



**CITY COUNCIL AGENDA
November 2, 2020**

Members

Nikayah Walker, Mayor
Sena Magill, Vice Mayor
Heather D. Hill
Michael K. Payne
J. Lloyd Snook, III

**5:00 p.m. Closed session as provided by Sections 2.2-3711 and 2.2-3712 of the Virginia Code
(Public contract, legal advice, personnel)**

Virtual/electronic meeting

6:30 p.m. Regular Meeting

Virtual/electronic meeting. Register at www.charlottesville.gov/zoom

CALL TO ORDER

MOMENT OF SILENCE

ROLL CALL

AGENDA APPROVAL **APPROVED 5-0 (MAGILL/HILL)**

ANNOUNCEMENTS

CONSENT AGENDA* **APPROVED 5-0 (HILL/MAGILL)**

1. Minutes: September 21 closed and regular meetings, September 30 work session
2. **Resolution:** Measurements and Solutions Group reporting deadline extension (1
#R-20-139 reading)
3. **Appropriation:** Victim Witness Assistance Program Grant - \$265,024 (2nd reading)
#A-20-140
4. **Appropriation:** Annie E. Casey Foundation Grant Award - \$10,000 (2nd reading)
#A-20-141
5. **Appropriation:** Virginia Juvenile Community Crime Control Act Grant (VJCCCA) -
#A-20-142 \$452,704 (2nd reading)
6. **Ordinance:** Authorizing a Grant of Public Funding to Subsidize Construction of For-
#O-20-143 Rent Affordable Housing to be Occupied by Persons of Low and Moderate
#O-20-144 Income as Part of a Redevelopment of Public Housing (2nd reading):
 - a. South First Street Phase One Redevelopment
 - b. Crescent Halls Redevelopment
7. **Ordinance*:** Authorization of a Forgivable Loan to Piedmont Housing Alliance to
#O-20-145 Support Redevelopment of Friendship Court for the Purpose of Producing
New Housing for Low and Moderate Income Persons (2nd reading)
8. **Appropriation:** Housing Opportunities for People with AIDS/HIV (HOPWA) Covid
#A-20-146 Supplement- \$20,050 (2nd reading)
9. **Appropriation:** Virginia Department of Education Special Nutrition Program Child and
Adult Care Food Program - \$30,000 (1st of 2 readings)

10. Appropriation: Virginia Outdoors Foundation Grant - Ragged Mountain Land Acquisition - \$65,000 (1st of 2 readings)
11. Appropriation: Runaway Emergency Shelter Program Grant - \$209,444.00 (1st of 2 readings)
12. Appropriation: Local Emergency Management Performance Grant (L.E.M.P.G.) - \$7,500 (1st of 2 readings)

CITY MANAGER RESPONSE TO COMMUNITY MATTERS (FROM PREVIOUS MEETINGS)

COMMUNITY MATTERS Public comment for up to 16 speakers (limit 3 minutes per speaker). Preregistration available for up to 8 spaces; preregistered speakers announced by Noon the day of the meeting. Additional public comment period at end of meeting. Public comment will be conducted through electronic participation as City Hall is closed to the public. Participants can register in advance at www.charlottesville.org/zoom.

ACTION ITEMS

13. Ordinance: Amendment to the text of Chapter 34 (Zoning Ordinance) of the City of Charlottesville, 1990, as amended, to provide updates to family day home uses (1st of 2 readings)
14. Allocation*: Bridge Ministry Request for Allocation of \$54,750 of CARES Contingency Reserve (1 reading) **APPROVED 5-0 (HILL/SNOOK)**

GENERAL BUSINESS

15. Report: Update on unmarked burials near the Gilmer/Craven/Hotopp Cemetery at Pen Park
16. Report: Mapping Cville Update

OTHER BUSINESS

MATTERS BY THE PUBLIC

*Action Needed

NOTE: Individuals with disabilities who require assistance or special arrangements to participate in the public meeting may call the ADA Coordinator at (434) 9703182 or submit a request via email to ada@charlottesville.gov. The City of Charlottesville requests that you provide a 48 hour notice so that proper arrangements may be made.

RESOLUTION

Whereas, on June 17, 2019, City Council established an advisory commission referred to as the “Measurements and Solutions Group” (M.S.G.) and set a timeline for the M.S.G. to complete its work and to report back to City Council in May 2020; and

Whereas, due to constraints of the state of emergency caused by COVID-19, the M.S.G. was unable to meet to complete its work, and City Council desires to establish a new timeline for the M.S.G.’s work to be performed with a deadline of May 2021 for the group to make its report back to City Council;

NOW, THEREFORE, be it resolved by the Council of the City of Charlottesville, Virginia that:

City Council hereby ratifies its June 17, 2019 Resolution establishing a Measurements & Solutions advisory Group (“M.S.G.”) to identify appropriate measurements, benchmarks, solutions and metrics for the designated priority areas (Jobs/Wages, Affordable Housing, Public Health Care, and Education) for use in The Vibrant Community Funding process by which the city funds nonprofit organizations, provided that, by approval of this Resolution, this advisory group shall have until May 2021 to complete its work and make its final report back to City Council.

APPROPRIATION

Charlottesville Victim Witness Assistance Program Grant

\$265,024

WHEREAS, The City of Charlottesville, through the Commonwealth Attorney’s Office, has received an increase in the Victim Witness Program Grant from the Virginia Department of Criminal Justice Services in the amount of \$224,024; and

WHEREAS, the City is providing a supplement in the amount of \$41,000, the source of which is the Commonwealth’s Attorney’s operating budget;

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the sum of \$224,024 is hereby appropriated in the following manner:

Revenues

\$ 56,006	Fund: 209	Cost Center: 1414001000	G/L Account: 430110
\$168,018	Fund: 209	Cost Center: 1414001000	G/L Account: 430120
\$ 41,000	Fund: 209	Cost Center: 1414001000	G/L Account: 498010

Expenditures

\$251,000	Fund: 209	Cost Center: 1414001000	G/L Account: 519999
\$ 14,024	Fund: 209	Cost Center: 1414001000	G/L Account: 599999

Transfer

\$ 41,000	Fund: 105	Cost Center: 1401001000	G/L Account: 561209
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BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$224,024 from the Virginia Department of Criminal Justice Services.

APPROPRIATION
Annie E. Casey Foundation
\$10,000

WHEREAS, the City of Charlottesville has been awarded \$10,000 from the Annie E. Casey Foundation;

WHEREAS, the funds will be used to purchase equipment identified by the collaborating members of the capstone project cohort;

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$10,000 is hereby appropriated in the following manner:

Revenue – \$10,000

Fund: 210 Internal Order: 1900382 G/L Account: 431110

Expenditures - \$10,000

Fund: 210 Internal Order: 1900382 G/L Account: 519999

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$10,000 from the Annie E. Casey Foundation.

