown Crozet would then be built and expanded, as called for in the Master Plan and Comprehensive Plan.

Mr. Johnson reviewed next steps. He indicated that should the Board approve the development agreement, staff would move forward with the rezoning process and come back before the Board in an unrelated matter for the Board to consider. He said staff would begin work on the road and VDOT agreements right away and could potentially begin construction as early as April 2020, with the roads and the plaza completed by 2021. He said along with the plaza construction it would be expected that you would start to see buildings becoming vertical. He said staff recommended approval of this development agreement and invited questions or comments.

Mr. Randolph asked which County department would be responsible for the plaza 10 years out. Mr. Walker responded that a number of models would be considered, including having the County or EDA own the property and contract for maintenance, or having the local business community involved with the DCI representation here about what role they might want to play, Parks and Recreation since this would be a park type amenity. He noted do we want to own it and control it ourselves or do we want to then sublet it or has a contractual arrangement for the ongoing maintenance. He said either way we would have to assure that there are adequate resources to maintain it. He said it could be through an expectation of fundraising activities on the plaza that then gives return into ongoing maintenance. He added that other communities have used different models. He said we would be engaging with the local community and the EDA to best assure ongoing maintenance of the plaza in the way that is most cost effective.

Mr. Randolph asked if a public-private partnership to operate the plaza would be considered. Mr. Walker responded, "yes".

Mr. Randolph asked if the \$25.3 million figure cited by Mr. Johnson for total revenues to the County includes synthetic TIFs. Mr. Johnson responded that it excludes the paybacks.

Ms. Palmer remarked that Supervisors are often asked about the costs of development, though she recognizes that it was difficult to calculate them, and she asked if these were included in the figures. Mr. Johnson responded that at the Board's request, he had staff estimate the costs to schools, other public amenities, social services and other services to the County as a result of 150 or 200 new residents in our community. He said they subtracted the total cost from the total revenue, with an expected net revenue of \$39 million over the life of the plan.

Mr. Dill asked if there would be any historical markers or remnants of the original lumber yards. Mr. Johnson responded, "yes".

Ms. Mallek said that many members of the community are interested in a fundraising effort to raise money for second-tier amenities for the plaza such as benches or a fountain, as well as events programming.

Mr. Gallaway addressed Mr. Randolph's question about who would take care of maintenance of the plaza. He said that as more projects with public and green spaces come online, the County may want to have a plan to address this, rather than the current plan of addressing them one at a time.

Ms. McKeel agreed with Mr. Gallaway, adding that the urban ring continues to urbanize, and the County would have to look at things differently.

Ms. Mallek added that intersections along Route 29, traveling to Lynchburg, have been adopted by neighborhood and business groups that plant flowers and take great pride in them. She said she expects there would be enthusiasm in the County for these types of things.

Mr. Richardson recognized the Board's support for facility planning efforts, which helps to look into the future to project how the community would transform and grow and the service levels that would be needed.

Ms. Mallek **moved** that the Board adopt the proposed resolution approving an agreement between the County, Economic Development Authority, and Crozet Newtown Associates. The motion was **seconded** by Ms. McKeel.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.
NAYS: None.

**RESOLUTION APPROVING AN AGREEMENT
BETWEEN THE COUNTY OF ALBEMARLE,
THE ALBEMARLE COUNTY ECONOMIC DEVELOPMENT
AUTHORITY, AND CROZET NEW TOWN ASSOCIATES, 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 Crozet New Town Associates, LLC to support the redevelopment at the former Barnes Lumber site in Downtown Crozet, which is expected to grow the commercial tax base and create positive tax revenue growth.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby authorizes the County Executive to execute an Agreement between the County of Albemarle, the Albemarle

County Economic Development Authority, and Crozet New Town Associates, LLC to support the redevelopment of the former Barnes Lumber site in Downtown Crozet once the Agreement has been approved as to form and content by the County Attorney.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made as of July 1, 2019, 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 CROZET NEW TOWN ASSOCIATES, 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 Crozet, Virginia and described as Albemarle County Tax Map Parcels Nos. 56A2-0-25, 26, 71 and 71B containing 20 +/- acres and shown on the attached Exhibit A (the "**Property**") which the Developer intends to develop for commercial, retail and residential uses (the "**Project**").

B. The County seeks to promote the economic development and the increased vitality of Crozet's downtown area; to fulfill the Crozet Master Plan's vision for developing the Crozet town center with a plaza to be constructed on a portion of the Property (the "**Plaza Property**") shown on Exhibit A, and the improvements planned for the Square; provide an opportunity for a permanent location for Perrone Robotics; and ensure the Project's development sooner than it likely would have happened without incentives.

C. As part of the development of the Project, it is necessary to construct Library Avenue, Hilltop Extension, and the Extension to Parkside Village (the "**Roads**") as shown on the attached Exhibit B. The construction of the Roads is a high priority in the County's Capital Improvements Program.

D. The Parties seek to facilitate the construction of the Roads and a collaboratively designed public plaza (the "**Plaza**") which will be part of the public infrastructure of Crozet. The Parties agree that private sources of debt and equity are insufficient to pay all costs of developing and constructing the Plaza and the Roads. Without additional funding sources, the Plaza Project and the Roads would not proceed.

E. **The Project is Consistent With, Promotes, and Implements the County's Comprehensive Plan.** 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. Crozet Master Plan: Vision. The Vision of the Crozet Master Plan includes the statement that “successful redevelopment of Downtown . . . requires public/private collaboration. The Downtown will be a vibrant place with a library, employment area, shops, and housing. Parks and open space will be key features of the community.” The Vision’s guiding principles include the statement that “Community facilities and services must accommodate the changing needs of the community as it grows over time.”

e. Crozet Master Plan: Implementation Chapter. The Implementation chapter of the Crozet Master Plan states that “successful redevelopment of Downtown and provision of job opportunities in Crozet requires public/private collaboration.”

f. 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.”

F. **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 \$5,200,000.

G. **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 Crozet area.

b. Enhancing the County’s Tax Base and Jobs Base. Enhancing the County’s tax base and jobs base by facilitating the redevelopment of the former Barnes Lumber site into a mixed use development that, when developed will include commercial uses, public spaces, and housing in a downtown environment.

H. **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 Cash Contributions. Appropriate the County Plaza Contribution of \$1,600,000 to the EDA, to be transferred to the Developer, for the construction of the Plaza in accordance with the terms of this Agreement.

b. Rebate the Equivalent of a Portion of the Incremental Increase in Real Property Tax Revenue. Pay to the Developer or Developer's Bank SYNTIF Payments generated within the SYNTIF Property until the Permanent Financing for the Plaza Project has been paid in full.

I. **Developer's Acceptance of the Incentives and Related Obligations.** The Developer agrees to SYNTIF Payments from the County and the EDA described in this Agreement as an incentive for the Developer to pay the Revenue Sharing Match in an amount not to exceed \$2,000,000 to pay for the construction of the Roads and to construct, lease and convey to the County the Plaza described in this Agreement. The Developer agrees to be responsible for any shortfall between the amount of the SYNTIF Payments from the County and amounts owed under the Construction Loan. Such obligation shall encourage the Developer to develop the Property as quickly as possible. The Developer and the County shall work together to encourage the development of job producing projects on the Property.

J. **This Agreement is Contingent Upon, But Not in Exchange for, Approval of ZMA 2010-00018.** This Agreement is contingent upon the County Board of Supervisors approving ZMA 2010-00018 which, as currently proposed, would allow the uses and densities to enable the 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 2010-00018, the Board may and will exercise its full legislative powers and discretion as authorized by law.

K. **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.

L. 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:

Section 1. **INTERPRETATION.**

1.1 **Definitions.** For purposes of this Agreement, capitalized terms shall have meanings set forth on **Schedule 1**.

1.2 **Captions.** Captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement.

1.3 **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.”

1.4 **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.

1.5 **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.

1.6 **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.

1.7 **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.

Section 2. **PRE-DEVELOPMENT OBLIGATIONS**

2.1 **Developer Obligations.** The Developer shall undertake the following obligations:

(a) Rezoning of Phase 1. The Developer last modified its application for the rezoning of Phase 1 (6.25 acres) on April 4, 2016. The Developer shall use its best efforts to complete the rezoning of Phase 1 from Heavy Industrial (HI) to Downtown Crozet District (DCD) by September 4, 2019 (the “Phase 1 Zoning Deadline”).

(b) ARB Guidelines. The Developer, with input from the County and the Crozet community, shall develop an architectural code for the property owned by the Developer, (the “Architectural Code”). The County’s agreement to the Architectural Code shall not be condition precedent to the County’s obligations under this Agreement.

(c) Plaza Site Plan. The Developer shall work cooperatively with the County and the Crozet community to develop final plans and specifications for the Plaza. Within 6 months of the receipt of VDOT’s approval of the Final Road Plans the Developer shall submit the final Plaza Site Plan to the County for its review and approval.

(d) Environmental Planning Grant. The Developer will contribute the County’s local match for the Virginia Department of Environmental Quality (the “VDEQ”) Brownfields Grant in an amount not to exceed \$49,912.50 (the “Brownfields Match”). The Brownfields Match shall be paid by the Developer upon the County receipt of the funds for the Brownfields Grant from VDEQ. Brownfields Grant funds shall be used in accordance with the terms of the Brownfields Grant.

2.2 **County.** The County shall undertake the following obligations:

(a) Phase 1 Rezoning. The County shall cooperate in scheduling hearings and other matters to accomplish the rezoning by the Phase 1 Zoning Deadline. If, through no fault of the Developer, the rezoning is not completed on or before September 4, 2019, County shall, at its sole option, extend the action deadline by ordinance or otherwise or undertake a county-initiated rezoning.

(b) County Review of Road Plans. The County shall review and provide comments and/or approval of all the Road Plans prior to submittal to VDOT and within 21 days following receipt of such plans.

(c) Market Study. The County shall commence and complete by March 31, 2020, the market study as provided in the Crozet Master Plan Implementation Plan.

2.3 **Parking.** In recognition of the parking shortage that will result from construction activity and dense future development in downtown Crozet, the County shall take measures necessary to approve interim gravel parking areas on undeveloped property owned by the Developer. If zoning action is necessary to approve such parking as a stand-alone use, the County shall undertake such action without cost to the Developer. In conjunction with the update to the Crozet Master Plan, the County shall undertake a parking study in downtown Crozet to determine how much shared parking could be made available and attempt to secure such shared parking and advertise its availability. The parties agree that properly addressing parking is critical to the success of the Project.

2.4 **Public Engagement.** The Developer shall undertake a public engagement process regarding the Road and Plaza construction projects with assistance and participation from the County. The purpose of the public engagement process is to receive input from the Crozet community on the Architectural Guidelines, the road and the plaza to be constructed in accordance with this agreement.

Section 3. **ROAD PLAN AND CONSTRUCTION**

3.1 **Developer Obligations.** The Developer shall undertake the following obligations:

(a) Road Plans. Developer has submitted the 30% Road Plans to VDOT. The Developer shall have no obligation to proceed with any portion of the Project until the Road Plans are acceptable to the Developer and the County and approved by VDOT and a contract for construction of the Roads has been executed by the County and the road contractor.

(b) Road Revenue Sharing Match. The Developer shall contribute an amount not to exceed \$2,000,000 (the "Revenue Sharing Match") which shall be used to pay for the County's revenue sharing match requirement for the construction of the Roads under a revenue sharing Agreement between the County and VDOT (the "Revenue Sharing Agreement"). The timing of the payment of the Revenue Sharing Match shall be specified in an agreement between the County and the Developer regarding the construction of the Road. The Developer shall provide evidence of availability of funds prior to commencement of construction of the Roads. A portion of the Road Revenue Sharing Match shall be used for right-of-way acquisition, as stipulated in the grant application for VDOT revenue share matching funds. The

amount paid to the Developer for right-of-way acquisition shall be no less than \$200,000 and no more than \$800,000.

3.2 **County.** The County shall undertake the following obligations:

(a) Construction Management. The County shall be responsible for management and, through its contract with a road contractor, the construction of the Roads. The construction contract shall be reviewed and approved by Developer prior to final execution by the County. If adequate funds are available after right-of-way acquisition and hard construction costs, a portion of the total Road Construction funds, not to exceed 3% of construction costs may be used by the County for project management and administration fees.

3.3 **Contribution Increases.** Neither the Developer nor the County shall be obligated to contribute more to the construction of the Roads than specified in Sections 3.1 and 3.2 without the agreement of both the Developer and the County.

Section 4. **PLAZA DEVELOPMENT, CONSTRUCTION AND CONVEYANCE**

4.1 **Budget.** A minimum of 60 days prior to commencement of the construction of the Plaza (the "Plaza Commencement Date"), the County and the Developer shall agree on the final design and construction budget for Plaza (the "Plaza Budget"). The County and the Developer agree that as of the date of this Agreement the Plaza Budget is \$3,200,000. A preliminary cost estimate based on the schematic plan is shown on Exhibit C, not including design costs which are estimated to be \$137,000.

4.2 **County Obligations.**

(a) County Plaza Contribution.

(i) Contribution. Thirty (30) days prior to the Plaza Commencement Date, the EDA shall deposit \$1,600,000 (the "County Plaza Contribution") in an escrow account with the Plaza Construction Lender under the terms of an escrow agreement (the "Construction Escrow") between the County, the Developer and the Plaza Construction Lender. The Construction Escrow shall allow for the release of funds from the Construction Escrow for construction of the Plaza prior to use of loan proceeds from the Plaza Construction Lender, subject to review and approval by the County of applications for payment.

(ii) Security. The County Plaza Contribution shall be secured by a second lien Deed of Trust on the Plaza Property (the "County Deed of Trust") which shall be subordinated to the deed of trust of the Plaza Construction Lender and the Permanent Financing Lender (each a "Plaza Lender"). The County shall have the right to replace the Developer under the terms of the financing from the Plaza Lenders if the Developer defaults under the terms of such financings.

(b) Construction Contract Approval. The County shall review and approve or reject the Plaza Construction Contract within 10 days of receipt by the County Attorney's Office.

(c) Construction Inspection. The County may, at its own expense, order monthly inspections of construction progress and review applications for payment.

(d) Plaza Maintenance. Upon execution of the Plaza Lease by the County and the Developer, maintenance of the Plaza shall become the responsibility of the County or its designee. The Terms and Conditions of the County's obligation to maintain the Plaza shall be contained in the Plaza Lease.

4.3 Developer Obligations.

(a) Construction of the Plaza. The Developer shall construct the Plaza in accordance with plans approved by the County. The Developer shall submit plans to the County for its review and approval at the 30%, 60% and final completion for its approval.

(b) Plaza Construction Contract. The Developer shall, in coordination with the County and with the assistance of the County Attorney, select the contractor to build the Plaza and negotiate the Plaza Construction Contract. The County shall have the opportunity to confirm the Plaza Construction Contract has fair and reasonable costs.

(c) Plaza Construction Management. The Developer shall manage the construction of the Plaza pursuant to the terms of the Plaza Construction Contract and the Plaza Construction Loan. The Developer shall endeavor to complete the Plaza within 9 months of the Plaza Commencement Date. If funding is adequate to cover all other budgeted hard and usual and customary soft construction costs, the Developer shall be entitled to a construction management fee of up to 3% of total construction costs. Plaza design and public engagement costs already incurred by the Developer or approved by the County are part of the total project cost and shall be reimbursed from the Plaza Construction Loan. The Developer shall obtain a Performance Bond from the general contractor for the full value of the Plaza Construction Contract. The Performance Bond shall not release the Developer from its obligation to complete the construction of the Plaza in a timely manner and in accordance with the approved plans for the Plaza.

(d) Construction Loan. Thirty days prior to the Plaza Commencement Date, the Developer shall obtain a construction loan for the balance of funds in excess of the County Plaza Contribution (the "Plaza Construction Loan"). The Plaza Construction Loan shall not exceed \$1,600,000 without the written consent of the County. The Plaza Construction Loan shall be secured by the Plaza Property and other property owned by the Developer, as required by the Permanent Lender.

(e) Commercial Site Plan. The Developer shall submit a site plan for the first commercial building site within 60 days of the County Plaza Contribution being deposited in the Construction Escrow.

(f) Assignment. The Developer shall not assign its obligations under this agreement or under the Plaza Lease without the prior written approval of the County.

4.4 Plaza Lease and Conveyance to the County. Prior to the Plaza Commencement Date, the County and the Developer shall enter into a Term Sheet specifying the Terms and Conditions to be contained in a lease (the "Plaza Lease") of the Plaza from the Developer to the County. The consideration for the Plaza Lease shall be the County Plaza Contribution. The Plaza Lease shall provide the County with an option to require the

Developer to convey the Plaza Property to the County in fee simple for no additional consideration. Upon the conveyance of the Plaza Property to the County, the County Deed of Trust shall be released. The Plaza Lease shall be subordinate to the Plaza Construction Loan and the Permanent Loan. After construction is complete and the Plaza has been inspected and the work has been accepted by the Developer and the County, the Plaza Property will be subdivided from the Property. Upon final completion of all construction of the Plaza by the Developer and acceptance by the County, the Developer and the County shall execute the Plaza Lease to be written in accordance with the Term Sheet.

4.5 Downtown Crozet Initiative. The Downtown Crozet Initiative, Inc. (the "DCI") intends to raise \$800,000 for the purpose of providing furniture, fixtures and equipment for the Plaza. The DCI intends to participate in the programming and maintenance of the Plaza.

4.6 Contribution Increases. Neither the Developer nor the County shall be obligated to contribute more to the construction of the Plaza than specified in Sections 4.2 and 4.3 without the agreement of both the Developer and the County. Should the cost exceed \$3.2 million, the Developer and County will agree to either (i) undertake a value engineering exercise to reduce the cost to \$3.2 million, or (ii) increase the amount of the construction loan or (iii) increase the contributions to the cost of the Plaza.

Section 5. SYNTHETIC TAX INCREMENT FINANCING.

5.1 SYNTIF Property. The SYNTIF Property is Albemarle County Tax Map Parcels Nos. 56A2-0-16A,25,26,71 and 71B. The SYNTIF Property is shown on **Exhibit D** attached to this Agreement.

5.2 Permanent Loan. Upon completion of the construction of the Plaza, the Developer shall obtain a permanent, amortizing loan to repay the Plaza Construction Loan on such terms as agreed by the Developer and the County (the "Permanent Loan"). The Permanent Loan shall be secured by the Plaza Property. Principal and interest payments on the Permanent Loan (the "Permanent Loan Payments") shall be payable semi-annually to the lender providing the Permanent Loan (the "Permanent Lender"). The specific terms and conditions of the Permanent Loan shall be detailed in the loan documents and approved by the County and the Developer prior to the start of construction on the Roads. The Permanent Lender shall establish a Tax Escrow Account for the purpose of receiving payments from the County and of making payments against the Permanent Loan as and when due. The Terms and Conditions of the Account shall be subject to review and approval of the County.

5.3 SYNTIF Payments.

(a) The Board, subject to its annual appropriation by the Board, shall provide the SYNTIF Payments to the Tax Escrow Account referred to in Section 5.2 above, at the Permanent Lender each year, beginning within ninety (90) days following receipt by the County of the semi-annual assessed real property taxes paid by the owners of the SYNTIF Property, the year following the later of: (i) the Road Completion Date or (ii) the Plaza Completion Date. The SYNTIF Payments shall be equal to 100% of the total of the annual real property taxes received by the County attributable to the portion of the assessed value of the SYNTIF Property which is the incremental increase in assessed value of the SYNTIF Property (the "**Incremental**

Increased Value") from the value of the Property on the tax rolls (i.e. County assessment records) of the County effective January 1, 2019 (the "**Base Value**") as determined by the County Assessor as of January 1 of the year on which the initial SYNTIF Payments are due.

(b) The permanent Loan shall not be extended, refinanced or modified without the prior written approval of the County.

(c) An example of the calculation of the SYNTIF Payments, based on the Incremental Increased Value is attached as **Exhibit E** to this Agreement. The SYNTIF Payments shall be paid, semi-annually, subject to funding by the Board, until the Permanent Loan has been paid in full or satisfied. The determination of assessed value of the SYNTIF Property shall be solely determined by the County Assessor.

(d) Conditions precedent to the payment of any SYNTIF Payment include:

(i) The Developer and any subsequent owner or owners of all or any portion of the SYNTIF Property agreeing not to contest any increase in assessed value for the Property for any year on which a SYNTIF Payments is based, provided such assessment is in general accord with other similar properties.

(ii) To the extent that the assessed value of portion of the SYNTIF Property is decreased for any reason during the term of this Agreement, the amount of SYNTIF Payments shall be reduced by the tax decrease based on the decrease in Incremental Increased Value.

(e) While recognizing that it is not empowered under Virginia law to make any binding commitment beyond the current fiscal year of the County, it is the current intention of the Board to make sufficient annual appropriations during the term of this Agreement to fund payments due under the Permanent Loan subject to the obligation of the Developer to make Developer Shortfall payments as provided under Section 5.4. To that end, the Board has directed the County Executive or other officer charged with the responsibility of preparing the County's budget to include in the proposed budget for each fiscal year of the County during the term of this Agreement a request that the Board appropriate the amounts due under this Agreement during such fiscal year. If at any time during any fiscal year of the County, the EDA or the Developer determines that the amount appropriated in the budget is insufficient to pay such funds when due that fiscal year, then the County Executive (or other officer charged with the responsibility of preparing the County's budget) shall submit to the Board at the next scheduled meeting of the Board or as promptly as practicable, a request for a supplemental appropriation sufficient to cover the deficit.