APPROPRIATION
Virginia Juvenile Community Crime Control Act Grant (VJCCCA)
\$452,704

WHEREAS, the City of Charlottesville has been awarded \$292,058 from the Virginia Department of Juvenile Justice; and

WHEREAS, this grant requires local maintenance of effort funds in the amount of \$52,231 from Albemarle County and \$108,415 from the City; and

WHEREAS, the grant award covers the period from July 1, 2020 through June 30, 2021.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$452,704 is hereby appropriated in the following manner:

Revenue – \$452,704

\$292,058	Fund: 220	Cost Center: 3523001000	G/L Account: 430080
\$52,231	Fund: 220	Cost Center: 3523001000	G/L Account: 432030
\$108,415	Fund: 220	Cost Center: 3523001000	G/L Account: 498010

Expenditures - \$452,704

\$ 53,075	Fund: 220	Cost Center: 3523001000	G/L Account: 519999
\$399,629	Fund: 220	Cost Center: 3523001000	G/L Account: 530010

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$292,058 from Virginia Department of Juvenile Justice, and \$52,231 from Albemarle County.

ORDINANCE
AUTHORIZING A GRANT OF PUBLIC FUNDING
TO SUBSIDIZE CONSTRUCTION OF FOR-RENT AFFORDABLE
HOUSING TO BE OCCUPIED BY PERSONS OF LOW AND MODERATE
INCOME AS PART OF A REDEVELOPMENT OF PUBLIC HOUSING
(SOUTH FIRST STREET PHASE ONE REDEVELOPMENT)

WHEREAS, the production of new housing for persons of low and moderate income is a public purpose and use for which the General Assembly has authorized public funds to be expended, and such production is a governmental function of concern to the Commonwealth of Virginia; and

WHEREAS, pursuant to Virginia Code §15.2-958 the City of Charlottesville may, by ordinance, make grants or loans to the owners of residential rental property occupied, or to be occupied, following construction, by persons of low or moderate income; and

WHEREAS, Charlottesville Redevelopment and Housing Authority (“CRHA”) is a political subdivision of the Commonwealth of Virginia, organized and operating under the laws of the Commonwealth of Virginia and having the purposes and authority set forth within Virginia Code Title 36, Chapter 1 (Housing Authorities Law), and the City of Charlottesville, acting by and through its City Council, is authorized to make grants or loans to CRHA to enable or assist CRHA to carry out its purposes; and

WHEREAS, pursuant to Virginia Code § 36-19.2 the City of Charlottesville has requested that the CRHA address the redevelopment of existing public housing sites and the provision of additional affordable housing units that will be committed for rental to persons of low and moderate income; and

WHEREAS, CRHA is planning the redevelopment of its property on South First Street in multiple phases, funded by Low Income Housing Tax Credit (LIHTC) program funding, loans, private donations, and a grant of local funding from the City of Charlottesville; and

WHEREAS, CRHA has requested the City of Charlottesville award a grant of funding to subsidize the costs of producing new units of residential rental property occupied, or to be occupied, following construction, by persons of low and moderate-income, said undertaking being described in CRHA’s Mixed Finance Development Proposal submitted to the Department of Housing and Urban Development in 2020, referred to as “South First Street Phase One” (the “Project”), as well as to subsidize the costs of maintaining those units in residential rental use for a period longer than ten years; and

WHEREAS, the City is willing to provide the requested local funding, subject to certain certifications and assurances, and binding obligations, as set forth within this Ordinance; and

WHEREAS, in consideration of the funding to be provided by the City for the Project, CRHA has agreed to provide certifications and assurances, and to enter into certain binding obligations, as set forth within this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Charlottesville City Council that local public funding is hereby approved, subject to the following conditions:

Section 1. Public purpose of the City Grant

A grant of City funding (“Grant Funds”) is hereby authorized (i) to support the construction of new for-rental housing units within a housing development project referred to as South First Street Phase One (“Project”), as more specifically described herein below, and (ii) to support the operation of the residential units within the Project in residential rental use, over a period of no less than fifteen (15) years, or the expiration of the initial compliance period applicable to the Project under the Low Income Housing Tax Credit Program (“LIHTC”), whichever first occurs.

Section 2. Representations and warranties; remedies for breach

The Charlottesville Redevelopment and Housing Authority (“CRHA”), the Charlottesville Community Development Corporation (“CCDC”), and South First Phase One, LLC (the “Project Owner”), shall through their duly authorized officers, members, or agents, execute a written acceptance of the terms and conditions of the Grant Funding awarded by this Ordinance, and as part of that written acceptance each entity shall verify that they have made the following representations and warranties to the City, each of which is a material representation and warranty that has induced the City to make this Grant:

(A) The CCDC is the Developer of the Project.

(B) Grant Funds provided for the purpose of supporting the production of affordable residential rental units shall be used or expended exclusively for costs and expenditures expressly authorized within Section 3, Paragraph (A), herein below.

In the event of a breach of this warranty, then in addition to any other remedies available to the City, CRHA and the CCDC shall be jointly and severally obligated to repay to the City all amount(s) used or expended in breach of this warranty. All amounts to be repaid to the City shall be due and owing to the City within thirty (30) days after the written notice of breach given by the City, unless the breach is cured by the CCDC or CRHA within the 30-day period. (Due Date: 30 days after the date of the notice). If the City does not receive payment in full within the 30-day period, then the City shall not thereafter make any additional disbursement(s) of Grant Funding referenced within Section 3 (A) of this Ordinance, and the City shall have the right to institute proceedings to collect the amounts due under this paragraph.

(C) Following completion of construction, each of the residential units within the Project shall be reserved for rental by low and moderate income individuals throughout a term (“Affordability Period”) that is co-extensive with the term of a long-term ground lease entered into between CRHA, as landlord, and the Project Owner, as tenant (“Ground Lease”). The Ground Lease shall contain the following terms and conditions: for the first forty (40) years of the term of the Ground Lease, the demised premises described therein shall be used exclusively for

residential purposes and related amenities; thereafter, in addition to residential uses previously established within the Project, the premises may also be used for commercial purposes. CRHA shall not amend the Ground Lease to modify or delete the provisions required by this paragraph, except with the advance written notice to the City.

In the event of a breach of this warranty, then in addition to any other remedies available to the City, the City shall give written notice to CRHA and the Project Owner and, if the breach is not cured within thirty (30) days after the date of such notice, the City shall not thereafter make any additional payment(s) of Grant Funds under Section 3(B) of this Ordinance.

(D) On the date as of which construction of the Project is complete:

(i) the Project shall include no fewer than thirteen (13) units of Public Housing legally obligated to be operated in accordance with Va. Code §36-22 and/or federal public housing requirements, including, without limitation, a Declaration of Trust/ Restrictive Covenants recorded in the land records of the City; and

(ii) in addition to the required public housing units, the Project shall contain no fewer than forty-nine (49) for-rent affordable dwelling units legally obligated to be operated as follows: twenty-four (24) units shall participate in the project-based [federal] Section 8 program, and twenty-five (25) units shall be legally obligated to be reserved for occupancy by persons having a household income at or below sixty-percent (60%) of Charlottesville's Area Median Income.

For purposes of this paragraph (D) the term "legally obligated" refers either to a land use restriction imposed within an instrument recorded in the land records of the Charlottesville Circuit Court, or to a grant assurance or obligation given to the Department of Housing and Urban Development, the Virginia Department of Housing and Community Development or other federal or state public agency or funding source.

In the event of a breach of the warranties set forth in this paragraph (D), in addition to any other remedies available to the City, the City shall give written notice of breach to CRHA and the Project Owner and, if the breach is not cured within thirty (30) days after the date of such notice, the City shall not thereafter make any additional payment(s) of Grant Funds under Section 3 (B) of this Ordinance.

(E) CRHA will continue to make annual payments in lieu of taxes (PILOT) to the City, in accordance with the Cooperation Agreement entered into between the City and CRHA, dated May 13, 1958, as amended, provided that any residential units within the Project that are owned by an entity other than CRHA or CCDC will not be part of the PILOT calculation.

(F) CRHA will prepare a written **Sustainability Plan** for the purpose of demonstrating the levels at which CRHA and the Project Owner will establish and provide operational funding and capital and other reserves sufficient to assure the continued use of all of the residential units within the Project as affordable rental units for a period not less than 40 years from the Commencement Date of the Ground Lease for the Project. The Sustainability Plan shall be given to City Council

in writing, and it shall be presented to City Council at a public meeting for Council's discussion and consideration. No City funding will be approved by Council for Phase Two of the redevelopment of CRHA's South First Street property, until CRHA has obtained a vote of confidence, by a majority vote of City Council, affirming that Council is satisfied as to the adequacy of the Sustainability Plan.

(G) Miscellaneous

i. City shall have a right to compel performance of these warranties by CRHA, the CCDC and the Project Owner, and to collect any payments due to the City, through legal action initiated within a court having jurisdiction within the City of Charlottesville, Virginia.

ii. Interest shall accrue at the rate of six (6) percent per annum on all amounts due and owing to the City pursuant to this Section 2, from the Due Date until paid.

iii. No forbearance by the City in exercising any right or remedy afforded either by this Ordinance, or by the laws of the Commonwealth of Virginia, shall constitute a waiver of or preclude the exercise of any such right or remedy. The rights and remedies set forth within this Ordinance are cumulative and the use of any one right or remedy by the City shall not preclude or waive its right to use any or all other remedies. All of said rights and remedies are in addition to any other rights the City may have by law, statute, ordinance or otherwise.

iv. Throughout the fifteen (15) year initial compliance period of the LIHTC program, the Project Owner will promptly notify the City of its receipt of any notice or determination stating that the Project does not comply with the requirements of the LIHTC program, and the Project Owner shall provide a copy of any such notice or determination to the City Attorney.

Section 3. Authorized Expenditures; Budget

(A) City Council hereby approves funding in an amount up to **\$1,125,000** to subsidize the cost of producing new units of residential rental property occupied, or to be occupied, following construction by persons of low and moderate income. Grant Funds disbursed as authorized by this Ordinance shall not be used or expended for payment of current expenses of CRHA, the CCDC or any other legal entity. The Grant Funds shall be used only to pay the following costs of the Project (subject further to the limit on "soft costs" as set forth below): the cost of improvements, property or equipment, the cost of construction or reconstruction, the cost of all labor, materials, machinery and equipment, the cost of all land, property, rights, easements and franchises acquired, financing charges, interest before and during construction and for up to one year after completion of construction, Project start-up costs, and operating capital for the Project, and other expenses as may be necessary or incident to the financing or construction of the Project.

Notwithstanding the foregoing:

- i. not more than **\$144,000.00** of the Grant Funds shall be used to pay “soft costs”, including, without limitation, the cost of plans and specifications, surveys and estimates of cost and of revenues, the cost of engineering, legal and other professional services, expenses incident to determining the feasibility or practicability of the project, the Developer’s administrative expenses, amounts to be deposited to reserve or replacement funds, and other similar expenses associated with Project feasibility, planning or design;
- ii. if construction of the buildings within the Project is not commenced on or before **June 30, 2021**, this Grant shall expire and the City shall have no obligation to the Recipient hereunder; and
- iii. the CCDC shall establish a Budget for construction of the Project, and will submit the Budget to the City for its review. The City will communicate in writing to the CCDC within ten (10) business after receipt of the Budget whether or not the City has any concerns. After the Budget is reviewed and the City has responded to Recipient, all subsequent changes to the Budget shall likewise be subject to review and comment by the City.

(B) In addition to the funding approved in Section 3(A), above, City Council also hereby approves an annual recurring subsidy for the purpose of inducing CRHA, CCDC and the Project Owner to undertake and complete the Project and as an inducement for the Project Owner to operate the Project pursuant to the terms of this Ordinance. The amount of the annual subsidy shall be the dollar amount of the real estate taxes assessed and billed to the Project owner for each tax year (January 1 – December 31). This subsidy shall be available with respect to the Project for a total of fifteen (15) tax years, beginning with the first tax year in which the Project Owner receives a real estate assessment and bill for the Project, or until the expiration of the LIHTC initial compliance period, whichever first occurs. Notwithstanding the foregoing, the subsidy shall not be payable by the City within any tax year in which the household incomes of renters, and maximum rents, of residential units within the Project are not in compliance with income and rent requirements set forth within the Extended Use Agreement executed by the Project Owner for and in connection with the LIHTC Tax Credit program. The annual subsidy shall be paid as a grant by the City to CRHA. CRHA agrees to provide said grant funds to CCDC, which will in turn provide a loan of those funds to the Project Owner for use in the development and operation of the Project in compliance with the terms of this Ordinance.

- i. While recognizing that it is not empowered under Virginia law to make any binding commitment beyond the current fiscal year of the City, it is the current intention of the Council to make sufficient annual appropriations to fund the annual subsidy for which Grant Funds are approved under this Section 3 (B). To that end, the City Manager or other officer charged with the responsibility of preparing the City’s budget shall include in the proposed budget for each fiscal year of the City a request that the Council

appropriate sufficient amounts to cover the annual subsidy referenced within this Section 3 (B).

- ii. If at any time during any fiscal year of the City, the amount appropriated in the City's annual budget is insufficient to pay the annual subsidy referenced within this Section 3 (B), then the City Manager or other officer charged with the responsibility of preparing the City's budget shall submit to the Council, as promptly as practicable, a request for a supplemental appropriation sufficient to cover the deficit.