5.4 SYNTIF Payments Shortfall. If the SYNTIF Payments are less than the amount of the Permanent Loan Payment Amount then the Developer shall pay the amount by which the SYNTIF Payments are less than the Permanent Loan Payment (a "Shortfall"). If the Developer makes any Shortfall payments then the Developer shall be entitled to recover the Shortfall payments from future SYNTIF Payments which exceed the amount of the Permanent Loan Payment until the Shortfall payment amounts have been recovered by the Developer.

5.5 **Prepayment.** Unless otherwise agreed in writing by the County and the Developer, to the extent that the amount of the SYNTIF Payments exceeds the Permanent Loan Payment amount, the SYNTIF Payments shall be applied first to the repayment of any Shortfall payments paid by the Developer and then to the prepayment of principal of the Permanent Loan.

Section 6. **DEFAULT AND TERMINATION.**

6.1 **Events of Default.** Each of the following shall constitute an "Event of Default":

(a) Such party shall fail to pay any monetary amount under this Agreement as and when the same is due and payable, and such failure shall continue uncured for 30 days after such party receives written notice of such failure from the other party; or

(b) Such party shall fail to perform any obligation under this Agreement (other than as described in Section 6.1(a)) as and when the same is required, and such failure shall continue uncured for sixty (60) days after such party receives written notice of such failure from the other party, provided that if such failure is not reasonably susceptible of cure within such sixty (60) day period, then such sixty (60) day period shall be extended so long as the defaulting party initiates efforts to cure within the initial sixty (60) day period and thereafter diligently pursues completion of such cure.

6.2 **Remedies.** Upon occurrence of an Event of Default, the non-defaulting party shall have the following rights and remedies: (i) to terminate this Agreement by written notice to the defaulting party, and/or (ii) to pursue such other rights and remedies as may be available under applicable law. Any funds remaining in the Tax Escrow Account shall be promptly returned to the County.

6.3 **Term.** The term of this Agreement shall commence on the date this Agreement is executed by the Parties and shall continue until the payment in full of the Permanent Loan unless this Agreement is otherwise terminated in accordance with its terms.

6.4 **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.

Section 7. **MISCELLANEOUS.**

7.1 **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.

7.2 **Designated Representatives.** The Parties designate the individuals listed in the Notice Section as authorized to bind the respective parties with respect to any consents or approvals required under this Agreement.

7.3 **Reporting Obligations.** The Developer shall provide information regarding the Plaza Project to the County as follows:

(a) Annual Reports. The Developer shall provide to the County, at the Developer's expense, a written report that verifies in a form and having a content reasonably satisfactory to the County Executive about Developer's progress on the Plaza Project. The report shall be provided to the County in June of each year until the Plaza Project has been completed.

(b) Other Information Requested by the County or the EDA. The County and the EDA may request any other information regarding the status of the Project as either party may reasonably require. Developer shall provide the requested information within a reasonable period of time, not to exceed 60 days, unless otherwise agreed to by the County or the EDA.

7.4 **Amendments.** This Agreement may be modified or amended, and the provisions of this Agreement may be waived, only by a writing executed by the party against whom such modification, amendment or waiver is sought to be enforced.

7.5 **This Agreement is Contingent Upon Approval of ZMA 2010-00018.** This Agreement is contingent upon the County Board of Supervisors approving ZMA 2010-00018 which, as currently proposed, would allow the uses and densities to enable the Project. If ZMA 2010-00018 is not approved by the County Board of Supervisors by June 30, 2020, this Agreement is void.

7.6 **Non-appropriation.** The obligation of the County to contribute the County Plaza Contribution and the SYNTIF Payments 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 the County Plaza Contribution then this Agreement shall terminate and the Developer shall have no further obligation under this Agreement. If the Board does not appropriate the SYNTIF Payments then the Developer shall have the right to terminate the Plaza Lease, and the Developer shall have no obligation to convey the Plaza to the County.

(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 contribute the County Plaza Contribution to the Developer as provided in this Agreement.

7.7 **Notices.** 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. Any Party may change its address by notice given in accordance with this Section 7.7.

- (a) Each Notice to the Developer shall be addressed as follows:

Developer:

Crozet New Town Associates LLC
c/o Milestone Partners, LLC
300 2nd Street NE
Charlottesville, VA. 22902
Attn: Frank Stoner
Email: fstoner@milestonepartners.co
Designated Representative: Frank Stoner

With a copy (which shall not constitute notice):

Flora Pettit PC
530 East Main Street
Charlottesville, VA 22902
Attn: Donald D. Long, Esq.
Email: DDL@fplegal.com

- (b) Each Notice to the EDA shall be addressed as follows:

Economic Development EDA
Albemarle County
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Rod Gentry, Chair
Email: rgentry@albemarle.org
Designated Representative: Jennifer Schmack

- (c) Each Notice to the County shall be addressed as follows:

Albemarle County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Jeffrey B. Richardson, County Executive
Email: jrichardson3@albemarle.org
Designated Representative: Douglas C. Walker

With a copy (which shall not constitute notice):

Albemarle County Attorney
401 McIntire Road
Charlottesville, VA 22902
Attn: Greg Kamptner, Esq.
Email: gkamptner@albemarle.org

7.8 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all oral discussions, agreements or understandings.

7.9 **No Goods or Services Received by the County.** The County Plaza Contribution transferred by the EDA to the Developer pursuant to this Agreement are solely to enable Developer to construct the Plaza within in the Project. The descriptions of the services that will be provided by the Developer state the public and economic development purposes that may be indirectly served by the County Plaza Contribution, and are not a description of goods or services being procured by the County by this Agreement.

7.10 **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.

7.11 **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 our 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.

7.12 **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.

7.13 **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.

7.14 **Relationship of the Parties.** This Agreement is intended solely for the purpose of establishing the relative rights and obligations of the parties and does not create any type of partnership, joint venture, joint venture, purchaser-vendor, or employer-employee relationship.

7.15 **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.

7.16 **No Waiver of Sovereign Immunity or Other Immunities.** This Agreement and any action taken by the County, the Board, and the EDA 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 Board, or the EDA.

7.17 **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.

7.18 **Force Majeure.** If the Developer'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.

[SIGNATURES ON FOLLOWING PAGE]

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

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

EDA:

ECONOMIC DEVELOPMENT AUTHORITY OF
THE COUNTY OF ALBEMARLE, VIRGINIA

By: W. Rod Getty
Name: W. Rod Getty
Title: Chairman - EDA

DEVELOPER:

CROZET NEW TOWN ASSOCIATES, LLC,
a Virginia limited liability company

By: Francis R. Sankoff
Name: Francis R. Sankoff
Title: Manager

COUNTY:

COUNTY OF ALBEMARLE, VIRGINIA

By: Jeff Richardson
Name: JEFF RICHARDSON
Title: COUNTY EXECUTIVE

Approved as to form:

Gary Kumpf
County Attorney

SCHEDULE 1

Definitions

Architectural Code shall have the meaning set forth in Section 2.1(b).

Board shall have the meaning set forth in Section

Brownfields Grant shall have the meaning set forth in

Brownfields Match has the meaning set forth in Section 2.1(d).

Commercial Space Commitment has the meaning set forth in Section 6.1.

Construction Escrow has the meaning set forth in Section 4.2(a)(i).

County means the County of Albemarle, Virginia, a political subdivision of the Commonwealth of Virginia

County Plaza Contribution has the meaning set forth in Section 4.2(a)(i).

Developer means Crozet New Town Associates, LLC, a Virginia limited liability company.

EDA means the Economic Development Authority of the County of Albemarle, Virginia

Permanent Lender has the meaning set forth in Section 5.2.

Permanent Loan has the meaning set forth in Section 5.2.

Plaza has the meaning set forth in Section D.

Plaza Budget has the meaning set forth in Section 4.1.

Plaza Commencement Date has the meaning set forth in Section 4.1.

Plaza Construction Lender means the lender providing the construction loan for the construction of the Plaza.

Plaza Construction Contract means the contract between the Developer and the general contractor constructing the Plaza.

Plaza Property has the meaning set forth in Section B.

Plaza Project means the project to construct the Plaza.

Phase 1 means the real property subject to the Developer's rezoning application ZMA 2010-00018 and shown as Phase 1 on Exhibit A.

Phase 1 Zoning Deadline has the meaning set forth in Section 2.1(a).

Property means Albemarle County Tax Map Parcels Nos. 56A2-01-00-02500, 56A2-01-00-07100 and 56A2-01-00-071B0 as shown on the attached Exhibit A

Project has the meaning set forth in Section A.

Revenue Sharing Agreement has the meaning set forth in Section 3.1(b).

Revenue Sharing Match has the meaning set forth in Section 3.1(b).

Roads have the meaning set forth in Section C.

Roads Completion Date means the date the Roads have been completed, accepted by the VDoT and are open for use by the public.

Schedule 1 – Page

Road Plans means the plans for the construction of the Roads.

Shortfall has the meaning set forth in Section 5.4.

SYNTIF means synthetic tax increment financing.

SYNTIF Property means Albemarle County Tax Map Parcels Nos. 56A2-01-00-016A00, 56A2-01-00-02500, 56A2-01-00-07100 and 56A2-01-00-071B0. The SYNTIF Property is shown on Exhibit D attached to this Agreement.

VDEQ has the meaning set forth in Section 2.1(d).

VDoT means the Virginia Department of Transportation.

Exhibit A – Page 1

EXHIBIT A
Property Sketch

Exhibit A – Page 1

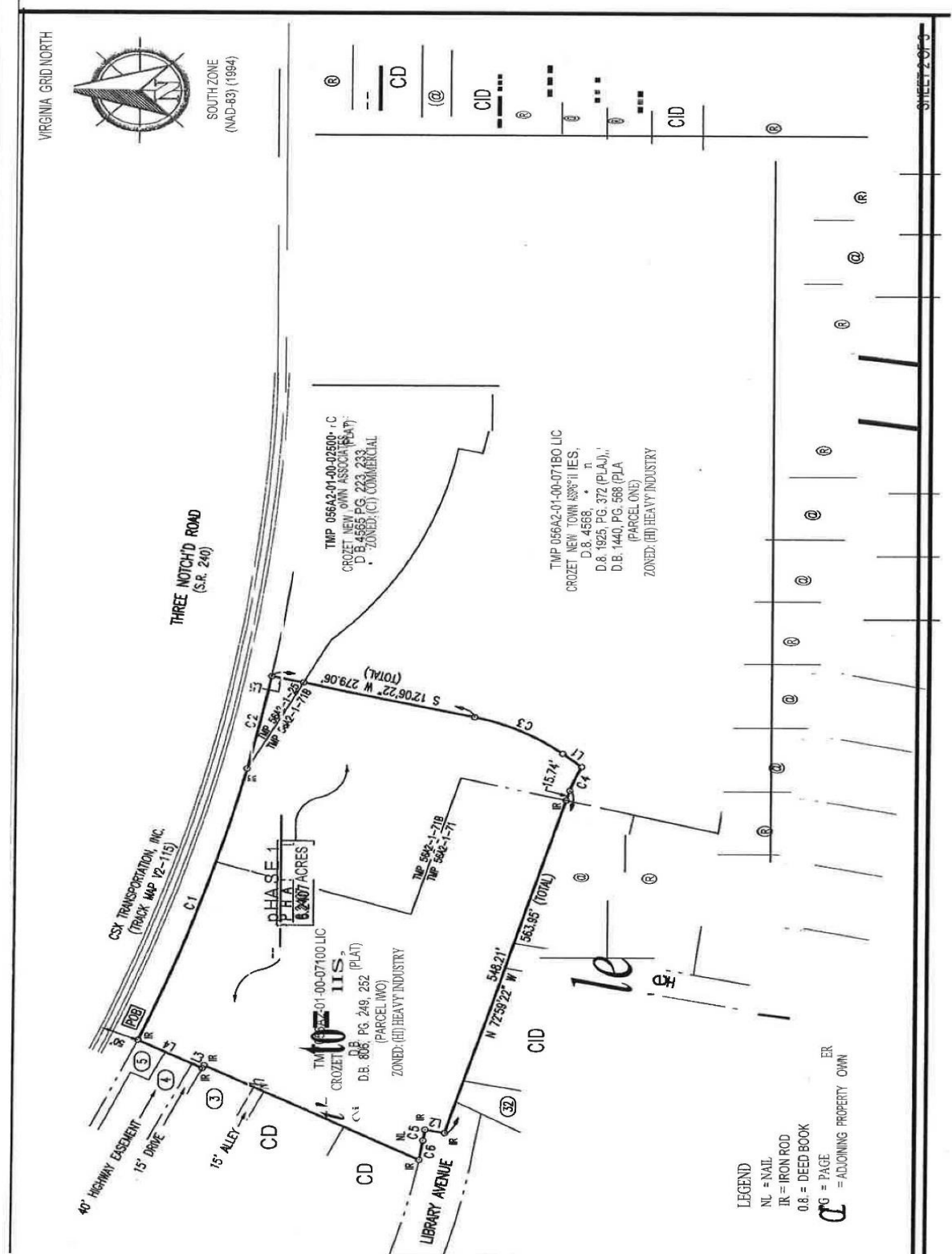



EXHIBIT C
Plaza Budget

Exhibit C – Page 1

CROZET PLAZA CROZET, VIRGINIA SCHEMATIC DESIGN SUBMISSION			
DIVISION SUMMARY		28,000 GSF	
01 GENERAL REQUIREMENTS		\$150,000	\$5.36 / GSF
02 EXISTING CONDITIONS		\$28,000	\$1.00 / GSF
03 CONCRETE		\$0	\$0.00 / GSF
04 MASONRY		\$0	\$0.00 / GSF
05 METALS		\$0	\$0.00 / GSF
06 WOODS, PLASTICS & COMPOSITES		\$0	\$0.00 / GSF
07 THERMAL & MOISTURE PROTECTION		\$0	\$0.00 / GSF
08 DOORS & WINDOWS		\$0	\$0.00 / GSF
09 FINISHES		\$0	\$0.00 / GSF
10 SPECIALTIES		\$0	\$0.00 / GSF
11 EQUIPMENT		\$0	\$0.00 / GSF
12 FURNISHINGS		\$0	\$0.00 / GSF
13 SPECIAL CONSTRUCTION		\$0	\$0.00 / GSF
14 CONVEYING EQUIPMENT		\$0	\$0.00 / GSF
21 FIRE SUPPRESSION		\$0	\$0.00 / GSF
22 PLUMBING		\$0	\$0.00 / GSF
23 HVAC		\$0	\$0.00 / GSF
26 ELECTRICAL		\$0	\$0.00 / GSF
27 COMMUNICATIONS		\$0	\$0.00 / GSF
28 ELECTRONIC SAFETY & SECURITY		\$0	\$0.00 / GSF
31 EARTHWORK		\$72,935	\$2.60 / GSF
32 EXTERIOR IMPROVEMENTS		\$2,081,328	\$74.33 / GSF
33 UTILITIES		\$128,300	\$4.58 / GSF
SUBTOTAL		\$2,460,563	\$87.88 / GSF
DESIGN CONTINGENCY	15.0%	\$369,084	\$13.18 / GSF
SUBTOTAL		\$2,829,648	
ESCALATION	3.0%	\$84,889	\$3.03 / GSF
SUBTOTAL		\$2,914,537	
BONDS / INSURANCE	2.0%	\$58,291	\$2.08 / GSF
SUBTOTAL		\$2,972,828	
CONTRACTOR'S OVERHEAD & PROFIT	6.0%	\$178,370	\$6.37 / GSF
SUBTOTAL		\$3,151,197	
TOTAL		\$3,151,197	\$112.54 / GSF

6/1/2017

DMS

1 of 1

EXHIBIT D
SYNTIF Property

Exhibit D – Page 1

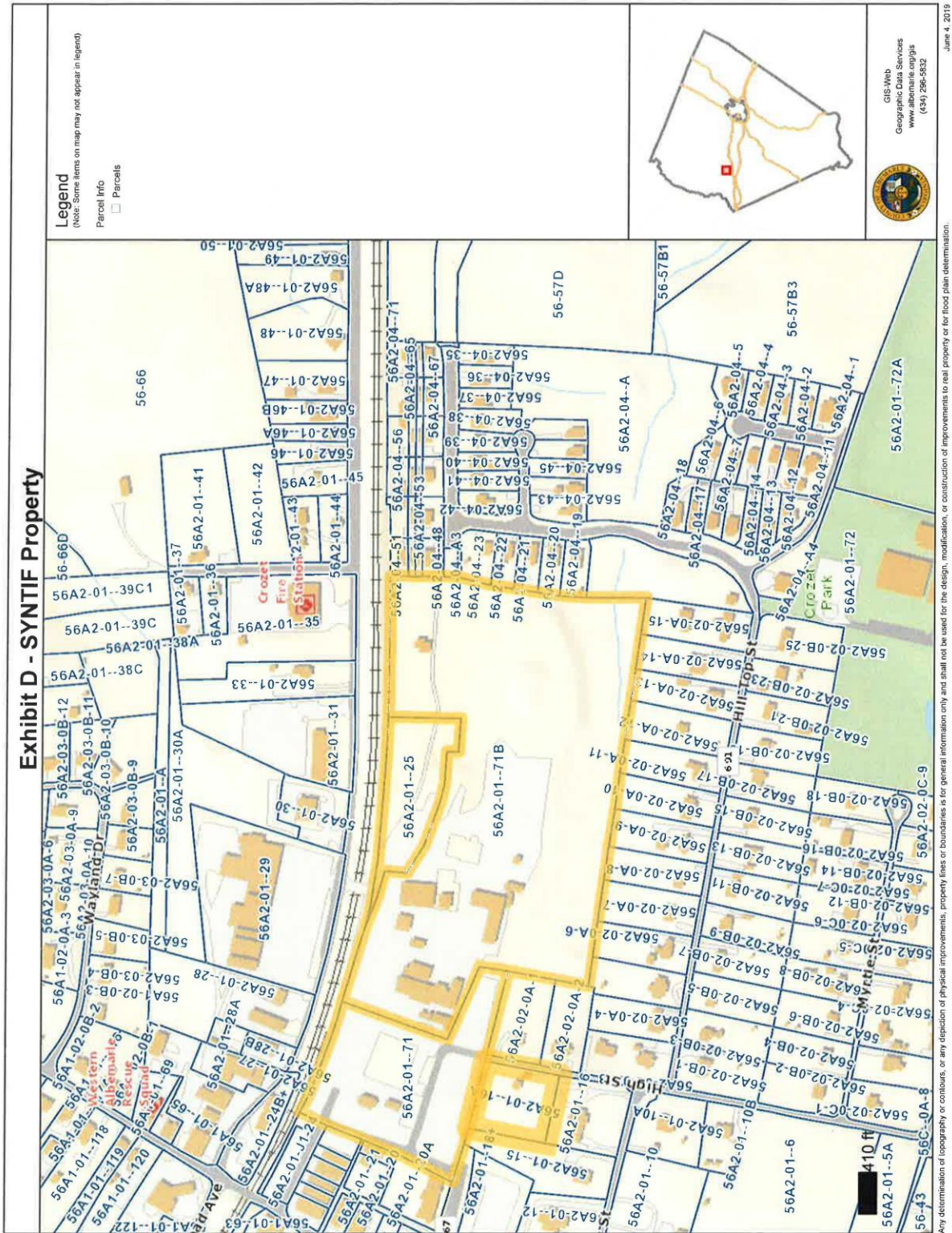


EXHIBIT E
Sample SYNTIF Calculation

Exhibit E – Page 1

Formula

The formula for a semiannual SYNTIF payment from the County to the Tax Escrow Account, as referenced in Section 5.3, is as follows:

$$\text{SYNTIF}_t = (((\text{AV}_{\text{REC}} - \text{BV}) / 100) \times \text{TR}_t) / 2$$

where

SYNTIF_t = The synthetic TIF payment at point “t” in time;

AV_{REC} = The applicable most recently assessed value of the SYNTIF Property immediately *before* the SYNTIF payment that is to be made at point “t” in time;

BV = The “base value” of the SYNTIF Property, i.e., the assessed value on January 1, 2019; and

TR_t = The County’s real property tax rate per \$100 of assessed value that is applicable at point “t” in time.

Example

We want to know the value of the June 5, 2021 SYNTIF_t payment.

Suppose that the assessed value of the SYNTIF Property were \$1,200,000 on January 1, 2019. This would be the base value (BV) of the property. Suppose also that on January 1, 2021 (after all improvements have been completed on the SYNTIF Property) the assessed value of the SYNTIF Property equaled \$3,000,000. This amount would be AV_{REC}. This situation would mean that the incremental increase in assessed value between January 1, 2019 and January 1, 2021 would be:

$$\text{AV}_{\text{REC}} - \text{BV} = \$3,000,000 - \$1,200,000 = \$1,800,000.$$

Assume that the real property tax rate per \$100 of assessed value for June 5, 2021 real property taxes equaled \$0.854. In this case, the dollar value of the County’s SYNTIF_t payment to the Tax Escrow Account that would reflect the June 5, 2021 tax revenues would be:

$$\text{SYNTIF}_t = ((\$1,800,000 / 100) \times 0.854) / 2 = \mathbf{\$7,686}.$$

ADDENDUM TO DEVELOPMENT AGREEMENT

THIS ADDENDUM TO DEVELOPMENT AGREEMENT ("Agreement") is made as of August 19, 2019, by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF THE COUNTY OF ALBEMARLE, VIRGINIA** (the "EDA") a political subdivision of the Commonwealth of Virginia, and **CROZET NEW TOWN ASSOCIATES, LLC**, a Virginia limited liability company (the "Developer"). The EDA and the Developer are collectively referred to as the "Parties."

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:

Section 1. AUTHORITY

Pursuant to Section 7.4 (**MISCELLANEOUS – AMENDMENTS**) of the Development Agreement between these Parties and the County of Albemarle, Virginia (the County), the Parties hereto are authorized to enter into this written amendment to the Development Agreement.