Section 4. Disbursement of Grant Proceeds

(A) Preconditions, General

No City official or employee shall disburse any Grant proceeds authorized by Section 3 (A) or 3 (B), unless and until the Recipient has furnished all of the following documents to the City for the Project:

- i. Evidence of HUD Approval: copies of all written approvals required from the Department of Housing and Urban Development for the Project, specifically including, without limitation: HUD's approval of Recipient's applications seeking approval of a Mixed Finance Development and for approval of a Demolition/Disposition of Recipient's property.
- ii. Documents of Record: copies of each of the following fully-executed documents, or written notice given to the City identifying the deed book and page number at which the documents are recorded in the land records of the Charlottesville Circuit Court (if the documents are required to be recorded):
 - a. Memorandum of the Ground Lease for the Project (fully-executed) along with a fully-executed copy of the Ground Lease for the Project;
 - b. HUD Declaration of Trust/ Restrictive Covenants for the Project;
 - c. The Regulatory and Operating Agreement executed for the Project by and among the members of the entity that is the Project Owner;
 - d. A copy of the Consolidated Annual Contributions Contract ("ACC"), number P-5513, dated August 30, 1996, and all amendments thereto
 - e. Fully-executed Mixed-Finance Development Certifications and Assurances (HUD) for the Project
 - f. Fully-executed Extended Use Agreement executed by the Project Owner for and in connection with the LIHTC Tax Credit Program.

- iii. Construction Contract and Schedule: a copy of the contract for construction executed between the Project Owner and the General Contractor for Construction, and a copy of the approved Construction Schedule that will be implemented by the Construction Contractor.
- iv. Building Permit: evidence that a building permit for the Project has been approved and issued.
- v. The Budget for the Project (see Section 3, above).

(B) Disbursements for Expenditures Authorized by Section 3 (A)

- i. CRHA or the CCDC may, in writing, request disbursements of the Grant Funds authorized by Section 3 (A) of this Ordinance, and disbursements may be made by the City from time to time, as construction of the Project progresses. Disbursement requests may be submitted to the City, no more frequently than the following Milestone Dates, and only in the amounts indicated:
 - a. **Request 1 (not to exceed \$500,000)**: may be submitted on or after the date on which the City verifies that it is in possession of all of the documents referenced in 4(A), above. Disbursement Request 1 shall not be deemed complete until the City verifies that it has received all of the required documents. The City's receipt of all of the required documents is a condition precedent to any obligation on the City's part to disburse the Grant Funds.
 - b. **Request 2 (not to exceed \$343,750)**: may be submitted to the City on or after the date on which the City verifies that it has received all of the following: **(i)** a document verifying the date on which construction was commenced; **(ii)** a copy of the first payment application submitted by the General Construction Contractor to the Project Owner, **and (iii)** copies of financial and accounting records kept in the normal course of business, demonstrating to the satisfaction of the City that all Grant Funds disbursed in response to Request 1 were used only to pay costs authorized pursuant to Section 3(A), above. Financial and accounting records shall include, without limitation: copies of invoices for specific amounts, written descriptions of the materials or services described in the invoices in sufficient detail to demonstrate eligibility for Grant Funding pursuant to Section 3(A), above, and corresponding evidence of payment of said invoices by check, wire transfer, etc. Purchase Orders or other encumbrances shall not be acceptable as evidence of payment. Disbursement Request 2 shall not be deemed complete until the City verifies that it has received all of the required documents and records. The City's

receipt of all the required documents and records is a condition precedent to any obligation on the City's part to disburse the Grant Funds to the Recipient.

- c. **Request 3 (not to exceed \$281,250)** may be submitted to the City on or after the date on which the City verifies that it has received all of the following: **(i)** copies of financial and accounting records kept in the normal course of business, demonstrating to the satisfaction of the City that all Grant Funds disbursed in response to Request 2 were used only to pay costs authorized pursuant to Section 3(A), above. The words "financial and accounting records" shall mean and include, without limitation: copies of invoices for specific amounts, written descriptions of the materials or services described in the invoices in sufficient detail to demonstrate eligibility for Grant Funding pursuant to Section 3(A), above, and corresponding evidence of payment of said invoices by check, wire transfer, etc. Purchase Orders or other encumbrances shall not be acceptable as evidence of payment.; **(ii)** evidence, satisfactory to the City, that no Grant Funds previously disbursed to Recipient remain unspent (i.e., financial and accounting records demonstrate that all previously-disbursed Grant Funds have been used to pay costs authorized pursuant to Section 3 (A) of this Ordinance); **(iii)** a budget-to-actual expenditure report for the Project, current through the date of the disbursement request; and **(iv)** a Construction Schedule report, documenting the actual progress of construction (inclusive of public infrastructure and housing units) compared with the approved Construction Schedule for the Project. Disbursement Request 3 shall not be complete, until the City verifies that it has received all of the required documents. The City's receipt of all the requested documents is a condition precedent to any obligation on the City's part to disburse the Grant Funds to the Recipient.

- ii. The City shall issue payment of Grant Funds to the Recipient, in the specified amount, within 30 days of the City's receipt of a complete Disbursement Request. It shall be the sole responsibility of CRHA, the CCDC and the Project Owner to deliver all required documents to the City as a complete application package, along with any written Disbursement Request Form the City Manager or Finance Director may require.

(C) Payment of the Annual Subsidy Authorized by Section 3(B)

The City Manager, in consultation with the City Assessor and the Treasurer, shall establish administrative forms and procedures by which CRHA may request and receive the annual subsidy authorized by Section 3(B) of this Ordinance.

Section 5. General Grant Conditions

(A) Compliance with Government Requirements. In all of its actions and activities undertaken to provide for the construction, management and operation of the Project, the Recipient shall comply with:

- i. Any Recovery Agreement entered into between Recipient and the Department of Housing and Urban Development on or after July 1, 2020,
- ii. The 1958 Cooperation Ordinance between CRHA and the City, as amended,
- iii. The Consolidated Annual Contributions Contract (“ACC”), number P-5513, dated August 30, 1996, and all amendments thereto,
- iv. The Ground Lease between CRHA and the Project Owner,
- v. The Declaration of Trust/ Restrictive Covenants for the Project,
- vi. The Regulatory and Operating Agreement between CRHA and the Project Owner,
- vii. HUD’s Mixed-Finance Development Certifications and Assurances for the Project, and
- viii. Any other legal obligations and requirements imposed on the Project, or any aspect of the Project, as a result of any federal or state law, regulation or grant Ordinance, or by any City ordinance.

(B) Project Approval. By its adoption of this Ordinance, the City Council approves the Project for which the Grant Funds are awarded and requests the Recipient to construct and operate the Project. (Va. Code §36-19(2)). Before the Recipient gives final approval to the Budget for the Project, Recipient shall hold at least one public hearing to receive the views of residents of the City of Charlottesville. The Recipient shall cause public notice to be given at least 10 days prior to the public hearing, by publication in a newspaper having a general circulation within the City of Charlottesville, as required by Va. Code §36-19.2.

(C) Public Disclosure of Ordinance Documents: The Recipient acknowledges and understands that this Ordinance, and all related public proceedings and records, shall be open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (Va. Code §2.2-3700 et seq.) and the Virginia Public Procurement Act (Va. Code §2.2-4300 et seq.) to the extent that either of those laws applies.

(D) No Waivers: No failure on the part of the City to enforce any provision(s) of this Ordinance shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the City of any breach or failure to perform by the Recipient shall be construed as or deemed to be a waiver of any other and/or subsequent breach or failure to perform.

(E) Severability: In the event that any term, provision, or condition of this Ordinance, or the application thereof to any person or circumstance, shall be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this Ordinance, and the application of any term, provision or condition contained herein, to any person or

circumstance other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

(F) No Other Understandings: There are no understandings or agreements between the City and the Recipient, other than those set forth within this Ordinance, and the provisions of this Ordinance supersede all prior conversations, discussions, correspondence, memoranda, or other communications between or among any employees or officials of the City and the Recipient.

(G) Notices: All notices required by this Ordinance shall be given in writing, and shall be deemed to be received on the date that is either:

- i. five (5) business days after being mailed by first class mail, postage prepaid, return receipt requested, or
- ii. one (1) business day after being placed for next day delivery with a nationally recognized overnight courier service, or
- iii. the same date on which the notice is delivered by hand to the City.

All notices shall be addressed as follows: (i) if given to the City—to the City Manager, with a copy to the City Attorney, each to: 605 East Main Street, Second Floor, City Hall (P.O. Box 911), Charlottesville, Virginia, 22902, or (ii) if given to the Recipient—to Charlottesville Redevelopment and Housing Authority, Attention: Executive Director, 500 South 1st Street, Charlottesville, Virginia, 22902.

(H) Authorized Signatures: The Clerk of Council shall provide a certified copy of this Ordinance, along with a written Grant Acceptance Form approved by the City Attorney. The Grant Acceptance Form shall be signed by a duly authorized officer, member or agent of CRHA, the CCDC, and the Project Owner.

ORDINANCE
AUTHORIZING A GRANT OF PUBLIC FUNDING
TO SUBSIDIZE CONSTRUCTION OF FOR-RENT AFFORDABLE
HOUSING TO BE OCCUPIED BY PERSONS OF LOW AND MODERATE
INCOME AS PART OF A REDEVELOPMENT OF PUBLIC HOUSING
(CRESCENT HALLS RENOVATION/ REDEVELOPMENT)

WHEREAS, the production of new housing for persons of low and moderate income is a public purpose and use for which the General Assembly has authorized public funds to be expended, and such production is a governmental function of concern to the Commonwealth of Virginia; and

WHEREAS, pursuant to Virginia Code §15.2-958 the City of Charlottesville may, by ordinance, make grants or loans to the owners of residential rental property occupied, or to be occupied, following construction, by persons of low or moderate income; and

WHEREAS, Charlottesville Redevelopment and Housing Authority (“CRHA”) is a political subdivision of the Commonwealth of Virginia, organized and operating under the laws of the Commonwealth of Virginia and having the purposes and authority set forth within Virginia Code Title 36, Chapter 1 (Housing Authorities Law), and the City of Charlottesville, acting by and through its City Council, is authorized to make grants or loans to CRHA to enable or assist CRHA to carry out its purposes; and

WHEREAS, pursuant to Virginia Code § 36-19.2 the City of Charlottesville has requested that the CRHA address the redevelopment of existing public housing sites and the provision of additional affordable housing units that will be committed for rental to persons of low and moderate income; and

WHEREAS, CRHA is planning the renovation and redevelopment of its property known as Crescent Halls, funded by Low Income Housing Tax Credit (LIHTC) program funding, loans, private donations, and a grant of local funding from the City of Charlottesville; and

WHEREAS, CRHA has requested the City of Charlottesville award a grant of funding to subsidize the costs of renovating existing units of residential rental property occupied, or to be occupied, following construction, by persons of low and moderate-income, said undertaking being described in CRHA’s Mixed Finance Development Proposal submitted to the Department of Housing and Urban Development in 2020, referred to as “Crescent Halls” (the “Project”), as

well as to subsidize the costs of maintaining those units in residential rental use for a period longer than ten years; and

WHEREAS, the City is willing to provide the requested local funding, subject to certain certifications and assurances, and binding obligations, as set forth within this Ordinance; and

WHEREAS, in consideration of the funding to be provided by the City for the Project, CRHA has agreed to provide certifications and assurances, and to enter into certain binding obligations, as set forth within this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Charlottesville City Council that local public funding is hereby approved, subject to the following conditions:

Section 1. Public purpose of the City Grant

A grant of City funding (“Grant Funds”) is hereby authorized (i) to support the renovation of existing for-rental housing units within a housing development project referred to as Crescent Halls (“Project”), as more specifically described herein below, and (ii) to support the operation of the residential units within the Project in residential rental use, over a period of no less than fifteen (15) years, or the expiration of the initial compliance period applicable to the Project under the Low Income Housing Tax Credit Program (“LIHTC”), whichever first occurs.

Section 2. Representations and warranties; remedies for breach

The Charlottesville Redevelopment and Housing Authority (“CRHA”), the Charlottesville Community Development Corporation (“CCDC”), and Crescent Halls Reno, LLC (the “Project Owner”), shall through their duly authorized officers, members, or agents, execute a written acceptance of the terms and conditions of the Grant Funding awarded by this Ordinance, and as part of that written acceptance each entity shall verify that they have made the following representations and warranties to the City, each of which is a material representation and warranty that has induced the City to make this Grant:

- (A) The CCDC is the Developer of the Project.
- (B) Grant Funds provided for the purpose of supporting the renovation of affordable residential rental units shall be used or expended exclusively for costs and expenditures expressly authorized within Section 3, Paragraph (A), herein below.

In the event of a breach of this warranty, then in addition to any other remedies available to the City, CRHA and the CCDC shall be jointly and severally obligated to repay to the City all amount(s) used or expended in breach of this warranty. All amounts to be repaid to the City shall be due and owing to the City within thirty (30) days after the written notice of breach given by the City, unless the breach is cured by the CCDC or CRHA within the 30-day period. (Due Date: 30 days after the date of the notice). If the City does not receive payment in full within the 30-day period, then the City shall not thereafter make any additional disbursement(s) of Grant Funding referenced within Section 3 (A) of this Ordinance, and the City shall have the right to institute proceedings to collect the amounts due under this paragraph.