Section 2. INDEMNIFICATION

The Developer agrees to indemnify, hold harmless, and defend the EDA, its 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, in connection with the performance of the Development Agreement and any amendments thereto and/or any act or omission of an officer, director, agent, employee, or representative of the Developer, its successors and assigns, or the County 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 Addendum to Development Agreement and/or the Development Agreement as to acts or omissions occurring prior to the effective date of termination.

Section 3. INCORPORATION

All other terms and conditions of the Development Agreement remain unchanged and in force. This Addendum is intended to supplement the Development Agreement as it pertains to these Parties and does not supersede or negate the Development Agreement in whole or in part.

[SIGNATURES ON FOLLOWING PAGE]

[SIGNATURE PAGE TO ADDENDUM]

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

EDA:

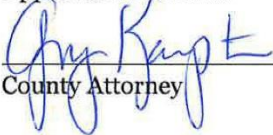
ECONOMIC DEVELOPMENT AUTHORITY
OF THE COUNTY OF ALBEMARLE,
VIRGINIA

By: 

Name: W. Rod Gentry

Title: Chairman

Approved as to form:


County Attorney

DEVELOPER:

CROZET NEW TOWN ASSOCIATES, LLC,
a Virginia limited liability company

By: _____

Name: Frank R. Stoner, IV

Title: _____

Recess. The Board recessed at 3:24 p.m. and reconvened at 3:42 p.m.

Agenda Item No. 12. Proposed 2020 Legislative Priorities.

The Executive Summary forwarded to the Board states that each year the Board considers and approves its legislative priorities. The Board then meets with the County's local delegation from the General Assembly to discuss these priorities and submits them to the Thomas Jefferson Planning District Commission (TJPDC), the Virginia Association of Counties (VACo), and the Virginia Municipal League (VML). Other initiatives are sometimes added prior to the General Assembly session. This is the third of at least three anticipated Board discussions to develop its priorities for the 2020 General Assembly session.

At the second Board discussion on May 15, staff reviewed the 12 legislative initiatives under consideration by the Board. Following are the outcomes on several of those initiatives:

Impact fees: Pursue legislation in conjunction with other localities.

Equal taxing authority for counties: Pursue legislation in conjunction with other localities in the High Growth Coalition, with the legislation limited to enabling authority for a city-level transient occupancy tax with new revenue applied to a specific purpose, such as to support a conference center.

Local control over monuments and memorials for war veterans: Legislation will be pursued, subject to changes in relevant General Assembly committees that might be favorably receptive to the legislation.

Prohibition on carrying specified loaded weapons in public places: Legislation will be pursued, subject to changes in relevant General Assembly committees that might be favorably receptive to the legislation.

In-kind services to volunteer firefighting and emergency service providers: Legislation will be pursued, with further refinement of the purposes for which in-kind services may be provided. In-kind services that have been identified so far include contract management services for capital projects, assisting in preparing proposals, budgeting services, and providing insurance.

Expanding the powers of land bank entities: This initiative will not be further pursued because existing enabling authority likely allows the County to achieve similar purposes.

Extending the eligibility of antique motor vehicle status from 25 to 30 years: Recognition that the government must work with the auto clubs and that the issue will have to be addressed nationally.

These initiatives, as well as the others being considered, are explained in Attachment A.

Since the May 15 Board discussion, staff and David Blount, the County's legislative liaison, have performed additional research. Following is the status of staff's work on some of the other initiatives:

Civil penalties for open burning violations: Staff of the Air Pollution Control Board (APCB) was contacted. The staff member who handles legislative matters for the APCB has offered to look at the basis for the APCB's regulations that establish a criminal penalty. To the extent that civil penalties would be perceived as a reduction in punishment when compared to criminal penalties, the County's Fire Marshal said that any reduction would be resisted by his colleagues around the State.

Providing tax relief for public safety volunteers: There are bills pending in the United States House of Representatives (HR 1241) and the Senate (S 1210) that would reduce the federal tax liability on tax benefits and qualified payments provided by States and localities to volunteer firefighters and emergency medical providers. David Blount retrieved a 10- to 12-year old Virginia Association of Counties survey of the incentives provided by Virginia localities to public safety volunteers (Attachment B).

Staff recommends that further work be done to, among other things, seek feedback from volunteers and their representatives to learn what incentives would be meaningful to them

Increasing the minimum tree canopy preserved during development: David Hannah (Hannah), the County's Natural Resources Manager, was contacted for his input on the current State enabling authority and the County's current tree canopy regulations. Hannah states that he would support the Board seeking enabling authority such as Virginia Code § 15.2-961.1 (applicable to certain Planning District 8 [northern Virginia] localities) to increase the minimum tree canopy required to be preserved. In addition to an abundance of data documenting the benefits of urban forests, Hannah summarizes: "Broad categories of benefits, with some of them having climate change implications, include air quality, water quality, stormwater management & pollution abatement, human health and well-being, energy conservation, outdoor recreation, education, property values, quality of life, wildlife habitat, and biological diversity." An enhanced urban tree canopy also better fulfills the County's stated goal of its Development Areas being "attractive, desirable places to live and work."

There are no specific, identifiable budget impacts.

Staff seeks direction from the Board on its legislative priorities and other initiatives.

Mr. Greg Kamptner, County Attorney, reported that this was the third review of the Board's legislative priorities for the 2020 General Assembly session, and he would touch on the items that are still

under consideration and that have ongoing work or changes since the last update on May 15th and where we will be going next. He said he met with the Senate Subcommittee work group on June 10 and gave a presentation on the County's position on impact fees as to what it would look like under an ideal scenario. He stated that Loudoun County presented on the calculations it uses to develop its CIP and capital needs assessment and how that factors into its cash proffer calculation. He noted that Senator Stanley commented that the General Assembly struggles when localities are not unanimous. He recounted how some localities support the proffer legislation, while some in the development community opposed the 2016 proffer statute. He said the other presentation was a preliminary report on the High Growth Coalition's survey of 24 localities, which showed there was not unanimity of opinion among localities. He said that Loudoun County's Assistant County Administrator indicated they would not give up cash proffers to support impact fees.

Ms. Mallek noted that they already carved out a special arrangement in 2016 without telling others. Mr. Kamptner explained that the carveouts were in areas within the master plan or were transit-oriented. He said the County could create a case for mass transit services and noted that this was the area where one would like to encourage development for those who need mass transit. He said there was confusion as to whether impact fees would replace cash proffers or replace proffers altogether, and it was his opinion that they would only replace cash proffers. He said the other impacts from development, for example, that abutting road that needs to have an extra lane constructed and things like that should remain even though it is technically off site to be on the table as something that can be resolved.

Ms. Palmer asked what the rationale was for counties that supported the 2016 change. Mr. Kamptner responded that most Virginia localities do not accept cash proffers, with only about 20 accepting them as they are desperate for any kind of investment.

Ms. Mallek remarked that the cost side has not yet caught up with them, though in some smaller neighboring communities the cost was now catching up because schools are bursting there.

Mr. Kamptner said the main takeaway from the High Growth Coalition, relative to the Board's support of impact fees, was the recognition that this may be a multi-year process to get to the next step. He said they have the 2019 legislation that is just coming on board and they probably want to give that time to see how it works. He added that in his opinion impact fees represent a more reasonable solution to this issue.

Ms. Mallek responded that to her, the combination of all the onsite stuff and things directly related that people now are doing as part of their construction project should have to stay, but all the things that do not require rezoning could be subject to the impact fee. She said that one of the important things they did not talk about at the conference was the fact that it takes away or softens the disincentive for building in the growth area because at least there was some cost responsibility for people who build in the rural area and also use the roads. She said a combination hybrid plan was the only one that was useful, and it may take several years to get there, though there would never be unanimous consent as everyone has different needs.

Mr. Randolph agreed with Ms. Mallek and said he cannot think of an issue over the last several years for which the General Assembly was unanimous in support, because of the rural/urban and partisan divide. He recounted that at the Coalition of High Growth Communities there was an extensive and persuasive presentation by L. Carson Bice on the financial logic of impact fees, because by-right development was included, whereas proffers do not include them, which evens the playing field between the two options, and everyone was treated more equitably. He noted that impacts could be drips, rather than a torrent of water, which could add up in terms of effects on schools and other services.

Mr. Kamptner resumed his presentation with civil penalties for open burning. He said that David Blount has spoken with a representative from DEQ and the Air Pollution Control Board and learned that a switch in penalties has not been a topic of discussion for them. He said that Mr. Blount learned from Howard Lagomasino, the County's Fire Marshal, that the fire marshals' organization has not supported this, as they see it as a reduction in the penalty.

Ms. Mallek pointed out that they are going from criminal to civil, which means there was something one could actually prosecute, and she does not see why this would be seen as a reduction because now they do not have any recourse.

Mr. Kamptner explained that this was something for which they would want to obtain buy-in from other localities around the state. He said he thinks it has been very successful with zoning, notwithstanding longstanding, incorrigible violators, as civil penalties address the issue. He recounted how the visiting judge was not really interested in zoning enforcement, and although the County might win the case, the criminal penalty was only \$25.

Mr. Kamptner reviewed homestay platforms. He explained that they have identified software used by Arlington County and other localities, which the Department of Finance was trying out, and suggested they revisit the issue this Fall once they have had a chance to see if it works.

Ms. Mallek asked if the software used by other localities helps to identify new, unregistered users or helps them chase after those already registered. Mr. Kamptner responded that the software surveys advertising.

Mr. Kamptner next addressed the issue of tax relief for public safety volunteers. He said that Mr. Blount has identified several bills in Congress that would reduce federal taxes for localities that provide benefits to public safety volunteers, although they are not active. He said that Mr. Blount also found an old survey conducted about 10 years ago of the benefits provided to volunteers by localities around the Commonwealth.

Ms. Mallek said the survey was in the packet and remarked that Roanoke County did something really substantial, though most only offered a car sticker, which was a complete waste if the car was not registered in the County. Mr. Kamptner suggested that fire/rescue staff reach out to sister agencies in other localities to see what they are doing in terms of benefits to entice recruits and retention.

Ms. Mallek said she spoke with Chief Childress the previous day and suggested they consider the possibility of allowing volunteers to buy into the County's health insurance. She asked Mr. Kamptner to make sure they have the authority to establish a stipend program and to allow access to health insurance. Mr. Kamptner remarked that another possibility was to offer in-kind services to volunteers, should they determine they cannot directly provide health insurance, and he offered to look into this.

Mr. Kamptner next addressed tree canopy preservation. He said the enabling authority allows the County to require developers to preserve up to a maximum of 20%, depending on the zoning density. He noted that some Northern Virginia localities in Planning District 8 that are non-attained for ozone, have the authority to go an additional 10% and to establish tree canopy banks, tree canopy funds, and to allow credits. He said that David Hannah supports pursuing this legislation and informed him that Arlington County was considering the addition of tree canopy as a best practice for stormwater, which would have to go through DEQ. He said that climate change and the Chesapeake Bay are big issues that Virginia needs to deal with so they would keep working on this one.

Ms. Mallek remarked that tree canopies are a result of the decimation of small acreage but large tree forests in the Crozet growth area on small parcels and stressed the importance of making sure the growth areas are livable places and not concrete jungles.

Mr. Kamptner next reviewed recycling reporting. He reminded the Board that the impetus for this was three companies that withheld some reporting recycling information that was required by DEQ and the Planning District, with one of the companies indicating they would not provide this information because it was proprietary. He said he researched the Virginia Waste Management Act of the State regulations that was implemented and has not found an exclusion for proprietary information. He said should the Board adopt an ordinance to require reporting directly to the County, it allows recyclers to withhold proprietary information. He said the staff needs to do more work to get a better understanding of what was going on.

Ms. Palmer asked for confirmation that should the County adopt an ordinance requiring reporting of recycling information, the companies could call it proprietary and not provide the information, though if an organization such as TJPDC were to require it, then the companies would have to provide it. Mr. Kamptner confirmed this was what he understands from what he has read so far.

Ms. Palmer said she received an email from the new TJPDC person who would write this next year, as it comes up every five years, and was due by the State in 2021. She stressed that it was important to work on the issue this winter if they want to get something through the General Assembly, otherwise they would have to wait five years.

Mr. Kamptner remarked that some localities are required to report on an annual basis. He said the fix they suggested in prior presentations was to amend the Freedom of Information Act, so the localities get the information and any claim of proprietary information goes away and does not get disclosed under a FOIA request.

Ms. Mallek asked if an alternative would be to empower the Planning District to enforce this. Mr. Kamptner responded, "yes".

Mr. Randolph asked Mr. Blount what could be done in terms of effective enforcement. Mr. David Blount, TJPDC Legislative Liaison, responded that he does not have a really good answer. He said there were multiple requests and conversations and the three companies provided several reasons as to why they were not providing the information. He said he spoke with DEQ representatives and did not think it was a fruitful conversation. He suggested the County force a discussion with larger service providers.

Mr. Randolph asked that Chip Boyles put this issue on the agenda for August. He said he thinks he was aware of what they cannot do and they could find a way to put teeth into this on the County level, if they cannot do it on a regional basis.

Ms. Mallek suggest inviting the noncompliant people to a meeting and have them explain themselves.

Mr. Kamptner next reviewed documenting historic structures prior to demolition. He said he does not see the General Assembly compelling private landowners to open their property, though there may be a more nuanced approach, which they could discuss with Community Development and Margaret Maliszewski.

Ms. Mallek remarked that this was discussed many times at the Historic Preservation Committee and she thinks there are some counties that already do this.

Mr. Kamptner said he would be back to the Board on July 17. He suggested the Board use the August 7 meeting as the final one, provided the meeting with the local delegation has not been scheduled for an earlier date. He recognized the tremendous assistance of Mr. Blount in the process.

Mr. Gallaway suggested staff begin the process for the joint meeting with the legislators so as not to make it too late in the year.

Mr. Blount commented that the special session of the General Assembly begins July 9.

Agenda Item No. 13. Closed Meeting.

At 4:15 p.m., Mr. Dill **moved** that the Board go into Closed Meeting pursuant to Section 2.2-371(A) of the Code of Virginia,

- under Subsection (1), to discuss and consider appointments to the Equalization Board, the James River Alcohol Safety Program, Thomas Jefferson Emergency Services Counsel, and three board-appointed committees.
- under Subsection (6), to discuss and consider the investment of public funds where bargaining was involved and where, if made public initially, would adversely affect the financial interest of the County. The two matters where public funds may be invested pertaining to:
 - 1) acquiring a public school site in the County and
 - 2) maintaining and repairing real property it owns in Scottsville Magisterial District and which may include acquiring additional real property related thereto.

The motion was **seconded** by Ms. Mallek. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.

NAYS: None.

Agenda Item No. 14. Certify Closed Meeting.

At 5:13 p.m., Mr. Dill **moved** that the Board of Supervisors certify by a recorded vote that, to the best of each supervisor's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed, or considered in the closed meeting. The motion was **seconded** by Ms. Mallek.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek and Ms. McKeel.

NAYS: None.

ABSENT: Ms. Palmer.

(Note: Ms. Palmer returned at 5:14 p.m.)

Agenda Item No. 15a. Boards and Commissions: Vacancies and Appointments.

Mr. Randolph **moved** that the Board make the following appointments/reappointments:

- **appoint** Mr. Tristian Fessell to Citizens Transportation Advisory Committee (CTAC) with said term to expire June 30, 2023.
- **appoint** Mr. Douglas Woodside and Ms. Diane L. Brown Townes to Historic Preservation Committee with said term to expire June 4, 2022.
- **reappoint** Mr. Ron Lantz to James River Alcohol Safety Program with said term to expire January 1, 2022.
- **appoint** Ms. Michelle Busby to Places 29 (Hydraulic) Community Advisory Committee with said term to expire August 5, 2020.
- **appoint** Mr. Lee Kondor to Places 29 (Rio) Community Advisory Committee with said term to expire September 30, 2020.
- **appoint** Mr. Meade Whitaker to Thomas Jefferson Emergency Medical Services Council with said term to expire January 1, 2022.

The motion was **seconded** by Ms. Mallek. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.

NAYS: None.

Agenda Item No. 16. **Public Hearing: VDOT FY 20-25 Secondary Six-Year Program.** To receive public comment on the proposed Secondary Six-Year Plan for Fiscal Years 2020 through 2025 in Albemarle County, and on the Secondary System Construction Budget for Fiscal Year 2020.

(Advertised in the Daily Progress on June 3 and June 10, 2019.)

The Executive Summary forwarded to the Board states that the purpose of this public hearing is to receive input on the proposed Virginia Department of Transportation (VDOT) Secondary Six-Year Program (SSYP), FY 20-25 (Attachment A).

The SSYP allocates funding for construction, maintenance, and improvement of roads in the state secondary system (roads with a route number of 600 or higher). The funds allocated to Albemarle County through the SSYP include state and federal funds for a variety of road improvements. The SSYP for Albemarle County is updated and approved annually and identifies the specific funding source, use, and levels allocated for the immediate fiscal year. The SSYP also identifies projected funding allocations for the next five fiscal years.

The Board held a work session on the SSYP on May 1, 2019. Attachment B is the Executive Summary from that work session and Attachment C is the Report on the Secondary Six-Year Program Priorities and Recommendations from that Work Session. Based on the recommendations and discussion at the May 1st work session, the FY20 Albemarle County Priority List for Secondary Road Improvements, Unpaved Roads was updated and is included as Attachment D. The changes based on Supervisor comments at and since this work session include the removal of Burt on Lane (Route 856), Stony Point Pass (Route 600), and Via Lane (Route 672).

VDOT staff has provided an updated draft of the FY 20-25 SSYP (Attachment A) that is based on the direction provided by the Board at its previous work session. The available funding for the FY 20-25 SSYP would be used to address the priority projects the Board has supported. The Rio Mills Connector remains the top priority and TeleFee funding dedicated to this project will make up the balance to complete it beyond the Smart Scale funding. SSYP TeleFee Funds in the amount of \$2,275,792 currently directed to the Berkmar Drive Extended project will remain dedicated to that project as the Board directed from the May 1, 2019 Work Session.

SSYP is for the expenditure of State secondary road construction funds allocated to the County and does not require the expenditure of County funds except to the extent that any project may also utilize Revenue Sharing funds or otherwise necessitate County resources in support of the project.

After the public hearing, staff recommends that the Board adopt the attached Resolution (Attachment E) approving the FY 20-25 Secondary Six-Year Program and authorizing the County Executive to sign the FY 20- 25 Secondary Six-Year Program.

Staff also recommends that the Board vote to approve the final FY20 Albemarle County Priority List for Secondary Road Improvements, Unpaved Roads (Attachment D) for the record.

Mr. Daniel Butch, Senior Transportation Planner, presented. He explained that the program allocates state and federal funding for the construction, improvement, and maintenance of roads in the State Secondary System, which are those with a route number of 600 or higher. He said the program is annually approved by the Board of Supervisors. He said that for FY20, approximately \$550,000 was available that must be appropriated to paving unpaved roads and an additional \$355,000 of Telefee funds are available, which could be used for a broader range of projects. He said that selection of paving projects was based on the County's priority list for secondary road improvements unpaved roads, with the preferred method being through the Rural Rustic Road program.

Mr. Butch recapped the decisions made at the May 1 meeting on the Secondary Six-Year program as follows: Telefee funding remains on the Rio Mills Connector project and will make up the balance to complete it beyond the Smart Scale funding, continue to advance paving priorities, including the Dick Woods Road portion, North Garden Lane, and both segments of Cole's Rolling Road. He said they have removed the following three roads from the paving list: Burton Lane, Stoney Point Pass, and Via Lane. He said the FY20 priority list for secondary road unpaved road improvements has been updated and they have \$2.2 million Telefee funds the Board directed towards the Berkmar Drive Extended project. He noted that the Secondary Six-Year program and the balance of Smart Scale-funds are projected to be complete by 2023; Keswick Road expected to be complete by August 2019, Predry Creek Road was complete Spring 2019, work on Patterson Mill Lane to begin Summer 2019, work on Dick Woods Road from 151 to Nelson County line to begin July, 2019, work on North Garden Lane to begin Fall 2019, and work on the northern section of Cole's Rolling Road, known as Phase I, to begin Fall 2019.

Mr. Butch said that staff recommends that the Board adopt the proposed resolution to approve the FY20–25 Secondary Six-Year program and to authorize the County Executive to sign the program, and to approve the Final FY20 Albemarle County priority list for secondary road improvements of unpaved roads, after the public hearing.

Ms. Mallek asked if the \$335,000 Telefee funds represents the annual amount for five years. Mr. Butch confirmed that the funds are annual for five years. Ms. Mallek commented that the \$1.5 million total could be leveraged to \$15 million in borrowing.

Ms. Palmer asked for clarification that the difference between the Rural Rustic Road and Pave In Place programs was related to volume. She observed that in the materials it says the curves along the road should generally be adequate for traffic and any increase in speeds expected after the improvement. She asked how this was determined and if it has to do with turn radius. Mr. Butch responded that VDOT would determine this after the road has been paved. Ms. Palmer expressed surprise that it would be determined after the road has been paved.

Mr. Darryl Shifflett, VDOT Culpeper District, addressed Ms. Palmer's question. He explained from a Rural Rustic Road standpoint that staff from the residency visits the road locations to determine the width, as paving was based on existing conditions, with minimal work done other than drainage improvements, such as pulling ditches, and gives a recommendation as to whether the road was a good candidate. He explained that to qualify as a Rural Rustic Road the road must have 50 vehicles or more per day and fit the criteria in terms of the amount of maintenance required and its distance from the area headquarters in conjunction with working with staff as well for the recommendation.

Ms. Palmer remarked that her understanding was that it was the Board of Supervisors that determines which roads would be paved and she was trying to understand how they could make this determination based on the statement that curves along the road should generally be adequate for traffic and increased speeds expected after the improvement. Mr. Butch remarked that his understanding of Ms. Palmer's question was after the road was paved if there was a speeding issue, which he took wrongly. He explained that the priority paving lists are requests of the County by the Board and it was VDOT that does the engineering and determines if it falls within the Rural Rustic Program.

Ms. Palmer asked how often they have seen roads rejected by the Rural Rustic Road Program and reiterated her question about the differences between this and the Pave In Place Program. Mr. Shifflett responded that VDOT does not use the Pave In Place Program much anymore and from the standpoint of the Culpeper District everything was pretty much the rural rustic concept. He said the resident engineers and their staff go out to the roads to determine if they are good candidates for the Rural Rustic Program. He said he thinks there was a statutory maximum speed limit of 35 MPH on these roads, once they are completed. Ms. Mallek remarked that they had to go to the legislature to get this on gravel roads.

Ms. Palmer asked if the Pave In Place Program was used for winding roads or for roads that are too narrow. Mr. Randolph remarked that it was determined on a case by case basis. Ms. Palmer said she understands this but was trying to see if there were some criteria for the curviness. Mr. Shifflett responded that there was one additional program for which he cannot recall the name and in the past they have been providing something that compares all three.

At this time, Mr. Gallaway opened the public hearing.

Mr. Connor Poindexter, a member of the management of Parkside at Eagle's Landing Unit Owners Association, addressed the Board. He said the condominium community consists of 280 units located in the County at the northern terminus of Sunset Avenue Extended along the southern border with Charlottesville. He said that the community has not had adequate public safety public street access since it was constructed 15 years ago for fire and rescue vehicles. He said it often suffers isolation from key public services that first responders provide due to the closure of Sunset Avenue Extended's narrow steep single point of access during major rain or snow storm events. He expressed concern that they would not have ambulance, fire, or police service during a national disaster. Additionally, he said there was a lack of safe pedestrian access along this same road as well as safe sight distance at the entrance, though the road was not on VDOT's priority list to plow or clear. He noted that County staff was aware of these problems and has proposed a road connection, referred to as the Sunset-Fontaine Connector, to add a second access point, though this plan remains unfunded. He asked that the Board endorse the prioritization of the funding for design and construction of the Sunset/Fontaine Connector within the current VDOT six-year plan to address these public safety hazards that presently exist for our community and the Albemarle County residents who live there.

Mr. Ronnie Hahn, resident of the County, addressed the Board. He said he represents the majority of the families on White Mountain Road who would like the road to be paved. He read a letter that was sent to Senator Deeds in 2009 by Michael Boggs, a neighbor who owns a construction company that surveys and builds roads in the County. "I own four properties and have lived on Route 736, White Mountain Road, for the last 36 years. During my surveying and road construction career I have designed and constructed well over 100 miles of secondary and primary roads. Route 736, White Mountain Road, has many problems, including but not limited to, being very narrow and numerous errors, having no shoulder on some portions, having both horizontal and vertical alignment deficiencies that endanger the public and causing serious erosion problems due to the woeful, inadequate drainage system and having a surface that was long overdue for upgrade. The most serious problem was the inadequate drainage system where tons and tons of gravel continuously over the years erode from the surface, often making the road impassible and depositing the gravel in the fields of three adjacent properties. The most serious area was just above the Hahn property. The most important aspect of any permanent road design or construction was adequate drainage. Until the problem was corrected no amount of surface stabilization, other than paving the whole roadway, including travel surface, shoulders, ditch and a portion of the back slopes would solve anything."

Mr. Hahn said they only know of two property owners who do not want the road paved. Mr. Hahn said this needs to be done for the general public, school bus traffic, and to quit wasting public funds and address the deficiencies. He said it was high time for this roadway to receive some serious attention.

There being no other public comments, the public hearing was closed.

Ms. Palmer asked Mr. Butch for the status of the Sunset-Fontaine Connector. Mr. Butch responded that staff would present priorities to the Board in July, which would include this project.

Ms. Palmer noted that this was not part of the Six-Year Paving Plan, but part of another road plan.

Ms. Mallek **moved** that the Board adopt the proposed Resolution approving the FY 20-25 Secondary Six-Year Program and authorize the County Executive to sign the FY 20-25 Secondary Six-Year Program. The motion was **seconded** by Ms. McKeel.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.
NAYS: None.

**RESOLUTION TO APPROVE
THE SECONDARY SYSTEM SIX-YEAR PROGRAM (FY 20-25)**

WHEREAS, Virginia Code § 33.2-331 provides the opportunity for each county to work with the Virginia Department of Transportation in developing a Secondary System Six-Year Program; and

WHEREAS, the Board has previously agreed to assist in the preparation of this Program, in accordance with the Virginia Department of Transportation policies and procedures, and participated in a public hearing on the proposed Program (FY 20-25), after being duly advertised so that all citizens of the County had the opportunity to participate in said hearing and to make comments and recommendations concerning the proposed Program and Priority List; and

WHEREAS, local and regional representatives of the Virginia Department of Transportation recommend approval of the Secondary System Six Year Program (FY20-25); and

WHEREAS, the Secondary System Six Year Program (FY20-25) is in the best interest of the County and of the citizens of the County

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle County Board of Supervisors hereby approves the Secondary System Six-Year Program (FY20-25) and authorizes the County Executive to sign the Secondary System Six-Year Program (FY 20-25); and

BE IT FURTHER RESOLVED, that the Clerk of the Board shall forward a certified copy of this resolution to the District Administrator of the Virginia Department of Transportation.

Ms. McKeel **moved** that the Board approve the final FY20 Albemarle County priority list for secondary road improvements unpaved roads. The motion was **seconded** by Ms. Mallek.

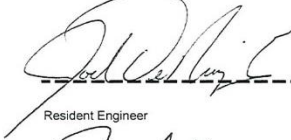
Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.
NAYS: None.

Secondary System
Albemarle County
Construction Program
Estimated Allocations

Fund	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	Total
CTB Formula - Unpaved State	\$550,892	\$0	\$0	\$0	\$0	\$0	\$550,892
TeleFee	\$355,279	\$355,279	\$355,279	\$355,279	\$355,279	\$355,279	\$2,131,674
District Grant Unpaved	\$0	\$773,496	\$522,580	\$694,463	\$751,383	\$751,383	\$3,493,305
Total	\$906,171	\$1,128,775	\$877,859	\$1,049,742	\$1,106,662	\$1,106,662	\$6,175,871

Board Approval Date: June 19, 2019

 7/1/19
Resident Engineer Date

 6/26/19
County Executive Date

Received
JUL 18 2019
County of Albemarle
Board of Supervisor's Office

SECONDARY SYSTEM CONSTRUCTION PROGRAM (in dollars)

District: Culpeper
County: Albemarle County

Board Approval Date: June 19, 2019

2019-20 through 2024-25

Route	PPMS ID	Accomplishment	Road Name	Estimated Cost	Previous Funding	Additional Funding Required	PROJECTED FISCAL YEAR ALLOCATIONS						Balance to complete	Traffic Count
							2019-20	2020-21	2021-22	2022-23	2023-24	2024-25		
103937	CONTRACT	S	PROJECT LENGTH	PE \$355,000 RW \$157,500 CON \$3,286,739 Total	\$2,484,189	\$1,315,811	\$0	\$0	\$800,000	\$315,811	\$0	\$0	\$0	TELEFEE FUNDS / SMARTSCALE FUNDS BALANCE TO BE FUNDED THROUGH SMART SCALE
			ROUTE 643											
			BERKMAR DRIVE EXTENDED											
			CONNECTOR ROAD BETWEEN											
			CONNECTOR ROAD 041, C-501											
0001.00	S	NO PLAN, SECONDARY	PROJECT LENGTH	PE \$621 RW \$0 CON \$360,812 Total	\$361,433	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	300 VPD 06/26/2012 CTB FORMULA UNPAVED >50 VPD RURAL RUSTIC RESOLUTION RECEIVED 04/05/2017
			ROUTE 731											
			ROUTE 731 - RURAL RUSTIC RD											
			(SURFACE TREAT											
			NONHARDSURFACE RD)											
0002.00	S	NO PLAN, SECONDARY	PROJECT LENGTH	PE \$2,359 RW \$0 CON \$417,642 Total	\$420,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	120 VPD 07/25/2012 CTB FORMULA UNPAVED >50 VPD RURAL RUSTIC RESOLUTION RECEIVED 04/05/2017
			ROUTE 640											
			ROUTE 640											
			ROUTE 640											
			ROUTE 640											
0003.00	S	NO PLAN, SECONDARY	PROJECT LENGTH	PE \$10,000 RW \$0 CON \$260,000 Total	\$270,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	250 VPD 06/06/2012 CTB FORMULA UNPAVED >50 VPD RURAL RUSTIC RESOLUTION RECEIVED 04/05/2017
			ROUTE 688											
			ROUTE 688											
			ROUTE 688											
			ROUTE 688											
0004.00	S	NO PLAN, SECONDARY	PROJECT LENGTH	PE \$15,000 RW \$0 CON \$310,000 Total	\$325,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	130 VPD 07/09/2012 CTB FORMULA UNPAVED >50 VPD RURAL RUSTIC RESOLUTION RECEIVED 06/06/2018
			ROUTE 151											
			ROUTE 151											
			ROUTE 151											
			ROUTE 151											

SECONDARY SYSTEM CONSTRUCTION PROGRAM (in dollars)

SECONDARY SYSTEM CONSTRUCTION PROGRAM (in dollars)

2019-20 through 2024-25																
Road Name		Estimated Cost	Previous Funding	Additional Funding Required	PROJECTED FISCAL YEAR ALLOCATIONS						Balance to complete	Traffic Count				
PPMS ID	Project # Description		SS/VP Funding Other Funding Total		2019-20	2020-21	2021-22	2022-23	2023-24	2024-25		Scope of Work FHWA # Comments				
Type of Funds	FROM															
Type of Project	TO															
Priority #	Length															
RL0720 113776 S/F HIRED EQUIP. S NO PLAN, SECONDARY	HARRIS CREEK ROAD	PE \$7,500														
	0720-002-P35, N-501	RW \$0														
	RTE. 720 - RURAL RUSTIC RD	CON \$95,000														
	(SURFACE TREAT															
	NONHARDSURFACE RD)	Total \$102,500	\$0	\$102,500	\$0	\$0	\$102,500	\$0	\$0	\$0	\$0	190 VPD 06/01/2012 DISTRICT GRANT UNPAVED >\$0 VPD RURAL RUSTIC PROJECT RESOLUTION NEEDED				
0.25 MI. W. ROUTE 20 END STATE MAINTENANCE																
0011.00	0.38															
RL0707 113777 S/F HIRED EQUIP. S NO PLAN, SECONDARY	BLAIR PARK ROAD	PE \$10,000														
	0707-002-P43, N-501	RW \$0														
	RTE. 707 - RURAL RUSTIC RD	CON \$100,000														
	(SURFACE TREAT															
	NONHARDSURFACE RD)	Total \$110,000	\$0	\$110,000	\$0	\$0	\$110,000	\$0	\$0	\$0	\$0	180 VPD 08/09/2012 DISTRICT GRANT UNPAVED >\$0 VPD RURAL RUSTIC PROJECT RESOLUTION NEEDED				
ROUTE 681 END STATE MAINTENANCE																
0012.00	0.35															
RL0612 113778 S/F HIRED EQUIP. S NO PLAN, SECONDARY	HAMMOCKS GAP ROAD	PE \$10,000														
	0612-002-960, N-501	RW \$0														
	RTE. 612 - RURAL RUSTIC RD	CON \$81,000														
	(SURFACE TREAT															
	NONHARDSURFACE RD)	Total \$91,000	\$0	\$91,000	\$0	\$0	\$15,234	\$75,766	\$0	\$0	\$0	170 VPD 04/10/2015 DISTRICT GRANT UNPAVED >\$0 VPD RURAL RUSTIC PROJECT RESOLUTION NEEDED				
ROUTE 20 0.52 MI. S. RTE. 20																
0013.00	0.52															
RL0760 113779 S/F HIRED EQUIP. S NO PLAN, SECONDARY	RED HILL SCHOOL ROAD	PE \$15,000														
	0760-002-961, N-501	RW \$0														
	RTE. 760 - RURAL RUSTIC RD	CON \$252,750														
	(SURFACE TREAT															
	NONHARDSURFACE RD)	Total \$267,750	\$0	\$267,750	\$0	\$0	\$0	\$267,750	\$0	\$0	\$0	170 VPD 04/10/2015 DISTRICT GRANT UNPAVED >\$0 VPD RURAL RUSTIC PROJECT RESOLUTION NEEDED				
ROUTE 29 ROUTE 712																
0014.00	1.53															
RL0671 T22803 S/F HIRED EQUIP. S NO PLAN, SECONDARY	WESLEY CHAPEL ROAD	PE \$0														
	0671-002-P86, N-501	RW \$0														
	RTE. 671 - RURAL RUSTIC RD	CON \$55,000														
	(SURFACE TREAT															
	NONHARDSURFACE RD)	Total \$55,000	\$0	\$55,000	\$0	\$0	\$0	\$55,000	\$0	\$0	\$0	140 VPD 08/07/2012 DISTRICT GRANT UNPAVED >\$0 VPD RURAL RUSTIC PROJECT RESOLUTION NEEDED				
CHAPEL SPRING ROAD FOX MOUNTAIN ROAD																
0015.00	0.10															

SECONDARY SYSTEM CONSTRUCTION PROGRAM (in dollars)												
2019-20 through 2024-25												
Route	Road Name	Estimated Cost	Previous Funding	Additional Funding Required	PROJECTED FISCAL YEAR ALLOCATIONS						Balance to complete	Traffic Count
					2019-20	2020-21	2021-22	2022-23	2023-24	2024-25		
9999.99												
99775	1204008 COUNTYWIDE RIGHT OF WAY ENGR.	PE \$0 RW \$0 CON \$54,083 Total \$54,083	SSYP Funding Other Funding Total \$54,083	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	USE WHEN IMPRACTICAL TO OPEN A PROJECT: ATTORNEY FEES and ACQUISITION COST.
99803	1204006 COUNTYWIDE FERTILIZATION & SEEDING	PE \$0 RW \$0 CON \$47,506 Total \$47,506	\$47,506	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	FERTILIZATION AND SEEDING TO IMPROVE SLOPE STABILIZATION ON SECONDARY SYSTEM
99846	1204009 COUNTYWIDE TRAFFIC CALMING	PE \$0 RW \$0 CON \$59,034 Total \$59,034	\$59,034	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	TRAFFIC CALMING MEASURES AS DETERMINED BY RESIDENCY AND DISTRICT TRAFFIC ENGINEER
99923	1204005 COUNTYWIDE ENGINEERING & SURVEY	PE \$0 RW \$0 CON \$4,520 Total \$4,520	\$4,520	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	MINOR SURVEY & PRELIMINARY ENGINEERING FOR BUDGET ITEMS AND INCIDENTAL TYPE WORK.

Agenda Item No. 17. **Public Hearing: ZTA 2019-04 Proffer (to update county code to reflect changes in state code).** To receive comments on its intent to adopt the following ordinance changes to the Albemarle County Code: Amend Section 18-33.21 to allow the County to require rezoning applications to include studies to determine impact on public facilities; and Amend Section 18-33.22 to allow the County to accept proffers addressing impacts from new residential developments or uses as permitted by the Code of Virginia.
(Advertised in the Daily Progress on June 3 and June 10, 2019.)

The Executive Summary forwarded to the Board states that the State Code amended in 2016 to limit the ability of localities to accept certain proffers addressing off-site impacts. The 2019 session of the General Assembly passed, and the Governor signed, HB2342. (Attachment E). This legislation goes into effect on July 1, 2019 and will allow localities to accept proffers if the owner and applicant deem the proffer reasonable and appropriate.

Currently in residential rezonings, the County may only accept offsite proffers to address impacts to public transportation facilities, public safety facilities, public school facilities and public parks. Proffers addressing impacts to these types of facilities may be accepted only if they meet very specific and quantifiable standards. These standards are difficult to meet and have prevented the acceptance of many off-site proffers.

This text amendment would allow more flexibility in the review of residential rezonings by allowing the County to accept more proffers addressing off-site impacts. Applicants would have the option of submitting proffers under the existing provisions or the new provisions. It is important to note

that failure to submit proffers deemed by the owner and applicant to be reasonable and appropriate may not be a basis for the denial of any rezoning or proffer amendment application.

On May 28, 2019 the Planning Commission unanimously recommended approval of this zoning text amendment.

The Planning Commission and staff recommend that the Board adopt the attached proposed ordinance (Attachment E).

Mr. Bill Fritz, Chief of Special Projects, presented. He thanked Supervisors Mallek and Randolph, as well as Mr. Kamptner, for accompanying him to a meeting of the High Growth Coalition last week to discuss what was just done and what may happen in the future. He said the State Code was amended in 2016 in a way that has severely limited the County's ability to accept off site proffers. He said an amendment to the State Code would take effect this July, which would expand the County's ability to accept proffers and to discuss their impacts with applicants. He said the Code amendment gives the developer the option to offer an offsite improvement if the owner and applicant deem the proffer reasonable and appropriate. He said the State Code retains the existing proffer language that limits the County's ability to accept offsite proffers to four categories: transportation, public safety, schools, and parks. He said proffers covering these four uses must meet specific quantifiable standards, which are difficult to measure and meet and have prevented the acceptance or offering of proffers. He explained that after July 1 an applicant could choose which of these two options to go under; making a proffer that they say was reasonable or limiting it to the four areas.

Mr. Fritz stated that the State Code was clear in stating that the failure to submit proffers deemed by the owner and applicant to be reasonable and appropriate shall not be a basis for the denial of any rezoning or proffer condition amendment application. He said the County can still deny an application due to unaddressed impacts. He said the new provisions restore the ability of the County to discuss the impacts of rezonings with applicants; the existing Code prohibits the County from even suggesting an unreasonable proffer. He explained this has had a dampening effect because there is no way of knowing during discussions if a proffer may or may not ultimately be reasonable or unreasonable. He said the new language of the State Code allows for free communication between applicants and the County. He said this is an improvement although staff does not think it is the ultimate solution. Mr. Fritz said staff and the Planning Commissions recommends adoption of the ordinance, effective July 1, 2019.

The Chair opened the public hearing.

Mr. Sean Tubbs, Piedmont Environmental Council, addressed the Board. Mr. Tubbs said he was present to support this amendment which is the beginning of another chapter in a story about how the cost of development in the urban ring is paid for. He said it is going to take a mix of funding sources to realize the long-held vision of a functional development area that supports a functional rural area. He said there needs to be creativity and some tried and true methods which have not been available for the past couple of years. He noted the Comprehensive Plan calls for the development areas to be a place where a variety of land uses, facilities and services exist and are planned to support the County's future growth with emphasis placed on density and high-quality design in new and infill development. He said this amendment restores an element that has been missing from negotiations related to rezonings and special use permits since the 2016 law. He said there was a chilling affect on the whole discussion related to proffers; the County is now back to a place where it can go forward and as he understands, advisory bodies can now be a little more free in their requests. He said with regard to the master plans, the plans are getting better in specifically laying out the kinds of things the County wants, though not all the areas are master planned which is where proffers can come in. He mentioned a petition from the Dunlora neighborhood to put a moratorium on future rezonings in the Rio/29 area to specifically address the intersection of Rio Road and the John Warner Parkway; a discussion that can possibly be held during this proffer discussion. He said this is not the final outcome for proffers as there will be further iterations with future discussions.

Mr. Neil Williamson, President, Free Enterprise Forum, addressed the Board. He said this paper represents the false promise of cash proffers and that Albemarle case studies prove that proffers discourage the very form of development the Comprehensive Plan recommends. He noted that over the years the County's proffers have increased and the mantra of the 2000s was "Biscuit Run agreed to that high proffer, why won't you". He noted that currently the development area has a 1,200 acre hole, partially as a result of proffers agreed to. He said that while they are supportive of this regulatory fix to the proffer regulation that would allow discussion between the applicant and the locality, they approach this proffer revival with great trepidation. He said the annual increases in cash proffers serve as a reminder that the voluntary proffer program has never seemed exceedingly voluntary, as localities often see proffers as free support for their CIP, while the reality was that proffers, like any business tax, are not paid by the business but passed on to the end user, harming affordable housing, or factored into the reduced cost for land acquisition; neither of which are in the County's best interest. He said the Free Enterprise Forum asks the Board to provide direction to staff for discussion of these proffers, which should be limited to the four primary impact areas of public safety, schools, transportation, and parks. He asked that any proffer calculation address only the projected impacts of proposed development, recognizing that much of the County's existing CIP needs are underfunded. He said they do not believe that Albemarle's failure to provide adequate infrastructure for existing residents should be billed to the new home buyer.

With no further comments from the public, Mr. Gallaway closed the public hearing.

Ms. McKeel **moved** that the Board adopt the proposed ordinance. The motion was **seconded** by Ms. Mallek.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.
NAYS: None.

ORDINANCE NO. 19-18(4)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE IV, PROCEDURES, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article IV, Procedures, is hereby amended and reordained as follows:

By Amending:

Sec. 33.21 Studies identifying potential impacts of zoning map amendment
Sec. 33.22 Proffers

Chapter 18. Zoning

Article IV. Procedures

Section 33. Zoning Text Amendments, Zoning Map Amendments, Special Use Permits And Special Exceptions

.....

Sec. 33.21 Studies identifying potential impacts of zoning map amendment.