(C) Following completion of renovation/construction, each of the residential units within the Project shall be reserved for rental by low and moderate income individuals throughout a term (“Affordability Period”) that is co-extensive with the term of a long-term ground lease entered into between CRHA, as landlord, and the Project Owner, as tenant (“Ground Lease”). The Ground Lease shall contain the following terms and conditions: for the first forty (40) years of the term of the Ground Lease, the demised premises described therein shall be used exclusively for residential purposes and related amenities; thereafter, in addition to residential uses previously established within the Project, a portion of the premises may also be used for commercial purposes. CRHA shall not amend the Ground Lease to modify or delete the provisions required by this paragraph, except with the advance written notice to the City.

In the event of a breach of this warranty, then in addition to any other remedies available to the City, the City shall give written notice to CRHA and the Project Owner and, if the breach is not cured within thirty (30) days after the date of such notice, the City shall not thereafter make any additional payment(s) of Grant Funds under Section 3(B) of this Ordinance.

(D) On the date as of which construction of the Project is complete:

(i) the Project shall include no fewer than fifty-three (53) units of Public Housing legally obligated to be operated in accordance with Va. Code §36-22 and/or federal public housing requirements, including, without limitation, a Declaration of Trust/ Restrictive Covenants recorded in the land records of the City; and

(ii) in addition to the required public housing units, the Project shall contain no fewer than fifty-two (52) for-rent affordable dwelling units which shall participate in the project-based [federal] Section 8 program, and shall be legally obligated to be reserved for occupancy by persons having a household income at or below sixty-percent (60%) of Charlottesville’s Area Median Income.

For purposes of this paragraph (D) the term “legally obligated” refers either to a land use restriction imposed within an instrument recorded in the land records of the Charlottesville Circuit Court, or to a grant assurance or obligation given to the Department of Housing and Urban Development, the Virginia Department of Housing and Community Development or other federal or state public agency or funding source.

In the event of a breach of the warranties set forth in this paragraph (D), in addition to any other remedies available to the City, the City shall give written notice of breach to CRHA and the Project Owner and, if the breach is not cured within thirty (30) days after the date of such notice, the City shall not thereafter make any additional payment(s) of Grant Funds under Section 3 (B) of this Ordinance.

(E) CRHA will continue to make annual payments in lieu of taxes (PILOT) to the City, in accordance with the Cooperation Agreement entered into between the City and CRHA, dated May 13, 1958, as amended, provided that any residential units within the Project that are owned

by an entity other than CRHA or CCDC will not be part of the PILOT calculation.

(F) CRHA will prepare a written **Sustainability Plan** for the purpose of demonstrating the levels at which CRHA and the Project Owner will establish and provide operational funding and capital and other reserves sufficient to assure the continued use of all of the residential units within the Project as affordable rental units for a period not less than 40 years from the Commencement Date of the Ground Lease for the Project. The Sustainability Plan shall be given to City Council in writing, and it shall be presented to City Council at a public meeting for Council's discussion and consideration. No City funding will be approved by Council for Phase Two of the redevelopment of CRHA's South First Street property, until CRHA has obtained a vote of confidence, by a majority vote of City Council, affirming that Council is satisfied as to the adequacy of the Sustainability Plan.

(G) Miscellaneous

i. City shall have a right to compel performance of these warranties by CRHA, the CCDC and the Project Owner, and to collect any payments due to the City, through legal action initiated within a court having jurisdiction within the City of Charlottesville, Virginia.

ii. Interest shall accrue at the rate of six (6) percent per annum on all amounts due and owing to the City pursuant to this Section 2, from the Due Date until paid.

iii. No forbearance by the City in exercising any right or remedy afforded either by this Ordinance, or by the laws of the Commonwealth of Virginia, shall constitute a waiver of or preclude the exercise of any such right or remedy. The rights and remedies set forth within this Ordinance are cumulative and the use of any one right or remedy by the City shall not preclude or waive its right to use any or all other remedies. All of said rights and remedies are in addition to any other rights the City may have by law, statute, ordinance or otherwise.

iv. Throughout the fifteen (15) year initial compliance period of the LIHTC program, the Project Owner will promptly notify the City of its receipt of any notice or determination stating that the Project does not comply with the requirements of the LIHTC program, and the Project Owner shall provide a copy of any such notice or determination to the City Attorney.

Section 3. Authorized Expenditures; Budget

(A) City Council hereby approves funding in an amount up to **\$1,875,000** to subsidize the cost of renovating existing units of residential rental property occupied, or to be occupied, following construction by persons of low and moderate income. Grant Funds disbursed as authorized by this Ordinance shall not be used or expended for payment of current expenses of CRHA, the CCDC or any other legal entity. The Grant Funds shall be used only to pay the following costs of the Project (subject further to the limit on "soft costs" as set forth below): the cost of improvements, property or equipment, the cost of construction or reconstruction, the cost of all labor, materials, machinery and equipment, the cost of all land, property, rights, easements and franchises acquired, financing charges, interest before and during construction and for up to one year after completion of construction, Project start-up costs, and operating

capital for the Project, and other expenses as may be necessary or incident to the financing or construction of the Project.

Notwithstanding the foregoing:

- i. not more than **\$85,000.00** of the Grant Funds shall be used to pay “soft costs”, including, without limitation, the cost of plans and specifications, surveys and estimates of cost and of revenues, the cost of engineering, legal and other professional services, expenses incident to determining the feasibility or practicability of the project, the Developer’s administrative expenses, amounts to be deposited to reserve or replacement funds, and other similar expenses associated with Project feasibility, planning or design;
- ii. if construction of the buildings within the Project is not commenced on or before **June 30, 2021**, this Grant shall expire and the City shall have no obligation to the Recipient hereunder; and
- iii. the CCDC shall establish a Budget for construction of the Project, and will submit the Budget to the City for its review. The City will communicate in writing to the CCDC within ten (10) business after receipt of the Budget whether or not the City has any concerns. After the Budget is reviewed and the City has responded to Recipient, all subsequent changes to the Budget shall likewise be subject to review and comment by the City.

(B) In addition to the funding approved in Section 3(A), above, City Council also hereby approves an annual recurring subsidy for the purpose of inducing CRHA, CCDC and the Project Owner to undertake and complete the Project and as an inducement for the Project Owner to operate the Project pursuant to the terms of this Ordinance. The amount of the annual subsidy shall be the dollar amount of the real estate taxes assessed and billed to the Project owner for each tax year (January 1 – December 31). This subsidy shall be available with respect to the Project for a total of fifteen (15) tax years, beginning with the first tax year in which the Project Owner receives a real estate assessment and bill for the Project, or until the expiration of the LIHTC initial compliance period, whichever first occurs.