When the filed application is complete, the Director of Planning may require an applicant to submit studies identifying the nature and extent of potential impacts resulting from a proposed zoning map amendment. In addition:

- A. *Studies pertaining to particular impacts.* The following requirements apply to particular impacts:
 - 1. *Impacts on traffic, generally.* The Director may require a traffic study for any application for a zoning map amendment. The scope of the appropriate traffic study shall be determined by the County's transportation engineer in consultation with the Virginia Department of Transportation.
 - 2. *Impacts on public transportation facilities, public safety facilities, public school facilities, and public parks; zoning map amendments for new residential development or new residential uses.* For zoning map amendments that propose new residential development or new residential uses as defined in and subject to Virginia Code § 15.2-2303.4, the Director may require studies that identify the impacts of the project on public transportation facilities, public safety facilities, public school facilities, and public parks. If required, the studies shall identify impacts that are specifically attributable to the project and, for impacts to public facilities that are located outside of the project, shall also identify: (i) the extent to which the project creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity at the time of the zoning map amendment; and (ii) the extent to which the applicant or its successors would receive direct and material benefits from any proffer related to any public facility improvements.
- B. *Form and content of studies; authority of the Director of Planning.* The Director may establish the form and determine the required content of any study.
- C. *Time to submit studies.* The Director may establish deadlines by which any studies must be submitted by the applicant in order to provide County staff adequate time to review the study before scheduling the Commission's public hearing on the application.

State law reference- Va. Code §§ 15.2-2285, 15.2-2286, 15.2-2303, 15.2-2303.4.

Sec. 33.22 Proffers.

The Board of Supervisors may accept proffers pursuant to Virginia Code §§ 15.2-2303 and 15.2-2303.4 in conjunction with zoning map amendments as follows:

- A. *Purpose.* Proffers are reasonable conditions proposed by the applicant governing the use of parcels being rezoned. The conditions are in addition to the regulations in this chapter that apply to the district.
- B. *Form.* Proffers shall be in writing and be in a form that is approved by the County Attorney. The Director of Planning may provide applicants with a proffer statement form.

- C. *Proffers addressing impacts from new residential developments or uses.* For zoning map amendments that propose new residential development or new residential uses as defined in and subject to Virginia Code § 15.2-2303.4, any proposed proffers addressing the impacts resulting from the new residential development or new residential uses shall comply with the requirements of Virginia Code § 15.2-2303.4.
- D. *Time to submit.* The applicant shall submit proffers by the following deadlines:
1. *Before the Commission's public hearing.* Proposed proffers, regardless of whether they are signed by the owners of all parcels subject to the zoning map amendment, shall be submitted to the Department of Community Development at least 14 days before the Commission's public hearing on the zoning map amendment.
 2. *Before the Board of Supervisors' public hearing.* Proposed proffers, signed by the owners of all parcels subject to the zoning map amendment, shall be submitted to the Department of Community Development before the Board's public hearing on the zoning map amendment. The Director of Planning may establish written guidelines that require signed proffers to be submitted a reasonable period of time prior to the public hearing to allow County officers and employees and members of the public a reasonable period of time to review the proffers.

State law reference-Va. Code §§ 15.2-2303, 15.2-2303.4.

[§ 33.22: (§ 33.7: Ord. 12-18(7), 12-5-12, effective 4-1-13 (§ 33.3, 12-10-80; 4-4-90; Ord. 07-18(1), 7-11-07)(§ 33.3.1, 12-10-80; 4-4-90; Ord. 16-18(4), 4-6-16); § 33.22 Ord. 18-18(3), 9-5-18]

This ordinance shall be effective on and after July 1, 2019.

(Note: Mr. Gallaway commented that since the Board was ahead of schedule, it would take up Matters from the Public, and Matters from the County Executive and Board, at this time. At 6:00 p.m., it would reopen the *Matters from the Public* portion.)

Agenda Item No. 18. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Sean Tubbs, Piedmont Environmental Council, addressed the Board. He stated that today the Board was taking action that impacts three of the County's development areas, with the Habitat Performance Agreement (the 5th Street side of 5th and Avon), the Crozet Plaza, and they would hear about Pantops later. He said this Board was following a legacy of building an urban community that preserves the natural resources of the rural area by concentrating things in the development area, though this would take a lot of heavy lifting; he urged the Board to stay the course. He commended the Board for taking this on and for investing resources to make it all work, as the planning was paying off and seems to be working. He drew their attention to the first quarter building report on the Consent Agenda and observed that of the 550 dwelling units approved, 518 were in the development area, and 12 in the rural area.

Agenda Item No. 24. From the County Executive: Report on Matters Not Listed on the Agenda.

Mr. Richardson said it has been an extremely busy month. He noted that he along with several Board members have been participating in the interviews for the position of Executive Director of the Charlottesville-Albemarle Convention and Visitors' Bureau and are working with its 15-member board on a short list of candidates. He said there will be another Board meeting tomorrow and hope to get to the list of finalists.

Mr. Richardson informed the Board that Doug Walker would be attending a conference of state, county, and city managers in Virginia Beach during the remainder of this week.

Agenda Item No. 22. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. McKeel informed the Board that the MPO would hold a meeting in July and urged Mr. Gallaway and the Board to send the MPO a letter expressing support for the concept of the Zan Road Bridge that would connect the County and City of Charlottesville, which was an HDAP project that was not funded by Smart Scale. She reminded the Board that \$18 million was left over and they have discussed this as a priority project. She noted this project was also a priority for the City.

Mr. Dill asked Ms. McKeel to describe the bridge for the benefit of the audience. Ms. McKeel said that representatives of the City, County, and business community served on a panel almost two years ago to review projects along the Hydraulic Road intersection that would improve traffic and pedestrian safety, and provide bicycle access. She said they submitted a series of projects for Smart Scale funding, which did not compete well with a \$3 billion tunnel in Newport News/Norfolk. She said that \$18 million was left over that was not spent on Places 29 projects and she was suggesting they prioritize the building of a two-lane pedestrian/vehicular/bicycle bridge over Route 29 from Stonefield to the City. She said the project was supported by the City, Stonefield, the County, and Northrup-Grumman and described it as a

great project because it allows people to cross the highway without having to go through the intersection. She commented that they heard that the Hydraulic Road is one of the most dangerous intersection in the Culpeper District.

Board members expressed support with the request.

Recess. At 5:56 p.m., Mr. Gallaway announced a brief recess since the Board was ahead of schedule. The Board reconvened at 6:03 p.m.

Agenda Item No. 18. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Gallaway re-opened matters from the public. As no one came forward to speak, this portion of the meeting was closed.

Agenda Item No. 19. **Public Hearing: ZMA201800005 Proposed Hotel – Pantops.**

PROJECT: ZMA201800005 Proposed Hotel MAGISTERIAL DISTRICT: Rivanna.

TAX MAP/PARCEL(S): 07800000006400, 07800000006500.

LOCATION: Northwest side of State Farm Boulevard approximately ¼ mile from the intersection of State Farm Blvd. and US Rte. 250 (Richmond Rd.).

PROPOSAL: Request for approval of an Application Plan for an existing planned development district to allow the development of a 109-room hotel.

PETITION: The two parcels totaling 4.42 acres are currently zoned Planned District Mixed Commercial (PDMC), which allows for retail sales, service establishments, public establishments, and offices as permitted by right in the Commercial Districts, as well as residential by special use permit (15 units/acre). The proposed zoning would remain PDMC. Approval of an Application Plan is requested pursuant to Chapter 18 Section 33.4.c.8. The proposed use is a 109-room hotel pursuant to 25A.2.1-(1) and 24.2.1-(20). No residential units are proposed.

OVERLAY DISTRICT(S): Steep Slopes – Managed and Preserved.

ENTRANCE CORRIDOR (EC): No.

PROFFERS: Yes.

COMPREHENSIVE PLAN: Urban Mixed Use, which allows retail, commercial services, office, and a mix of residential types (6.01 – 34 units/acre); and Parks, which allows public and semi-public parks, greenways, and active recreation areas. In the Neighborhood 3 (Pantops) Comp Plan Area within the Development Area.

POTENTIALLY IN MONTICELLO VIEWSHED: Yes.

(Advertised in the Daily Progress on June 3 and June 10, 2019.)

The Executive Summary forwarded to the Board states that at its regular meeting on May 28, 2019 the Planning Commission (PC) conducted a public hearing and voted 6:0 to recommend approval of ZMA201800005 as presented and as proffered. Attachments A, B, and C are the staff report, action memo, and draft meeting minutes from the May 28 PC meeting.

After the PC public hearing, the applicant submitted a finalized, signed, notarized proffer statement (Attachment D), which includes the following voluntary commitments:

1. a proffered application plan;
2. a reservation of approximately two (2) acres of land for future dedication to the County for public use.

Approval of this ZMA application would not amend the subject property's current zoning (PDMC Planned District – Mixed Commercial); but it would establish an approved Application Plan for this portion of the existing planned district, and thereby allow the proposed project to proceed to Site Plan review and Water Protection Ordinance Plan review.

The Planning Commission and staff recommend that the Board adopt the attached Ordinance (Attachment E) to approve ZMA201800005 with proffers.

Mr. Tim Padalino, Senior Planner, presented. He said the applicant was Michael Sweeney and the request pertains to two parcels within an existing planned development mixed commercial zoning district (PDMC). He said the approval of the application would not amend the zoning district; which would remain unchanged. He noted that the application includes proffers as provided in Attachment D (copy on file). He said the total combined area of the two undeveloped parcels was 4.4 acres and was located within the development area of Pantops on State Farm Boulevard, near Martha Jefferson Hospital, State Farm Insurance, and several other offices. He said the zoning district was established in 1980, although an application plan showing major elements of the proposed development was never approved or established for these two parcels within the larger district.

Mr. Padalino said the property has two future land use designations in the 2008 Pantops Master Plan, with Urban Mixed-Use for the front portion of the property and Parks for the rear portions. He said the 2019 Pantops Master Plan update's future land-use plan continues to have the two future land-use designations, with the front portions designated as Community Mixed-Use, which includes hotels, and Parks and Green Systems for the rear portions, consistent with the future land-use recommendations in

both the 2008 and 2019 plans. He noted that the applicant has committed to reserve two acres of the property for future designation to the County, in accordance with the parks future land-use designation. He presented digital renderings of the proposed hotel. He said that commitment is as provided as Proffer 2.

Mr. Padalino next reviewed factors favorable and unfavorable, as determined by the staff evaluation. He said that VDOT's review comments identified concerns with the spacing of the proposed southern entrance on State Farm Boulevard relative to the existing intersection with Martha Jefferson Drive, though he said this could be addressed through the site plan review process and noted that the proposal also includes a future inter-parcel connection to the south so that the property could be accessed through a future entrance that would be properly aligned with the Martha Jefferson Drive intersection. At the request of Ms. Mallek, Mr. Padalino pointed out features of the area on a map.

Ms. Mallek pointed out that the applicant does not own the undeveloped neighboring parcels or have the intention to buy it and to make it work right, and there was a right only out of the entrance as a median strip prevents them from going north. She observed that box trucks would have to go right and then around the end of the median. Mr. Padalino confirmed this. He said the applicant has provided an exhibit with regards to the turning movements that VDOT found to be acceptable, though they still have comments about the spacing, which could be addressed with a future interparcel connection.

Ms. Mallek asked if the 2008 and/or 2019 master plans describe a height element and observed that the hotel would be six stories and 80 feet tall. Mr. Padalino responded that the elevations submitted showed a height of 64' 11 7/8", and the narrative describes a building that was between 61 and 65 feet.

Mr. Padalino said the second unfavorable factor was that the location, size, and height of the hotel would diminish existing long distance views of the Blue Ridge Mountains, however, the proposed primary structure was compliant with applicable zoning ordinance regulations for maximum building height, minimum front setbacks, and other requirements. He added that no special exceptions have been requested with this proposal.

Mr. Padalino reviewed the six identified favorable factors. He said the first was that the use was permissible under existing zoning and the application does not seek to amend or change the intensity or amount of permissible uses on the property. He said the second was that the proposal has been revised to comply with general and height regulations and to eliminate the need for special exceptions. He said the third was that the proposal has been revised to conform to Neighborhood Model principles, with relegated parking, pedestrian orientation, human-scale buildings and space, interconnected streets, and parks and open space. He said the fourth was that the proposal was revised in response to the Thomas Jefferson Foundation's written concerns regarding impacts to the Monticello viewshed, including specification of certain building materials and colors that would reduce visual impacts and the inclusion of landscaping in strategic locations to further reduce visual impacts. He noted that at the May 28 public hearing before the Planning Commission the applicant made a verbal commitment to ensure that roof materials and colors would be selected to not impact the Monticello viewshed. He said the fifth favorable factor was that the proposed use and improvements are limited to a portion of the property, such that the proposal was consistent with the future land-use plan designations of urban mixed-use. He said the sixth factor was that the proposal includes a proffer to reserve two acres of undeveloped land in the rear in conjunction with the future land-use plan designation of parks. He said the Planning Commission and staff recommend adoption of the ordinance to approve ZMA201800005 with proffers.

Ms. Mallek asked if the proposed color schemes would be in writing and the applicant would not be able to change his mind. Mr. Padalino clarified that the first proffer was to develop the property in general accord with the application plan and he does not believe the digital renderings are considered part of the application plan. Ms. Mallek remarked that "in general accord" gives a lot of wiggle room and a higher level of certainty regarding the colors should be expected.

Ms. Mallek remarked that the topography of the green section appears to be very steep. Mr. Dill remarked that it was part of a larger area that was already owned by the County. Mr. Padalino corrected that it was not owned by the County but was envisioned as a future park.

Mr. Dill said he requested that a balloon test be conducted but has not seen the results. He noted that the building seems to be very high from one angle because it was a hilly area and wondered how much this was taken into consideration. Mr. Padalino responded that the digital renderings are based on the balloon test.

Ms. Mallek remarked that the picture was taken in an uphill location so that one could see over the building to the mountains, although from anywhere lower an individual would not be seeing anything.

Mr. Gallaway invited the applicant to address the Board.

Mr. Kurt Wassenaar, an Architect, representing Shaman Hotels, addressed the Board. He thanked Mr. Padalino and staff for their excellent work. He noted that he was a County resident and formerly lived in the Pantops area and was deeply concerned that the project be appropriate and tied into the best possible design. He said they have worked with staff to redesign the building to match colors, to which they are willing to commit, and to address neighbor concerns about the viewshed. He noted that although the project does not lie within an architectural design-controlled district, the applicant followed the neighborhood guidelines and evaluated how the building would look from a lot of respects. He said they were careful to match the visual presentation of the building with the Martha Jefferson Hospital and

adjacent Pantops building. He said the building sits behind the Pantops Shopping Center, was heavily buffered along the rear of that and was consistent with what an individual would see from Monticello and other viewsheds. He said that though it was not perfect, they have done everything they could within the guidelines to pull together something that was appropriate, reasonably scaled, and that fits in in a non-visually disturbing way, including a roof color that would not stand out.

Mr. Wassenaar noted that the neighborhood design guidelines includes a setback provision on the front side and the building has been stepped back to reduce its visual impact on the road according to the guidelines. He said that parking has primarily been moved to the back and was hidden as much as possible by vegetation and buffering. He said a concern was raised at the meeting of the Planning Commission about the steep slope in the back, which he said would be a terraced system with plantings, provide a very good transition, and would be given to the County for the parks system. Addressing traffic issues, he said that John Wright, their traffic engineer, was present to answer any questions about this. He said they have vetted traffic issues through VDOT and think they have a solution that works well with the interconnection of the parcels.

Mr. Wassenaar said the best they could do from an engineering standpoint was to demonstrate that there would not be traffic problems and to provide for future inter-connections that reduce the issues that might come up as adjacent parcels are developed. He stated that his client went through great lengths with Hampton Inn to do something that was non-typical to bring the best possible building they could, that might have met the requirements of an architectural design-controlled area. He said they held a number of meetings with Monticello and he thinks they have met all of their concerns, most of which were related to making sure the design fits in with existing buildings so they are not visually obtrusive any more than they are under the by-right zoning provisions. He invited questions.

Ms. Mallek asked what the white on the roof of the photograph is. Mr. Wassenaar responded that it was an earlier version of the rendering and was going away as it would be a brown color.

Ms. Mallek asked if the terraces would be on the green grass beyond the parking. Mr. Wassenaar responded that at the back of the parking lot there was a drop off which they would remediate with a series of 5-foot tiers so that there would not be adverse grading on what would be the park land. He noted that the intent was to give the proffer as much meaning as possible in the context of the Comprehensive Plan.

Mr. Gallaway opened the public hearing.

Ms. Sara Robinson, resident of Riverside Village, addressed the Board. She said she was speaking for residents of Riverside Village and recognized that many of them are in the audience. She added that she was also a member of the Pantops Citizens Advisory Committee. She asked the Board to consider whether they really need a hotel on State Farm Boulevard and offered some statistics. She said the average occupancy rate for Charlottesville/Albemarle in 2017 was 72%, according to television station NBC29. She cited Cville.com as reporting that the occupancy rate was 80%, and this includes bed and breakfasts, inns, and any type of temporary overnight accommodation, with a range of 74–93% occupancy. She said the Hampton Inn would add 109 rooms, in addition to 100+ rooms at a Holiday Inn Express on Pantops, a Hyatt proposed for Stonefield with over 100 rooms, as well as a new hotel on 5th Street Extended of 100+ rooms. She said the projected demand growth rate was less than 5% per annum. She characterized the situation in Pantops as precarious, with a very good Master Plan that could be a model for other areas, if implemented and enforced, but they do not know if they are in an enhanced corridor, an entrance corridor, or a residential community commercial development relationship that was productive. She asked that the Board consider whether the County really needs another hotel.

Ms. Maureen Mahoney, a neighbor of Rita Krenz, read the following letter: "I respectfully request that you deny the application plan for the Kimco property on State Farm Boulevard, which was proposed for development as a Hampton Inn Hotel, for the following reasons. As a member of the Pantops Community Advisory Council, I know that many PCAC members expressed significant concern over the site plan and there was consensus among many that a hotel on this property would be detrimental to the Pantops community. Our top concerns include further increased traffic in the area already choked by cars, our neighborhood becomes even more of an interstate exit and even less of a community. I can also tell you the small piece of land was home to some of the most singularly beautiful views in the County. If you do not believe me ask Dan from Parks and Recreation. From there you have a nearly 270 degree view from the north spanning the length of the Blue Ridge Mountains, south over to Scottsville, and east over Carter's Mountain and Monticello. To give this view a chain hotel was practically criminal. There was broad support at the PCAC for an alternative development vision, specifically a human-sized area of locally-owned and operated eating and drinking establishments; a mini downtown mall. This would create local business ownership, generate income that stays in the community, and provide places accessible to pedestrians on Pantops while capitalizing on the viewshed. This was an idea that might actually decrease traffic as Pantops residents could walk to their mall rather than drive to the City's. In contrast, the Hampton Inn would bring 8 to 20 relatively low wage jobs. The hotel would have no meeting space and no restaurant. They are offering to give the County their undevelopable land as green space but please do not let them fool you into thinking this was some sort of generous gesture. These are steep slopes that would be behind their dumpsters and not likely to be the kind of place you would take your kids for a walk. Statistics available from the Virginia Tourism Corporation show that in January 2019 hotel occupancy rates across the Commonwealth were up an average of 0.5%; however, in Charlottesville, occupancy rates were down 11.2%, the largest negative number on the chart for that period. Furthermore, room demand was down 2.4% while room supply went up 9.8%, indicating that supply was increasing at the same time that demand was decreasing."

Mr. Gallaway commented that the Board has received the letter.

Ms. Cherie Hill, resident of Rivanna District, addressed the Board. She noted that Ms. Krenz letter covered traffic issues, the beauty of the scenic area being scarred, the idea of a pedestrian-friendly neighborhood mall, and room demand down as room supply has increased and continues to increase sharply. She said *The Daily Progress* reported that at the last meeting of the Planning Commission there was no opposition to construction of the Hampton Inn and that the public absence was influential in the vote of approval by the PCAC. She wondered if previous presentations by community members were not recorded, noted, or remembered. She recounted that Ms. Krenz made a comprehensive presentation, complete with aerial photos of the sites involved, at the PCAC a couple of months ago.

Ms. Hill said that she, herself, spoke at a subsequent meeting. She said there was intermittently a barely visible sign posted on State Farm Boulevard, and separated by a median, not visible to oncoming traffic, and positioned on the downside of a knoll and preceded by a tree. She said there were complaints that nobody answered the phone number provided. She quoted Cameron Langille, of Community Development, comments in a June 3 email: "Sometimes the voicemail inbox for the main telephone line of CDD gets overloaded and it may take a few business days for voicemails to get around to the appropriate staff members." She said that two calls were made with messages left and there has not yet been a reply. She said the sign was to be in place through the vote this evening and once again quoted Cameron Langille as follows: "The sign would stay posted until the application goes before the Board for a final decision on Wednesday, June 19." She said she looked for the sign yesterday and did not see it and walked the property this morning and did not see it, meaning that people had no way to know about this project. She asked the Board for the number of people it would take to petition their objection to make a difference in their vote.

Mr. Cal Morris, resident of Rivanna District and member of the Pantops CAC, addressed the Board. He asked the Board to consider deeply what was in the Master Plan and recounted how in 2003 they started working on the 2008 version, which has, as one of its guiding principles: "The residents of Pantops value the exceptional nature, natural, and historical scenic qualities of this neighborhood, views of Monticello, surrounding mountains, the Rivanna River, and westward into the City. It is important to protect these scenic vistas and the sense of open space as the neighborhood continues to grow." He noted that after this session the Board would be considering the 2019 version of the Master Plan, and said this version was replete with calls and pleas for preserving the vistas at Pantops. He asked that the Board maintain the scope of the buildings and the area with buildings to not be more than two stories above the sidewalk, though it could go down another four stories on the downslope.

With no further comments from the public, the Chair closed the public hearing.

Mr. Dill said he would like to say a few things since he was the Supervisor for Rivanna. He acknowledged that this issue has divided the Pantops CAC, the land was zoned for the proposed use, and it was within the development area. He said another large development, Riverside, was planned for across State Farm Boulevard, and The Vistas was proposed to be nearby. He acknowledged the comments of tonight's speakers, said he has taken tours of the property with Ms. Krenz, and he characterized the area as a wonderful, special place. He said he lives on a hill across Route 250 that was owned by Peter Jefferson, on which Thomas Jefferson would take walks. He said this was a case of the aesthetic, cultural, and natural values of an area conflicting with a by-right development that fits all the criteria. He said that it was not up to the Board to figure out the business side of it and the Board cannot second guess Hilton Hotels as to the necessity of a hotel. He said they come up against the issue of natural beauty vs. commercial development time and again and this was a pretty dramatic example of this. He asked other Supervisors for their thoughts.

Ms. Mallek said she found Mr. Morris' comments about sinking it into the ground incredibly compelling. She commented that in Crozet, residents are sold lots based on the view and now a building has erased their view. She said she was concerned about the mass to begin with and wondered if the Board has the ability to sink the building into the ground, though it seems this would be a good way to go about it. She said the photographs disarms the impact of what was really going to be visible since they were taken from above while the view of a person standing would be different.

Ms. Palmer asked Mr. Dill how tall the buildings proposed for across the street would be. Mr. Dill responded that he does not think that has been decided yet. Mr. Padalino added that he believes they would be a maximum height of four stories and would be located on Peter Jefferson Parkway, to the southeast of this project, between the hospital and the river. Ms. Palmer remarked that the hospital was pretty tall. Mr. Randolph added that it was built into the slope, was two stories above on the east side and four stories to the west.

Mr. Dill added that this was a development area and there would be more development.

Mr. Randolph said he agrees with Mr. Dill. He said he has been a long-standing Hampton Inn card owner, stayed at their hotels all over the country. He said this is one of the nicest ones and has clearly been designed with sensitivity to the architecture of the community in which it would be sited. He said he hates to see the public view becoming more of a private view for those who would stay in this facility, though one could still walk the sidewalk and see over to Monticello and the mountain range towards Scottsville. He said the reality is that this was private property, the applicant was following every requirement established by the community and has bent over backwards with the building design and roof coloring, and he sees the developer as being a good actor. He said he does not see that the Board has

any choice but to approve this, since it was consistent with uses in the Master Plan and Comprehensive Plan. He said though, reluctant, he does not see that he has any other choice but to follow good land use practice.

Mr. Gallaway invited the applicant's representative to address the Board since the rules allow him an opportunity to speak after public comments.

Mr. Wassenaar remarked that he was very sensitive to the comments made and understands it was a difficult issue they all wrestle with. He said the difficulty architects and planners have was that they have to rely on the rules established by the community and the County through complex planning processes and recognizes the balance between economic development and the needs of a community from a financial standpoint and access to hospital, and the inherent beauty. He noted that one component of the Master Plan zoning was to allow density in places where it was appropriate. He said if this project were proposed to be within a predominantly residential neighborhood it would be a completely different discussion. He stated that this area has been designated in order to avoid other development elsewhere in the County as an appropriate and completely well-thought-out place to put this kind of development.

Mr. Wassenaar acknowledged the heartache and emotional part and expressed that he feels them the same way as everyone who has lived here a long time. He stressed the importance of relying on the process followed by the County, zoning, and master planning have set up for developers and those willing to make investments in the community and that we are in deeper waters than worrying about the views in terms of the overall good of the community over the long haul. He said the questions brought up are very appropriate, should be addressed in future master planning efforts, but applicants rely in good faith on the underlying rules and master planning to bring the most high-quality project they can. He said that computer modeling of the views indicates the building would have a fairly low profile in terms of overall vistas; and they have buffered it with trees and greenery and have situated it in the best possible way within the regulations to have the most minimum possible impact on viewsheds. He said they are trying to be responsible developers and are willing to consider other reasonable items that are feasible. He said there has been a great investment already on behalf of the applicant and they would like to see the project become a part of the community under existing guidelines.

Mr. Dill asked if it was possible to lower the building into the ground as suggested by Mr. Morris. Mr. Wassenaar responded that the ground has a lot of rock and it would not be economically feasible to build into the ground. He added that hotel guests would probably not want to look out at a dirt wall, although there are places where it was appropriate, such as for parking decks.

Mr. Kamptner remarked that the project comes to the Board in a very unusual context because the area was designated many years ago as a planned district and remains the only parcel with a planned development district designation without an application plan, which means they have to go through the application plan process. He continued that the County laid the groundwork as to how these types of applications should be processed and this was one of only four or five projects like this over the last 23 years or so. He reviewed his 2006 guidance to the Board that it was acting legislatively as though it was a rezoning in this context and said the staff report on the Giant shopping center at Pantops characterized the proposed development as by-right, subject to approval of the application plan.

Mr. Kamptner continued that when the Board designated the property as PDMC in the 1980s the allowed uses were already established, and the guidance given to the Board in 1998 and 2006 was that the location for the use, the use, and the density are already established. He explained that the evaluation of the application plan was limited to whether or not it meets the requirements for an application plan and the Board was looking at the issues related to the physical development of the property and how it meets the requirements for an application plan. He said the comments made by speakers that there was a glut of hotel rooms and there was not a need for additional hotels was not a proper consideration for the Board, unless an economic study demonstrated that the County had an excess of a particular use. He recalled one instance when economic considerations were relevant to a rezoning, when North Point was rezoned in the 2000s and an argument was made that there was a glut of commercial retail, however, a study on this was never conducted and the Board was not interested in going in that direction. He said that was the one circumstance when those types of economic business considerations can be relevant to a rezoning decision.

Ms. Mallek remarked that she believes in the process before everything else and this was all very compelling, though she feels trapped in a box. She advocated for a re-evaluation of densities as a way to solve this in the future.

Mr. Kamptner commented that this was an example of having to live with very old zoning. He said he cannot find anything specific enough in the application plan with respect to the roof color. He said that if the applicant was willing and they go through the process of amending the proffers, there was another process, under which the applicant could incorporate the roof color on the application plan by writing it in.

Ms. Mallek asked if they are allowed to have conditions. Mr. Kamptner responded that this was a rezoning and, since it was a planned development district, they have the application plan, which becomes part of the zoning regulation as per the County ordinance.

Ms. Mallek remarked that they see images that are not correct and asked how they deal with this as they cannot rely on them as a record.

Mr. Gallaway asked Mr. Padalino if he had anything to add. Mr. Padalino said that Mr. Kamptner correctly pointed out that the application plan includes a lot of material specifications on Sheets 4 and 5. He said the gap may be that the renderings show the roof with a white material, as this was submitted prior to the Planning Commission public hearing and a verbal commitment was made to use a different darker material for the roof, as reiterated tonight by the applicant. He pointed out that the elevations and building sides are specified in the application plan using architectural elevations and specifying bricks or stone and other material siding.

Mr. Wassenaar said they would be more than happy to update the renderings in an appropriate way and to include a written statement indicating the building would look substantially like the renderings show in terms of color and other aspects of its architecture.

Mr. Kamptner remarked that if the Board was willing to defer action for a couple of weeks, they could work on this but, if not, the applicant could hand write on the application plan the key elements that must be satisfied in order to be found to be in general accord as well as the roof issue.

Mr. Wassenaar agreed to work with Mr. Padalino tonight and to sign it.

Ms. Palmer asked if there are other properties in the general area that are the same. Mr. Padalino presented a GIS map and pointed out the two parcels, noting that the other undeveloped properties appear to be zoned commercial.

Mr. David Benish, Chief of Planning/Interim Director, pointed out a boomerang-shaped property behind Giant supermarket, noted that a church was approved by-right, and an additional building was being constructed on it, and was subject to the same requirements. He said that as these sites redevelop, unless the zoning changes, would be subject to the same process.

Ms. Palmer asked if the owner next door were to want to build something other than that, then the building that was on it now would have to go through this process. Mr. Benish responded that he thinks it was a different zoning. He stated that the focus of the rezoning was to consider the application plan and not so much the uses, as the uses and density are by-right but how they fit on the site is what is of discretion to you.

Ms. Palmer said she was trying to determine whether there are other properties the Board should be addressing proactively before they get into this situation. Mr. Benish remarked that this was the primary area.

Ms. Palmer asked if there was a secondary area. Mr. Benish responded that he thinks this was the only remaining property like this. He said the Gazebo Plaza development was an old zoning with an actual application plan, and one that must strictly adhere to the site plan. He said it was an old by-right zoning that was now subject to a particular decision made in 1980.

Ms. Palmer asked if there was discussion of this during the master plan update process at the Pantops CAC. Mr. Benish remarked that this might be a better discussion at the next venue and there has always been a general awareness that there was old zoning on properties in the development area, and they run into this with Places 29 because its vision was subject to the by-right zoning put in place as far back as the early 1970s. He said this one was particularly difficult and awkward to explain because they cannot do anything legislatively about the uses and densities, though what they can do was determine how it fits on the property and that is what the application plan does.

Ms. Mallek remarked that they cannot do much about that either because the Master Plan established that 60 feet was okay. Mr. Benish responded that he believes the Master Plan for this area has a recommendation of up to four stories and six stories by exception, and in this case, the zoning allows for up to 65 feet.

Mr. Dill remarked that he was frustrated this was coming up right now and that it was confusing. Mr. Kamptner apologized, explaining that it has been a while since they have had one of these.

Mr. Gallaway remarked that Mr. Padalino would get together with the applicant to handwrite the additional items and then they would hold the vote.

Mr. Randolph **moved** that the Board address this issue later in the meeting. The motion was **seconded** by Ms. McKeel.

Mr. Dill proposed that they postpone a decision and try to figure this out a little further.

Mr. Randolph suspended his motion and invited Mr. Dill to make a motion to postpone.

Mr. Dill **moved** that the Board defer ZMA201900005 until July 3, 2019 to allow staff time to investigate the legislative issues. The motion was **seconded** by Ms. Palmer.

Ms. Mallek asked if there was a time issue involved with deferral. Mr. Padalino responded that he does not believe there was a pressing or legal limitation. Mr. Kamptner added that the Board has twelve months from the time the application was complete.

Mr. Gallaway asked Mr. Dill what would change in two weeks that he does not now understand clearly. He asked if there is anything additional that could happen within that timeframe. Mr. Kamptner remarked that he thinks he has given the Board the essence of the legal framework.

Ms. McKeel said, in the past, the Board has recessed and had staff to assist the applicant, and then come back to the Board to take action.

Mr. Dill acknowledged that it was unlikely anything would change. He expressed an understanding that it was very important to many people and he wants to give them consideration in case there was a mistake or something the Board should do.

Roll was then called and the motion failed by the following vote:

AYES: Mr. Dill and Ms. Palmer.

NAYS: Mr. Randolph, Mr. Gallaway, Ms. Mallek and Ms. McKeel.

Mr. Randolph then **moved** that the Board suspend further discussion until the applicant has had an opportunity to sign the application, after which the Board would reconsider the issue later this evening. The motion was **seconded** by Ms. McKeel.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Gallaway, Ms. Mallek and Ms. McKeel.

NAYS: Mr. Dill and Ms. Palmer.

Agenda Item No. 20. **Public Hearing: CPA201800003 – Pantops Master Plan.** To consider proposed amendments to the Pantops Master Plan section of the Albemarle County Comprehensive Plan. The Master Plan update would revise recommendations related to land use decisions, transportation improvements, environmental conservation, and implementation projects for the Pantops development area. The Plan would revise the following information for the Pantops development area: the vision for development and redevelopment of the area and supporting recommendations; creation of new place types with form and use recommendations; a plan for the transportation network and its integration with the place types; a plan for open space, trails and natural resource protection and enhancement, and a plan for implementation and supporting community facilities and infrastructure.

(Advertised in the Daily Progress on June 3 and June 10, 2019.)

The Executive Summary forwarded to the Board states that at its meeting on May 14, 2019, the Planning Commission voted 5:0 (Bivens, Dolton absent) to adopt a resolution to recommend approval of CPA201800003 (Attachment A2).

This Comprehensive Plan Amendment will revise the 2008 Pantops Master Plan, which was identified as a strategic objective in the Albemarle County FY 17-19 Strategic Plan. The Plan contains updated recommendations and guidance on the use, form, and character of new development and redevelopment; a plan for improving the multimodal transportation network and enhancing connectivity between developments; and conservation initiatives to preserve and restore natural systems while also creating an integrated system of parks and greenways within Pantops. The Plan concludes with an implementation chapter that identifies policy and capital improvement projects that will help achieve the Plan's vision and recommendations.

Staff recommends that the Board adopt the attached Resolution (Attachment E) to approve CPA201800003.

Mr. Cameron Langille, Senior Planner, presented. He explained that the purpose of the public hearing was to review the Comprehensive Plan Amendment, which was an update to the Pantops Master Plan originally adopted by the County in 2008. He said the FY17–19 Strategic Plan identified an update to the Master Plan as one of the top eight strategic objectives, with a target completion date by June 2019. He noted that work has been going on since January 2018, with monthly public meetings with the Pantops Community Advisory Committee, surveys, emails, an open house, work sessions with the Commission and Board, and a public hearing last month at which the Planning Commission recommended approval.

Mr. Langille said the plan contains five chapters, with the Introduction chapter providing a summary of Pantops existing conditions, including demographics, employment rates, and a survey of land uses that currently exist. He said the second chapter was titled, Connectivity, which involves transportation; the third chapter was titled, Character and Land Use, where future land use recommendations are laid out; the fourth chapter was titled, Conservation, and deals with parks, recreation, green systems, and environmental preservation and the fifth chapter, Implementation, which contains policy and capital projects that could accomplish the plan's vision. He presented a slide with the guiding vision statements for each chapter and explained that it contains specific recommendations contained in numerical lists. He explained that they could be viewed as tools and principles to accomplish the goals in each plan's chapter.

Mr. Langille reviewed the Connectivity chapter and read its vision statement: "The goal was to improve multi-modal transportation options for all residents, regardless of age, race, income, and ability

as well as enhance connectivity to, from, and within Pantops". He presented an updated map of the 2008 plan's future transportation plan, which identifies the existing and proposed future streets in Pantops and classifies them by functional capacity and noted the street classifications listed as follows: arterial road, boulevard, avenue, and local streets. He said the plan focuses on enhancing road capacities as well as creating a more cohesive pedestrian, and bicycle transportation network, which includes trails, shared-use paths, and sidewalks. He reviewed the Character and Land Use chapter and presented an updated version of the 2008 future land use plan. He read the vision as follows: "The goal is to encourage high-quality, walkable, urban places and support development that protects viewsheds in the existing neighborhoods."

Mr. Langille said they have tried to take some properties that have an existing zoning district that does not match up with what the 2008 plan called for with the future land use and make them coincide with each other and be consistent, where possible. He noted that there are still some properties on the future land use plan that have a recommendation that does not match perfectly with the existing zoning, but we have made it more consistent. He said the goal was to set reasonable expectations with community members and developers. He said the first four goals of this Character chapter lay out the foundation for infill and redevelopment projects within the areas identified as urban centers in Pantops and calls for more publicly accessible open spaces and recreational opportunities within new developments. He pointed out that the fourth goal calls for reorienting development to the Rivanna River, at the request of community members, instead of turning its back on the river, which was the current land use pattern.

Mr. Langille reviewed the chapter on Conservation and presented a map with a parks and green systems plan, which identifies all the existing parks, green spaces, trails, and shared-use paths as well as potential future green space development. He said the vision statement and the goals and objectives focus on preserving the environment and enhancing recreation as well as connecting trails and public spaces with the cultural assets that exist in Pantops. He said that community members and staff think there was some great opportunity with the historic dam and looks to make a more community and neighborhood feel by connections.

Mr. Langille reviewed the chapter on Implementation. He said there are two parts, with the first involving Policy and Coordination Projects, of which there are several, including the Rivanna River Corridor Plan and the Pantops Trails Crew. He said the second part consists of 23 capital improvement projects, of which 18 are related to transportation, such as roads, pedestrian bridges, and things like that; and the other five involve parks and green systems. He said the format used in the table follows what staff did with the Rio/29 Small Area Plan, specifically with the row for timing, which calls out when these projects should be completed. He said they have identified catalyst projects as those most important for immediate needs, with a timeline to completion of one to eight years after adoption, while those classified as long-term are further than eight years out. He explained that a third category was long-term/redevelopment, which means that if the County was responsible for undertaking a development, it should be expected that it would occur eight years out or more, however, if a developer were looking to do a project that might be adjacent to an implementation project the County might work with them and take some of that work itself.

Mr. Langille reiterated that the Planning Commission recommended approval of the Pantops Master Plan last month, with a recommendation to add a page to the appendix that talks about the difference between zoning and the future land use recommendations in the Comprehensive Plan and Land Use Plans, which staff has done. He said that staff recommends approval, and he invited questions and comments.

Ms. Palmer asked for confirmation that the vast majority of the area was planned development mixed commercial. Mr. Langille confirmed that most of the land in this area was zoned PDMC.

Ms. Palmer asked if there would be residential. Mr. Langille responded that some residential was proposed. He pointed to a parcel on the south side of Peter Jefferson Parkway, which was under review, called the Martha Jefferson Hospital Apartments. He said he believes the project would include from 200 to 400 units and was the only residential project proposed, with the rest being office, institutional or commercial uses. Ms. Palmer commented that it could be. Mr. Langille agreed but noted that an applicant would likely have to go through a public hearing process for residential.

Mr. Randolph asked if the proposed housing for Martha Jefferson/Sentara employees was by right. Mr. Langille responded, "yes" under current zoning it would be by right on some of the parcels.

Ms. Mallek asked if there would be extra oversight for the steep slopes and the use of the land adjacent to the river, and if this was addressed in the master plan. Mr. Langille responded that they have created two land use classifications, with the first being for public parks, which was land used for trails, greenway, and public parks, where the County has greenway easements or owns the land in fee simple. He said the second classification was for land that was required open space within residential neighborhoods and land that was preserved, within the Managed Steep Slopes Overlay District, or with stream buffers and he would trace the green areas on a map.

Mr. Randolph referred to Page 29–31 of the future land-use plan map and the area around State Farm Boulevard. He said a hypothetical building of 65 feet in height would likely be five stories and asked if the Board were to receive such an application would the Board not also undertake that application because there would be an exception included, based on the land use typology. Mr. Langille referred to the table on page 32 that talks about different form and characters. He remarked that the parcel they

considered during the previous public hearing was situated in a unique area and pointed out two walk shed areas on the map which fall within the districts. He said the two parcels fall within these two zones and pointed out that one of the tables makes a height recommendation for uses, with two to four stories and up to six, by exception. He explained that this would not be a special exception but something that would be brought up during the public hearing and evaluations.

Ms. Mallek asked if this phrasing was in the 2008 master plan. Mr. Langille responded that the 2008 master plan did not have the tables with the form recommendations. He remarked that it was vague in regard to how many stories should be in certain areas, with some areas where it does say how many stories there should be and other areas where it does not.

Ms. Mallek referred to the public park future green systems map and asked if they have corrected the place on South Pantops Drive, which was formerly in the parks system that was now going to have apartments put in it. Mr. Langille explained that the developer of The Vistas at South Pantops voluntarily agreed to dedicate land to the County for use as a public park and so one-half of the property was shown in white, which could be developed, while the striping coincides with the area to be dedicated, which was why they have kept it.

Mr. Randolph said he attended the Parks and Recreation discussion on the development of the Master Plan and was interested in seeing the potential for connectivity to Woolen Mills, given the level of future economic development as a technology zone for the County in that corridor. He said he was struck by the fact that there was no mention of future connectivity across the Rivanna River at that point, though a number of other locations that have been fairly well-vetted and discussed in the past were cited, especially with City of Charlottesville, and were turned down by the previous Mayor. Mr. Langille responded that they have an implementation project that calls out Rivanna River crossings. He pointed out a purple line on a map, which he said represents a general conceptual area where they could have a bike or pedestrian bridge constructed to cross over to the Woolen Mills area. He said the previous version that came to the Board did not have it.

Ms. Mallek remarked that the new format was so readable and she cannot wait until they can use it for Crozet.

Mr. Dill recognized the following Community Development staff: Rachel Falkenstein, Cameron Langille, Michaela Accardi, and Elaine Echols, for their work on the master plan. He thanked Cal Morris, Chair of the Pantops CAC, for being a real leader and for getting people involved. He also recognized Daphne Spain of the Planning Commission for being a big help to him.

Mr. Langille recognized Andrew Knuppel, a neighborhood planner, as being absolutely essential to the process, particularly when it comes to the design and layout of the plan and for coming up with this template, along with Rachel Falkenstein, that they have taken forward with Pantops.

Mr. Gallaway opened the public hearing.

Ms. Sara Robinson addressed the Board. She thanked Mr. Dill for supporting her application to join the PCAC. She said it has been a tremendous experience and a privilege to work on this with the Planning Commission, fellow members, and neighbors. She said they are a model village, are very sensitive to development and the environment, and know that everything needs to live in harmony to proceed. She said that Mr. Langille and his staff have put together their visions, emotions, and statistics in a practical way, and they should be recognized for their hard work. She stated that she grew up in the Shenandoah Valley, understands rural life and progress; all they could ever ask was that progress be tempered with green space and a balance, and this Master Plan addresses that. She again thanked the Board and expressed her privilege in being a part of the process.