Notwithstanding the foregoing, the subsidy shall not be payable by the City within any tax year in which the household incomes of renters, and maximum rents, of residential units within Project are not in compliance with income and rent requirements set forth within the Extended Use Agreement executed by the Project Owner for and in connection with the LIHTC Tax Credit program. The annual subsidy shall be paid as a grant by the City to CRHA. CRHA agrees to provide said grant funds to CCDC, which will in turn provide a loan of those funds to the Project Owner for use in the development and operation of the Project in compliance with the terms of this Ordinance.

- i. While recognizing that it is not empowered under Virginia law to make any binding commitment beyond the current fiscal year of the City, it is the current intention of the

Council to make sufficient annual appropriations to fund the annual subsidy for which Grant Funds are approved under this Section 3 (B). To that end, the City Manager or other officer charged with the responsibility of preparing the City's budget shall include in the proposed budget for each fiscal year of the City a request that the Council appropriate sufficient amounts to cover the annual subsidy referenced within this Section 3 (B).

- ii. If at any time during any fiscal year of the City, the amount appropriated in the City's annual budget is insufficient to pay the annual subsidy referenced within this Section 3 (B), then the City Manager or other officer charged with the responsibility of preparing the City's budget shall submit to the Council, as promptly as practicable, a request for a supplemental appropriation sufficient to cover the deficit.

Section 4. Disbursement of Grant Proceeds

(A) Preconditions, General

No City official or employee shall disburse any Grant proceeds authorized by Section 3 (A) or 3 (B), unless and until the Recipient has furnished all of the following documents to the City for the Project:

- i. Evidence of HUD Approval: copies of all written approvals required from the Department of Housing and Urban Development for the Project, specifically including, without limitation: HUD's approval of Recipient's applications seeking approval of a Mixed Finance Development and for approval of a Demolition/Disposition of Recipient's property.
- ii. Documents of Record: copies of each of the following fully-executed documents, or written notice given to the City identifying the deed book and page number at which the documents are recorded in the land records of the Charlottesville Circuit Court (if the documents are required to be recorded):
 - a. Memorandum of the Ground Lease for the Project (fully-executed) along with a fully-executed copy of the Ground Lease for the Project;
 - b. HUD Declaration of Trust/ Restrictive Covenants for the Project;
 - c. The Regulatory and Operating Agreement executed for the Project by and among the members of the entity that is the Project Owner;
 - d. A copy of the Consolidated Annual Contributions Contract ("ACC"), number P-5513, dated August 30, 1996, and all amendments thereto
 - e. Fully-executed Mixed-Finance Development Certifications and Assurances (HUD) for the Project

- f. Fully-executed Extended Use Agreement executed by the Project Owner for and in connection with the LIHTC Tax Credit Program.
- iii. Construction Contract and Schedule: a copy of the contract for construction executed between the Project Owner and the General Contractor for Construction, and a copy of the approved Construction Schedule that will be implemented by the Construction Contractor.
- iv. Building Permit: evidence that a building permit for the Project has been approved and issued.
- v. The Budget for the Project (see Section 3, above).

(B) Disbursements for Expenditures Authorized by Section 3 (A)

- i. CRHA or the CCDC may, in writing, request disbursements of the Grant Funds authorized by Section 3 (A) of this Ordinance, and disbursements may be made by the City from time to time, as construction of the Project progresses. Disbursement requests may be submitted to the City, no more frequently than the following Milestone Dates, and only in the amounts indicated:
 - a. **Request 1 (not to exceed \$500,000)**: may be submitted on or after the date on which the City verifies that it is in possession of all of the documents referenced in 4(A), above. Disbursement Request 1 shall not be deemed complete until the City verifies that it has received all of the required documents. The City's receipt of all of the required documents is a condition precedent to any obligation on the City's part to disburse the Grant Funds.
 - b. **Request 2 (not to exceed \$906,250)**: may be submitted to the City on or after the date on which the City verifies that it has received all of the following: **(i)** a document verifying the date on which construction was commenced; **(ii)** a copy of the first payment application submitted by the General Construction Contractor to the Project Owner, **and (iii)** copies of financial and accounting records kept in the normal course of business, demonstrating to the satisfaction of the City that all Grant Funds disbursed in response to Request 1 were used only to pay costs authorized pursuant to Section 3(A), above. Financial and accounting records shall include, without limitation: copies of invoices for specific amounts, written descriptions of the materials or services described in the invoices in sufficient detail to demonstrate eligibility for Grant Funding pursuant to Section 3(A), above, and corresponding evidence of payment of said invoices by check, wire transfer, etc. Purchase Orders or other encumbrances shall not be acceptable as evidence of payment. Disbursement Request 2 shall not be deemed complete until the City verifies that it has received all of the required documents and records.

The City's receipt of all the required documents and records is a condition precedent to any obligation on the City's part to disburse the Grant Funds to the Recipient.

- c. **Request 3 (not to exceed \$468,750)** may be submitted to the City on or after the date on which the City verifies that it has received all of the following: **(i)** copies of financial and accounting records kept in the normal course of business, demonstrating to the satisfaction of the City that all Grant Funds disbursed in response to Request 2 were used only to pay costs authorized pursuant to Section 3(A), above. The words "financial and accounting records" shall mean and include, without limitation: copies of invoices for specific amounts, written descriptions of the materials or services described in the invoices in sufficient detail to demonstrate eligibility for Grant Funding pursuant to Section 3(A), above, and corresponding evidence of payment of said invoices by check, wire transfer, etc. Purchase Orders or other encumbrances shall not be acceptable as evidence of payment.; **(ii)** evidence, satisfactory to the City, that no Grant Funds previously disbursed to Recipient remain unspent (i.e., financial and accounting records demonstrate that all previously-disbursed Grant Funds have been used to pay costs authorized pursuant to Section 3 (A) of this Ordinance); **(iii)** a budget-to-actual expenditure report for the Project, current through the date of the disbursement request; and **(iv)** a Construction Schedule report, documenting the actual progress of construction (inclusive of public infrastructure and housing units) compared with the approved Construction Schedule for the Project. Disbursement Request 3 shall not be complete, until the City verifies that it has received all of the required documents. The City's receipt of all the requested documents is a condition precedent to any obligation on the City's part to disburse the Grant Funds to the Recipient.
- ii. The City shall issue payment of Grant Funds to the Recipient, in the specified amount, within 30 days of the City's receipt of a complete Disbursement Request. It shall be the sole responsibility of CRHA, the CCDC and the Project Owner to deliver all required documents to the City as a complete application package, along with any written Disbursement Request Form the City Manager or Finance Director may require.

(C) Payment of the Annual Subsidy Authorized by Section 3(B)

The City Manager, in consultation with the City Assessor and the Treasurer, shall establish administrative forms and procedures by which CRHA may request and receive the annual subsidy authorized by Section 3(B) of this Ordinance.