Ms. Mary Louise Kelley, resident of Riverside Village in the Rivanna District, addressed the Board. She said she endorses many of the goals in the Pantops Master Plan, including multi-modal transportation with bike lanes to Stony Point Road, high-quality walkable urban spaces, to make Pantops an attractive entrance corridor, the conservation goals of pedestrian access to trails and the river, and preserving the rural and scenic nature of Route 20 as it enters Pantops development area, as it was a scenic byway and should be treated as such. She expressed concern with developments that are approved consistently come down to a question of what anyone can do since it was private property and they have a by-right option and many are not consistent with the master plan. She expressed concern over the numerous fast food and gas station establishments as well as the Wawa and the Holiday Inn Express that were recently approved. She said the master plan is a dream unless they do something about zoning densities and she is concerned that development would eventually go down Route 20 and approach horse farms and rural areas. She suggested they consider making Free Bridge Lane a green street as it would be a great opportunity to have it become a pedestrian and bicycle path that would connect Route 20 and developments to the river, rather than a road.

Mr. Sean Tubbs, Piedmont Environmental Council, addressed the Board. He expressed his support for the County to conduct the master plan update in house with staff as it results in consistency and a coherence that should inspire some confidence in the future of the County's development areas. He expressed hope that more members of the community would read the document. He noted that it was not a prescriptive plan that says what definitely would happen and he acknowledged that sometimes there would be tough choices with things people are not going to like, but it was up to everyone to use as a guide to get to the next place. He said he hopes the plan would guide the County for the next 15-20 years during which time some of the shopping centers may be nearing the end of their useful life. He said

that what he likes about this plan, the 29 Area Plan, and the template are the implementation chapters which lay out specific ideas and things to bring the vision together.

Mr. Tubbs recounted that the previous night at Planning Commission there was a proposal at Rio Road/Route 29 in which two potential transformative projects would be addressed, which was the kind of clarity they might get at Pantops, for proffers and for potential economic development projects, such as the catalyst projects listed. He praised the Planning staff for caring deeply about the community and for understanding the many issues at play. He said the plan asks some tough questions, particularly under Key Challenges and Opportunities. He read a question from Page 8 as follows: "How can the County lead the way to forge a productive dialogue with the City of Charlottesville to find solutions to increase regional connectivity and improve stewardship of the Rivanna River." He said the Piedmont Environmental Council was here to help answer this question and pointed out that his colleague, Peter Krebs, was working on bike and pedestrian connectivity and a potential pedestrian bridge. He informed the Board that the Commonwealth Transportation Board adopted its Six-Year Improvement Plan today, which includes a small update for Route 250 and Route 20. He asked if this was included into the draft the Planning Commission saw and what was in front of the Board today.

Mr. Cal Morris, resident of Rivanna District, addressed the Board. He said this planning process was a model that works. He credited Mr. Dill and Ms. Spain with pushing staff and the committee to work together, without the need of a paid consultant.

With no further comments from the public, the Chair closed the public hearing.

Ms. Palmer asked Mr. Langille to respond to Mr. Tubbs' question about the Commonwealth Transportation Board. Mr. Dill indicated that he could answer the question. He said it was estimated that work on the Route 250/Route 20 intersection would get started in about four years, though there may be some pressure taken off with the changes at Malloy Ford.

Mr. Langille added that the chapter on Implementation identifies this as a catalyst transportation project and talks generally about making improvements to the Route 250/Route 20 intersection. He said they filed a Smart Scale application with VDOT last year to obtain funding and were told they are not going to get it, but he believes they are voting on it this week. He noted that some County transportation planners pitched the project to VDOT last month, there was some money left aside, and VDOT indicated they could do this. He said the County kept it in the plan in case they do not get it as it was a tool that enables them to make a request to VDOT.

Mr. Dill added that it was not just fixing the roads, but would include a wider pedestrian crossing.

Mr. Dill **moved** that the Board adopt the proposed resolution to approve the Comprehensive Plan Amendment for CPA201800003, Pantops Master Plan. The motion was **seconded** by Ms. Mallek.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.
NAYS: None.

Ms. Mallek praised the work of the staff, Mark Graham, former Director of Community Development, brought on over the last 10 years.

RESOLUTION TO APPROVE CPA 2018-00003 PANTOPS MASTER PLAN

WHEREAS, Chapter 8 of the Albemarle County Comprehensive Plan adopted by the Board of Supervisors on June 10, 2015, recommends the use of Master Plans to guide development and investment in each Development Area and that each Master Plan be updated every five years; and

WHEREAS, County staff has updated the recommended land uses covering the area within the Pantops Development Area boundary to amend the Land Use Plan section of the Albemarle County Comprehensive Plan and 2008 Pantops Master Plan; and

WHEREAS, the updated Pantops Master Plan would establish revised land use policies, guidelines, recommendations, goals and strategies for future development within the Pantops Development Area; and

WHEREAS, the proposed Pantops Master Plan would establish the following for the Plan area: a vision for the development and redevelopment of the area and supporting recommendations; land use, center and district types with form and use recommendations; a plan for the transportation network and its integration with the land use and centers; a plan for open space, trails and natural resource protection and enhancement; and a plan for implementation and supporting community facilities and infrastructure; and

WHEREAS, on May 14, 2019, the Albemarle County Planning Commission held a duly noticed public hearing on CPA 2018-00003, at the conclusion of which it: (i) concluded that approval of CPA 2018-00003 is appropriate and consistent with the coordinated, adjusted, and harmonious development of Albemarle County and, in accordance with present and probable future needs and resources, CPA 2018-00003 will best promote the health, safety, morals, order, convenience, prosperity, and general welfare of

all inhabitants of the County; and (ii) adopted a Resolution recommending approval; and

WHEREAS, on June 19, 2019, the Board of Supervisors held a duly noticed public hearing on CPA 2018-00003.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, and for the purposes articulated in Virginia Code § 15.2-2223, the Albemarle County Board of Supervisors hereby approves CPA 2018-00003 and amends: (i) the Land Use Plan section of the Albemarle County Comprehensive Plan as shown on the draft Pantops Master Plan dated May 31, 2019, and (ii) the Pantops Master Plan as shown on the proposed Pantops Master Plan with maps dated May 31, 2019.

BE IT FURTHER RESOLVED that the land use designation of the Lands and the applicable map in the Comprehensive Plan are amended accordingly.

Note: At this time the Board returned to Agenda Item No. 19. **ZMA201800005 Proposed Hotel – Pantops.**

Mr. Kamptner read the following two statements that would be added to the application plan for ZMA201800005 Proposed Hotel–Pantops as follows: 1) Applicant hereby agrees that the façades treatment of the hotel shown on the application plan dated 4/15/19 must be in substantial conformance with the Exhibit 1, attached. 2) Membrane roof colors must be tan or brown, subject to approval by the Director of Planning. (Signed by Michael Sweeney)

Mr. Randolph **moved** that the Board adopt the proposed ordinance to approve ZMA201800005, as proffered, with changes as noted above.

Mr. Kamptner clarified that the Board was adopting the proposed ordinance, and proffers, and subject to the application plan with the additional notations dealing with facades treatment and roof colors.

The motion was **seconded** by Ms. Mallek. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.
NAYS: None.

Board members thanked staff and the applicants for the additional work to get this done.

ORDINANCE NO. 19-A(5)
ZMA 2018-00005

AN ORDINANCE TO AMEND THE ZONING MAP
FOR TAX MAP PARCELS 07800-00-00-06400 and 07800-00-00-06500

WHEREAS, the application to amend the zoning map for Tax Map Parcel 07800-00-00-06400 and 07800-00-00-06500 is identified as ZMA 2018-00005, Proposed Hotel (“ZMA 2018-00005”); and

WHEREAS, ZMA 2018-00005 is a request for approval of an Application Plan pursuant to County Code § 18-8.5.5.5a for the two Tax Map Parcels identified above, which are within a previously-established Planned District Mixed Commercial (PD-MC) planned development district and for which an application plan was not previously approved, in conjunction with the proposed development of a 109-room hotel; and

WHEREAS, on May 28, 2019, after a duly noticed public hearing, the Planning Commission recommended approval of ZMA 2018-00005; and

WHEREAS, on June 19, 2019, the Albemarle County Board of Supervisors held a duly noticed public hearing on ZMA 2018-00005.

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 ZMA 2018-00005 and their attachments, including the proffers and the application plan, the information presented at the public hearing, the material and relevant factors in Virginia Code § 15.2-2284 and County Code §§ 18-8.5.5.5.a, 18-24.2.1(2), 18-25A.2.1(1), and 18-33.27(B), and for the purposes of public necessity, convenience, general welfare and good zoning practices, the Board hereby approves ZMA 2018-00005 with the proffers dated June 4, 2019, and the application plan entitled “Zoning Map Amendment 2018-00005 for PT Hotel, LLC,” prepared by Bohler Engineering, dated April 15, 2019.

Pantops Hotel – State Farm Boulevard

ZMA 2018-00005

PROFFER STATEMENT

Date: June 4, 2019
ZMA#: ZMA 2018-00005
Tax Map Parcel #: 07800-00-00-06400 and 07800-00-00-06500
Owner of Record: Kimco, LC

Approximately 4.42 acres to be rezoned from Planned Development Mixed-Commercial ("PD-MC") to PD-MC with an Application Plan.

The following parcels are subject to rezoning application ZMA 2018-00005 (the "Application") and thus to this proffer statement: Tax Map Parcels 07800-00-00-06400 and 07800-00-00-06500 (the "Property"). The Owner of the Property is Kimco, LC (the "Owner"). The Applicant and contract purchaser of the Property is PT Hotel, LLC.

The Owner hereby voluntarily proffers that if the Albemarle County Board of Supervisors acts to approve the Application, as requested, the Owner and its successors and assigns shall develop the Property in accord with the following proffers pursuant to Section 15.2-2203 of the Code of Virginia, 1950, as amended, and pursuant to Section 33.22 of the Albemarle County Zoning Ordinance. These conditions are voluntarily proffered as part of the Application, and the Owner acknowledges that (1) the rezoning itself gives rise to the need for the conditions; and (2) such conditions have a reasonable relation to the rezoning requested.

In the event the Application is denied the proffers shall immediately be null and void and of no further force or effect.

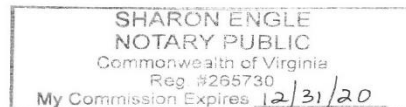
1. Development of the Property shall be in general accord with the plan entitled "Zoning Map Amendment 2018-00005 for PT Hotel, LLC" prepared by Bohler Engineering, dated June 18, 2018, last revised April 15, 2019 (the "Application Plan").
2. The Owner shall reserve the area shown as "Proposed Easement for Future Park (2.0 Acres +/-)" on Sheet 3 of the Application Plan (the "Reserved Land") for future dedication for public use for a public park and/or a connection to any future park to be constructed on a parcel or parcels adjacent to the Property. Upon the written request of the County, the Owner shall dedicate in fee simple to the County the Reserved Land to permit the construction by the County of public access trails or other pedestrian connections from the Reserved Land to the future park. Such dedication shall occur after final site plan approval, after issuance of Certificate of Occupancy for the proposed hotel use on the Property, and after delivery by the County to the Owner of a written request for such dedication (the "Dedication Request Notice"). The dedication shall be completed within six (6) months after delivery of the Dedication Request Notice. The Reserved Land shall be dedicated by

subdivision plat, and the Owner shall be responsible for the cost of a survey and preparing the deed to convey the Reserved Land to the County.

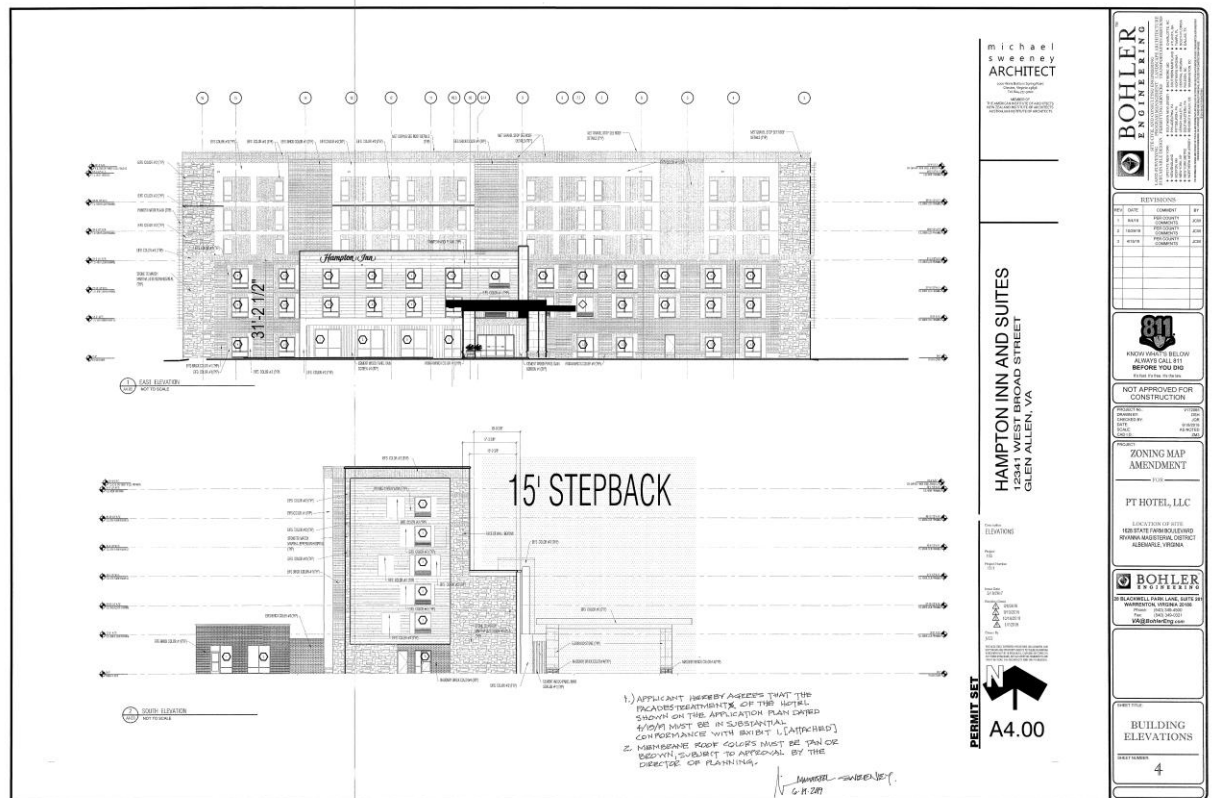
Witness the following signature:

KIMCO, LC,
a Virginia limited liability company

By: Barbara H. Cosner
Printed Name: Barbara H. Cosner
Title: Manager - Owner



Sharon Engle
6/6/19



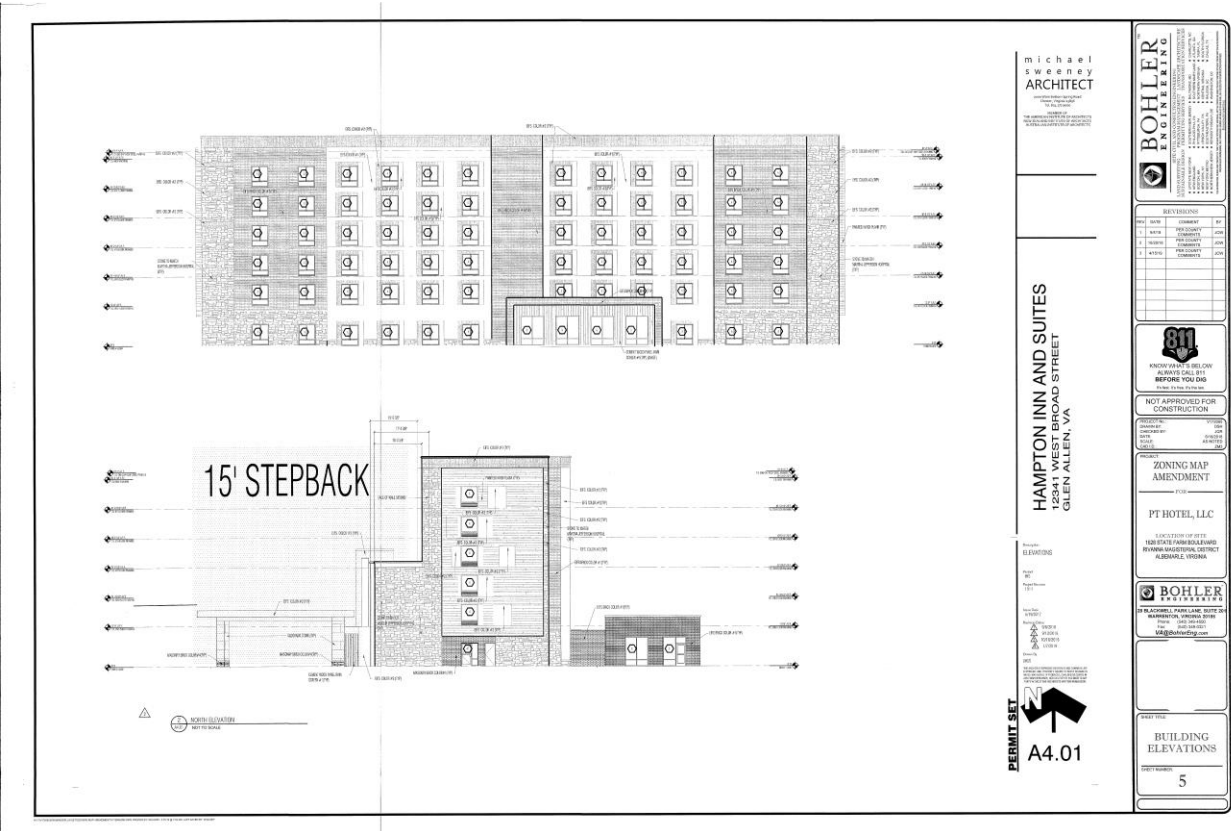


EXHIBIT 1.
MICHAEL SWEENEY V.P. PT HOTEL, LLC

Agenda Item No. 21. **Public Hearing: ZTA 201700001 Homestay (previously Transient Lodging).** To receive comments on its intent to recommend adoption of the following ordinance changes to the Albemarle County Code: ZTA 201700001 Homestay (previously Transient Lodging): Amend Section 18-3.1 to remove the definitions of bed and breakfast and tourist lodging and add a definition for homestay; Remove and Retitle Section 18-5.1.17 to Homestays; Retitle Section 18-5.1.48 from Bed and Breakfast to Homestays; Amend Section 18-5.1.48 to clarify that residency on a parcel requires at least 180 days of residency within a calendar year, require homestays in residential zoning districts and on Rural Area district parcels of less than 5 acres to be owner-occupied, require homestay owners to provide the owners' contact information to abutting property owners, permit an entire residence in the Rural Areas Zoning District to be rented for a maximum of 45 days in a calendar year and a maximum of seven days in any one month during the calendar year, and to permit homestays in duplexes, townhouses, and single family attached units in residential zoning districts; Amend Section 18-10.2.1 to replace the term bed and breakfast with homestay; Amend Sections 18-12.2.1, 18-13.2.1, 18-14.2.1, 18-15.2.1, 18-16.2.1, 18-17.2.1, 18-18.2.1, 18-20A.6 and 18-20B.6 to replace the term tourist lodgings with the term homestays; Amend Sections 18-19.3.1 and 18-20.3.1 to add homestays as a by-right

use; Amend Section 18-4.12.6 to replace the terms tourist lodging and bed and breakfast with homestay and require one off-street parking space per guest room in addition to the parking required for a single family dwelling.

(Advertised in the Daily Progress on June 3 and June 10, 2019.)

The Executive Summary forwarded to the Board states that on May 3, 2017, the Board of Supervisors prioritized the review of the homestay use (previously known as “transient lodging,” “bed and breakfasts,” and “accessory tourist lodging”) by adopting of a Resolution of Intent and related updates to the County’s taxation and licensing regulations. Many unlicensed homestays are not permitted under the current Zoning Ordinance regulations because they involve whole house rental (rental when the owner/manager is not present). Some of the proposed changes to the Homestay regulations include permitting whole house rental on large rural parcels when the owner/manager is not present, clarifying parking requirements, restricting the use of accessory structures, and updating terms and definitions associated with the use. Work sessions were held by the Board and Planning Commission regarding the scope, process and proposed text for the zoning text amendment (ZTA).

At its meeting on April 23, 2019, the Planning Commission recommended approval of ZTA 2017-01 by a 6-0 vote. The Commission suggested that the Board also consider the following information during its review (Attachment C):

- The possible negative neighborhood streetscapes resulting from paving front yard areas to meet off-street parking requirements
- The macro owner/occupancy requirement issue
- The definition of reside as it relates to the presence of the owner
- The configuration of properties that may be unable to meet the 125 ft. setback
- The number of rooms allowed on parcels less than five acres in size in the rural areas (RA) zoning district

Homestays were originally intended to supplement lodging for visitors to the City and County for events such as UVA graduation and football games. It also allowed homeowners to gain income from periodic rentals without changing the character of the area.

However, the Comprehensive Plan adopted in 2015 acknowledged the existence of many homestays that are not in compliance with the County’s homestay regulations, and suggested that staff examine this issue as noted in Attachment C.

The proposed ZTA addresses the following concerns regarding the impacts and opportunities related to Homestays in the district(s) in which the use is allowed:

- Potential for nuisance (noise, parking)
- Effect on Rural Areas development
- Effect on affordable housing stock

Staff believes zoning changes should be balanced with the County’s goals of protecting existing neighborhoods, ensuring affordable housing is available, and not commercializing the Rural Area. Staff believes that the current Albemarle County goals for tourism are different than those of resort cities. The draft ordinance language is contained in Attachment D. Additional staffing needs have been identified to close the compliance gap and implement annual inspections. This impact has been addressed through a budget funding request which was approved by the Board of Supervisors for FY2020.

Staff recommends that the Board adopt the attached Proposed Ordinance (Attachment D).

Mr. Bart Svoboda, Zoning Administrator/ Director of Zoning, presented. He said they have come up with areas of consensus through the help of the Planning Commission, staff, focus groups, and public meetings. He said the draft ordinance he would review was dated June 4, 2019. He said the other purpose of this meeting was to review the draft ordinance for any proposed revisions and/or adopt the proposal. He characterized homestays as an accessory transient lodging use of less than 30 consecutive days and so the regulation does not apply to longer term rental uses. He said that in cases where there was a preexisting use exemption it has to maintain its use and activity per those existing approvals. He explained that the purpose of the zoning text amendment was to address the Comprehensive Plan strategy that recommends transient lodging in both the rural and development areas to preserve residential character, to afford rural area protections, and to assure the safety of guests and the public. He presented a slide with a timetable, noting that work sessions were held in June, July, and September 2018, public engagement was conducted in January, with an additional work session in February, 2019, after which it returned to the Planning Commission in April, 2019, with today’s recommendation.

Mr. Svoboda said there are some minor changes in renting whole-house and for having an onsite manager. He noted that homestays are not permitted for townhouses and apartments, but only for single-family houses, and renting a detached structure in the development area and having weddings are not permitted. He said that special events are a separate use under rural areas and not part of the homestay use. He said the current language for residency was the owner of a parcel or manager of a bed and breakfast that must reside; they have taken out bed and breakfast while adding the term homestay and replaced minimum of 180 days with a number of days. To address parking, he said they have added the term, onsite, to be clear that it was in reference to the use that takes place on site. He noted that

restaurants are prohibited and they want to be clear that special events, other than attendees that are homestay guests, are not part of a special use.

Ms. Mallek asked for confirmation that only bed and breakfasts established before 1995 are allowed to serve dinner to their own guests.

Ms. Palmer asked if new bed and breakfasts would be permitted. Mr. Svoboda responded that the new definitions encompass all of that and the new term was homestay, which represents tourist lodging and bed and breakfasts.

Mr. Svoboda continued that they want to make sure that someone was available to address any issues or problems and have defined the term, responsible agent, as a designee to address complaints regarding the homestay use, who must be within 30 miles and 60 minutes. He said they have established pre-existing use approvals to be clear that if one has been approved and follows existing approvals then they could continue as is, while if they are changing things it was likely they would have to come into compliance with the changes.

Ms. Svoboda addressed the qualifications for a special exception. He said that more than two guest rooms or the use of an accessory structure on parcels less than five acres or the reduction of minimum applicable yards for a structure or parking used in whole or in part by a homestay would require notice. He next listed the rules for which there was consensus: rural areas greater than five acres, less than five acres, and residential.

Ms. Palmer remarked that the materials do a good job of explaining that the reason why they propose a 45-day total house rental in areas greater than five acres was so they could allow people to make a little extra money off their property. She recognized that some use the income to pay property taxes in order to keep a property in the family, though the intent was clearly to not commercialize the rural areas, while a bed and breakfast was a commercial enterprise. She asked where they are with the intersection of these two things and if a new bed and breakfast would also be limited to 45 days per year of total homestay. Mr. Svoboda responded that an individual could do 45 days with no more than seven days gone at one time, but also live there and continue the rental on other weekends.

Ms. Amelia McCulley, Deputy Director of Community Development, stated that it was important to remind everyone that the primary and ongoing use of these properties was residential, with the homestay being the accessory use, and this was important in order to maintain the character of residential neighborhoods.

Ms. Palmer pointed out that the owner of a bed and breakfast lives there but the primary use was commercial, and the lumping of everything into a homestay troubles her. Mr. Svoboda reassured her that this would not change, other than the name change from bed and breakfast to homestay. He explained that a homestay would generally be on more than five acres if one has five bedrooms while a traditional bed and breakfast has the majority of rooms rented up to five and that with over five rooms things are called hotels or motels.

Ms. Palmer asked if an owner of an existing licensed bed and breakfast would be allowed 45 days of total house rental and folded into the new regulation. Mr. Svoboda responded that the owner would be subject to existing approvals. Mr. Kamptner added that one could opt to come in under the homestay regulations.

Ms. Palmer remarked that she was troubled as to how they would police this. She said she understands the Department has requested a new Zoning Compliance Officer, though they may need more than one, and she asked if the Officer could be available on weekends when a lot of violations occur. Mr. Svoboda responded that this would be a budgeting and resource allocation matter and they would have to look into the data to determine the need as well as the Board's willingness to allocate resources.

Ms. Palmer asked how easy it was to hire zoning compliance officers. Mr. Svoboda responded that once the new budget year begins on July 1, they plan to bring a new officer on board; they have had a good pool of applicants. Ms. Palmer added that if the County is going to impose these types of regulations, it needs help policing them.

Mr. Randolph said he expects the County would not collect sufficient revenue from homestay fees to cover the cost of compliance officers, so that means general government revenues to cover this. He said an increased supply of homestays would reduce the use of hotels and therefore reduce the collection of transient occupancy taxes. He said he suspects they would rely on neighbors to inform the County about problems, many of which would occur on weekends, and the County has not imposed any consequences for violators and he sees the real weakness of this being that there are no teeth in terms of enforcement and compliance. Mr. Svoboda responded that the compliance officer was not being hired just to address homestays and was needed for other matters. He said County Code Chapters 6 and 7 establishes a registry that includes a three strikes rule and enforcement consequences are not found in the ordinance but in these chapters.

Mr. Dill asked for confirmation that transient occupancy taxes would be collected by homestay companies. Mr. Svoboda responded that the tax was not collected by the homestay company, though homestays are subject to the tax, and there was also a business license tax.

Ms. McCulley added that they are in partnership with the Department of Finance to close the compliance gap with existing operators and going forward they would have a combined website and work as a team to conduct inspections. She noted that there are hundreds of unlicensed operators that are not paying the tax to whom the County would proactively reach out with assistance, education, and workshops to help them through the process.

Ms. McKeel pointed out that this work was front loaded with a lot of work at the beginning but less ongoing.

Ms. Palmer asked if a violator that the County has to take to court could be billed for the County's court costs if the County wins, which was something she would support. Ms. Lisa Green, Senior Code Compliance Officer, responded that there was not a court cost per se, but there was a fine outlined by State law. Mr. Kamptner remarked that the court costs imposed in General District Court are nominal. Ms. Green added that the cost was attached to the fine. Mr. Kamptner said there is no cost for the County to file a warrant in debt and service, if it is done by the County's Sheriff. Ms. Palmer said she was thinking of lawyer's fees. Mr. Kamptner responded that they cannot do that. He said they would rely on the registry ordinance to offset the costs and zoning clearance fees. He said the zoning clearance fee is \$108 and staff was coming to the Board with a major fee update.

Ms. McKeel expressed concern with those who purchase a house with the intent to turn it into a homestay and hire a residential manager who was not the owner, particularly in residential areas. She asked why that continues to be allowed in the ordinance. Mr. Svoboda responded that this was discussed by the Planning Commission and the Commission dealt with this with the second part of its motion.

Ms. McKeel said she was going to push back on this and wants it to say owner occupant rather than residential manager. Mr. Svoboda responded that the impact was no different whether it was the owner renting as a homestay or the tenant renting as a homestay. Ms. McKeel reiterated that it is a way used to get around the ordinance.

Ms. Palmer commented that the reason she was okay with this before was because there are some larger properties in the rural areas where the families are trying to hang on to them.

Ms. McKeel said she was happy with this for the larger parcels and wants to address this with smaller parcels.

Ms. Mallek asked if a manager could be the manager for 10 properties or do they have to live on the property and are away for 45 days. She said that would have the same impact as the owner as you were describing, but there was a difference if it is a management company. Ms. McCulley clarified that it was one permanent residence.

Ms. McKeel reiterated her question as to whether or not one could buy a house and put in a resident manager, which she was not happy with, on smaller properties. Mr. Svoboda confirmed that one could do this.

Ms. Palmer remarked that the more she talks and thinks about this, the stricter she becomes.

Ms. McKeel said she sees this as a real weakness; there should be owner-occupancy. Ms. Palmer commented that she will not fight against that idea; she is fine with it.

Ms. McCulley commented that there was only one area in which the County requires owner occupancy right now; it was not required for home occupations but only for accessory apartments. She acknowledged that this gets difficult when someone was relocated and was difficult to enforce when you have corporate entities as the owner. She said staff can come forward with an ordinance that reflects what the Board wants and enforce it, though there are some complications to making it owner occupancy rather than manager and/or owner.

Ms. McKeel said she could give five examples of renters who have car repair businesses on quarter-acre lots with used cars piled up everywhere which was why they need to have owner occupancy.

Mr. Dill asked if a homestay owner was allowed to charge for food and drink. Mr. Svoboda responded that this was permitted for the guests but not for people coming from outside.

Ms. Palmer referenced Required Development Rights, Densities, and Limitations. She observed that if one has a development right an additional homestay was permitted. She asked if the development rights are theoretical or established. Mr. Svoboda responded that the same procedure would be followed as that to establish a primary or second residence.

Ms. Palmer explained that she wants to be sure that one cannot claim that, because a stove was not within the residence, that one does not have to go through all the hoops. Mr. Svoboda remarked that the County allows accessory structures to be used, which are not necessarily the second residence.

Ms. Palmer asked if an owner resident of a ten-acre property wants to do a homestay and put three yurts on if they have to get the development rights codified by the County or could the yurts be installed and have guests come to the main house for breakfast. Mr. Svoboda responded that if they were rooms then you are allowed to have those accessory structures with a limit of five. Ms. McCulley acknowledged that it gets confusing between dwellings and separate guest rooms.

Ms. Mallek brought up the case of a Hungarian bakery that had changes to accessory structures to allow use of a cottage over the garage, which involved existing buildings. She expressed concern with those who would build a second house on a property to use for this reason. Ms. McCulley explained that during discussion of the BnB amendments that allow the use of accessory structures, so that all the guest rooms do not have to be in the house, they talked about using existing buildings but did not mandate that only existing buildings could be used. Ms. Mallek said she needs to see the amendment as her understanding was that they would not see the building of accessory structures for this purpose.

There being no other questions for staff at this time, Mr. Gallaway opened the public hearing.

Mr. Bob Garland, resident of Jack Jouett District and representing Canterbury Hills Neighborhood Association, addressed the Board. He said he has continuously made the point with the Board that requiring the owner to be present helps to address the issue of affordable housing, as it prevents a company from buying a home and installing a resident manager. He said the only other objection they have to the ordinance was the phrase about the number of required parking spaces that makes an exception for when alternate parking was approved, as provided in Section 4.12.8. He said as he read it, that section allows on-street parking and it seems to him this phrase needs to be deleted if the intent was to only have onsite parking.

Mr. Travis Pietila, Southern Environmental Law Center, addressed the Board. He acknowledged that homestays are a complex topic and expressed appreciation to the County for taking additional time to carefully review the various issues involved before moving forward with this ordinance. He said they understand that homeowners want to be able to rent their homes to earn extra income or to help defray housing costs, however, these interests must be carefully balanced with other key goals of the Comprehensive Plan and with those of affected neighbors. He said their primary concern remains the potential effects of these changes on the centerpiece of the Comprehensive Plan, the Growth Management Policy, which directs new residential construction to the development areas to encourage more efficient development patterns and to help preserve the County's rural and natural resources.

Mr. Pietila said the ordinance has to make sure that they are not making homestays so lucrative that they encourage the construction of new houses in the rural area, which would not otherwise be built. He said they do not think the County wants to create a rush to convert existing rural homes to serve these uses either. He expressed support for key protections included in the current proposal that would help guard against these unintended results in the rural area. He urged the Board that should it decide to keep whole house rentals, to keep the proposed limits of 45 days per year and seven days per month, along with reporting requirements, which would still enable whole house rentals nearly every other weekend of the year, including every major travel weekend. He said that going beyond that creates a risk that commercial motivations would overtake the residential nature of many of these properties. He expressed support for keeping the requirement that the property must be used as a primary residence for at least half the year, otherwise, it would be much easier for those living out of town or state to build and rent new vacation homes in the county and make it easier for a person with a management company to convert several existing homes for this purpose. He pointed out that the Comprehensive Plan advises caution when making changes in the rural area and that any change should take place slowly to allow time to evaluate potential impacts. He indicated that the homestay issue was one that warrants this approach.

Mr. Michael Weber, resident of Malvern Farm on the corner of Dick Woods Road and Dry Bridge Road, addressed the Board. He said his parents bought the 186-acre property in 1969 and restored it, it was on the national register, and it was the last remaining farm on that stretch of Dick Woods Road. He expressed an understanding of those who would like to rent their property to help with costs of ownership but recognizes there was a big difference between doing this versus buying a property with the intent to use it as a revenue source. He expressed appreciation for the quality of the process, transparency, and the work of the Board and staff. He said the key issue for him was the replacement of the term transient occupancy with homestay, since it reflects the idea of a home, and once they start diverging from this principle they open a whole can of worms. He asked the Board to be as strict as possible, to consider homestay an exception, as something that could be done on occasion and not an opportunity for economic development. He said that a bed and breakfast should probably be considered a hotel.

Mr. Michael Zakin, resident of Samuel Miller District, addressed the Board. He said he wholeheartedly supports the remarks just made by Mr. Webber. He said the Board may have lost sight of the source of complaints they hear from their constituency involving BNBs, which was that there are more people staying than expected, and that without enforcement this was just talk. He gave an example of a guest renting two rooms and then inviting many friends over to a party and said this occurs in his neighborhood. Addressing the issue of having an owner on site, he said the size of the property should not be relevant and that an owner should be present regardless of size.

Mr. Elmer McCaskill, Samuel Miller District, addressed the Board. He said that he and his wife have had a homestay for four years and he thought it was a win-win-win. He said it helps his family pay the bills and maintain the house; it was a win for guests as they enjoy the farm; and it was a win for the County and State as they receive tax revenue. He said he has never had a neighbor complain and wonders why it has become a bad thing all of a sudden.

Ms. Cynthia McCaskill, resident of Samuel Miller District, addressed the Board. She said this has been a blessing for their family since they hold a County transient lodging business license, they pay their taxes, and she wonders why they are going to limit the number of days. She said it has been a great joy

for her and it brings tourism and revenue but now feels like she was doing something wrong and hopes the Board would not be limit them to 45 days per year.

Ms. Palmer asked Ms. McCaskill if she lives on her property when it was rented. Ms. McCaskill confirmed she does; the house they rent was built in 1750 and there is another house on the property in which they live. Ms. Palmer reassured her that she would not be affected by the 45 days.

With no other comments from the public, the public hearing was closed.

Mr. Gallaway asked if Mr. Garland's question about parking could be addressed. Mr. Svoboda responded that the parking regulations are included in Section 4.12.6 and there was a scheduled use, which was a homestay with an off-street space per guest in addition to what was required of the dwelling. He said Section 4.12.8 refers to some exceptions or alternate forms of parking.

Ms. McKeel recognized that there has been confusion as it seems like one offset the other, though she has heard from staff that this was not true and what they are really talking about was off-street parking. Mr. Svoboda responded that there was probably a way to clarify that the homestay was not subject to those exemptions as part of that schedule. Ms. McKeel expressed support for this.

Mr. Gallaway asked the McCaskills if they are doing whole-house rental or renting rooms. Ms. McCaskills responded that they rent a separate house.

Mr. Svoboda remarked that as an owner/resident manager the 45-day provision does not apply.

Mr. Gallaway said he thought they were capping whole-house rentals to 45 days/year for owners/managers.

Ms. Mallek clarified that whole-house means the owner was not present.

Mr. Svoboda clarified that if the owner resides on the parcel then the 45 days does not apply, whereas, if the owner does not reside on the parcel then the 45-day rule applies. He added that the guest cottage was subject to the 45-day limit, if the owner was not present.

Ms. McCulley suggested they think of whole-house as the entire property, which was how it was written into the ordinance. She emphasized that the owner must be present and residing on the property, with the exception of 45 days when one could do whole-house rental.

Ms. Palmer remarked that she was struggling with the difference between the 45-day whole-house rental homestay and a commercial bed and breakfast operation. She asked if a bed and breakfast was more of a hotel and if there should be a distinction.

Mr. Gallaway remarked that the primary use of a residence was as a residence while the primary use of a hotel was as a business.

Mr. Svoboda agreed that traditionally we think of a bed and breakfast in a different way from someone who just rents one room, however, by definition they are identical. He said that hotels operate under a different building code and have different standards.

Ms. Palmer asked if Zoning looks at the size of the septic system when reviewing applications. Mr. Svoboda confirmed that the Health Department verifies that the septic system was an appropriate size. He added that if food was served this was part of the review, as well as a building code inspection, and a fire/rescue inspection. He said they are looking to combine the inspections into one annual, comprehensive review, as well as annual registration and neighbor notification.

Ms. McKeel asked if the Board could receive a progress report in six months. Mr. Svoboda suggested they provide the report six months from August 7, 2019, when they review the other code sections. Ms. McKeel accepted Mr. Svoboda's suggestion.

Ms. Mallek asked how they would treat existing structures versus new buildings. She asked if they could have a five-year waiting requirement before a new structure could be involved in commercial activity. Ms. McCulley responded that this was the Board's prerogative to do, though it was not something staff has vetted. She added that if the Board wants to have owner occupancy only in the residential districts then staff would have to come back with a draft ordinance.

Mr. Kamptner added that staff would also have to come back with parking language.

Ms. McCulley asked Ms. Mallek to clarify her desire to have a five-year waiting period. She asked if she was referring to an accessory structure or to the house itself. Ms. Mallek responded that she was referring to building a house.

Ms. McCulley remarked that the change for BnBs allows people to use accessory structures and not put the guest rooms in the home. She said that to place a restriction, as requested by Ms. Mallek, would be much more complex.

Ms. Mallek asked if they are talking about a cottage with bedrooms but no kitchen that makes it a real house as something that could be prohibited from homestays under their current authority. Ms. McCulley clarified that the question was whether or not the County has the enabling authority to prohibit

the construction of new accessory structures to be used as homestay guest rooms. Mr. Kamptner said they could amend the ordinance so that any accessory structure coming under the ordinance would have to be in existence as of the adoption date.

Mr. Gallaway remarked that the special exceptions open up where he could support this, as there are some things he would not have tried to regulate or restrict, and a special exception gives them a way forward to think of site-specific impacts. He observed that in this instance, a special exception could be granted to build a new accessory structure if it was vetted properly and impacts addressed. He noted that they could cap homestay rentals to two rooms in the residential development areas, though there could be scenarios where a third or fourth room was appropriate, and the special exception opens the door to that. He stated that it was the special exceptions that are allowing him to vote for this ordinance, otherwise, he would have to vote against it. He said they cannot use this as a device to regulate behaviors that cannot be regulated and there has to be some consideration of the positives that come from it.

Ms. McKeel commended staff for a really good job and added that during the process they have been able to learn from what other communities have done. She recalled that one community used the term, "resident down the hall", instead of resident manager, to indicate that the manager was in the home.

Mr. Gallaway asked staff how long it would take to address the three items. Mr. Svoboda recapped that they would come back with the parking, accessory structure, and resident manager. He asked the Board if they want a resident manager for all three categories: rural area greater than five acres, rural area less than five acres, and residential.

Ms. McKeel responded that certainly for the residential.

Ms. Palmer suggested they also continue with five acres or less.

Ms. McKeel agreed with Ms. Palmer.

Mr. Randolph expressed a preference to have a consistent policy, regardless of acreage, so that the compliance officer does not have to measure a property. He said the special exception process could deal with a unique circumstance.

Ms. Mallek said she could agree with Mr. Randolph.

Mr. Gallaway said he does not quite understand what the size or acreage has to do with the resident manager requirement. He added that he had been persuaded to change his mind and require the owner to be present as a result of the affordable housing argument.

Ms. Palmer said she was fine with a resident manager and recognizes that there are good actors and she does not want to punish them. She said that compliance was a big issue.

Ms. McCulley offered to write and advertise the ordinance more restrictively and put that question to the Board when they come back. She said there was more consensus on smaller and residential properties, and the question was about the larger rural area properties.

Ms. Mallek remarked that there are many affordable but little properties in beautiful scenic areas of the rural areas. She said that not requiring the owner to be present means they are at much more risk of having their current tenants tossed out and turning them into rentals. She expressed support for Mr. Randolph's solution that they make it owner everywhere and see what happens.

Mr. Kamptner suggested the Board move to defer action to a specific date.

Ms. Palmer **moved** that the Board defer action on ZTA20170001, homestay, to August 7, 2019. The motion was **seconded** by Mr. Randolph.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Randolph, Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Ms. Palmer.
NAYS: None.

Ms. Mallek asked if the Board could have a presentation at this meeting about the software, how it is being used, whether the focus was on new people or those that have been working for years. Ms. McCulley said she would work with Rocio Lamb, Chief of Revenue Administration, Department of Finance.

Board members thanked staff for all their work.

Agenda Item No. 22. From the Board: Committee Reports and Matters Not Listed on the Agenda.

There were no further matters from the Board.

Agenda Item No. 23. From the County Executive: Report on Matters Not Listed on the Agenda.

There were no further matters from the County Executive.

Agenda Item No. 24. Adjourn to July 3, 2019, 1:00 p.m., Lane Auditorium.

At 9:29 p.m., Mr. Gallaway adjourned the Board meeting to July 3, 2019 at 1:00 p.m., in the Lane Auditorium.

Chairman

Approved by Board
Date 02/05/2020 Initials CKB