Section 5. General Grant Conditions

(A) Compliance with Government Requirements. In all of its actions and activities undertaken to provide for the construction, management and operation of the Project, the Recipient shall comply with:

- i. Any Recovery Agreement entered into between Recipient and the Department of Housing and Urban Development on or after July 1, 2020,
- ii. The 1958 Cooperation Ordinance between CRHA and the City, as amended,
- iii. The Consolidated Annual Contributions Contract (“ACC”), number P-5513, dated August 30, 1996, and all amendments thereto,
- iv. The Ground Lease between CRHA and the Project Owner,
- v. The Declaration of Trust/ Restrictive Covenants for the Project,
- vi. The Regulatory and Operating Agreement between CRHA and the Project Owner,
- vii. HUD’s Mixed-Finance Development Certifications and Assurances for the Project, and
- viii. Any other legal obligations and requirements imposed on the Project, or any aspect of the Project, as a result of any federal or state law, regulation or grant Ordinance, or by any City ordinance.

(B) Project Approval. By its adoption of this Ordinance, the City Council approves the Project for which the Grant Funds are awarded and requests the Recipient to construct and operate the Project. (Va. Code §36-19(2). Before the Recipient gives final approval to the Budget for the Project, Recipient shall hold at least one public hearing to receive the views of residents of the City of Charlottesville. The Recipient shall cause public notice to be given at least 10 days prior to the public hearing, by publication in a newspaper having a general circulation within the City of Charlottesville, as required by Va. Code §36-19.2.

(C) Public Disclosure of Ordinance Documents: The Recipient acknowledges and understands that this Ordinance, and all related public proceedings and records, shall be open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (Va. Code §2.2-3700 et seq.) and the Virginia Public Procurement Act (Va. Code §2.2-4300 et seq.) to the extent that either of those laws applies.

(D) No Waivers: No failure on the part of the City to enforce any provision(s) of this Ordinance shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the City of any breach or failure to perform by the Recipient shall be construed as or deemed to be a waiver of any other and/or subsequent breach or failure to perform.

(E) Severability: In the event that any term, provision, or condition of this Ordinance, or the application thereof to any person or circumstance, shall be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this Ordinance, and the

application of any term, provision or condition contained herein, to any person or circumstance other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

(F) No Other Understandings: There are no understandings or agreements between the City and the Recipient, other than those set forth within this Ordinance, and the provisions of this Ordinance supersede all prior conversations, discussions, correspondence, memoranda, or other communications between or among any employees or officials of the City and the Recipient.

(G) Notices: All notices required by this Ordinance shall be given in writing, and shall be deemed to be received on the date that is either:

- i. five (5) business days after being mailed by first class mail, postage prepaid, return receipt requested, or
- ii. one (1) business day after being placed for next day delivery with a nationally recognized overnight courier service, or
- iii. the same date on which the notice is delivered by hand to the City.

All notices shall be addressed as follows: (i) if given to the City—to the City Manager, with a copy to the City Attorney, each to: 605 East Main Street, Second Floor, City Hall (P.O. Box 911), Charlottesville, Virginia, 22902, or (ii) if given to the Recipient—to Charlottesville Redevelopment and Housing Authority, Attention: Executive Director, 500 South 1st Street, Charlottesville, Virginia, 22902.

(H) Authorized Signatures: The Clerk of Council shall provide a certified copy of this Ordinance, along with a written Grant Acceptance Form approved by the City Attorney. The Grant Acceptance Form shall be signed by a duly authorized officer, member or agent of CRHA, the CCDC, and the Project Owner.

ORDINANCE
AUTHORIZING A FORGIVABLE LOAN TO PIEDMONT HOUSING ALLIANCE TO SUPPORT REDEVELOPMENT OF FRIENDSHIP COURT FOR THE PURPOSE OF PRODUCING NEW HOUSING FOR LOW AND MODERATE INCOME PERSONS

WHEREAS, the production of new housing for persons of low and moderate income is a public purpose and use for which public money may be spent, and such production is a governmental function of concern to the Commonwealth of Virginia; and

WHEREAS, pursuant to Virginia Code §15.2-958 the City of Charlottesville may, by ordinance, make grants or loans to the owners of residential rental property occupied, or to be occupied, following construction, by persons of low or moderate income, for the purpose of producing such property; and

WHEREAS, Piedmont Housing Alliance (“PHA”) is a private, nonprofit 501(c)(3) organization (corporation) organized and operating under the laws of the Commonwealth of Virginia, having as its mission the creation of affordable housing opportunities by developing new housing and by preserving existing affordable housing; and

WHEREAS, PHA and its joint venture partner are planning the redevelopment of Friendship Court in multiple phases, funded by Low Income Housing Tax Credits, private donations, grants, local government funding from the City of Charlottesville, and a mortgage; and

WHEREAS, PHA has requested the City of Charlottesville (the “City”) to award local public funding for the Project, in an amount sufficient to subsidize the projected cost of constructing the required public infrastructure for the Project as well as the construction of for-rent affordable units within Phase 1 (defined below) of the Project (defined below), the City desires to make a Loan to PHA pursuant to and in consideration for PHA’s activities in compliance with this Agreement and the Master Affordable Housing Covenant attached hereto as **Attachment 1**; and

WHEREAS, PHA will make a subordinate loan to the owner of the first phase of the development (“Phase 1 Project Owner”) in an amount not to exceed the loan from the City to PHA (the “Sponsor Loan”), which the Phase 1 Project Owner will use to undertake the improvements described herein (defined below); and

WHEREAS, the Sponsor Loan will be secured by a subordinate interest in the land for Phase 1 of the Project and such subordinate interest shall be assigned to the City as security for this loan; and

NOW, THEREFORE, BE IT ORDAINED by the Charlottesville City Council that local public funding is hereby approved for Piedmont Housing Alliance to support the Project, subject to the following terms and conditions, which shall be set forth within a written agreement that shall be executed by duly authorized agents of the City and Piedmont Housing Alliance (“Loan Agreement” or “Agreement”):

Section 1. Public purpose of the Loan

This Loan is provided to Piedmont Housing Alliance (“Recipient”) for the public purposes of providing for construction of streets, utilities, and other site improvements necessary for the Project, and to assist the construction of new for-rental housing units within the property known as Friendship Court, as part of a multi-phased redevelopment of that property (“Subject Property” or “Project”). Phase 1 and subsequent phases of the Project shall be diligently prosecuted by the Recipient, to the end that, upon completion of construction, **one hundred percent (100%) of the dwelling units within the Project will be for rental or for ownership by low and moderate income persons, for a period not less than ninety-nine (99) years.**

Section 2. Representations and Warranties by the Recipient

To induce the City to make the Loan, Recipient makes the following as its representations and warranties to the City:

- (A) Recipient is a corporation organized under the laws of the Commonwealth of Virginia, active and in good standing as of the date of its execution of this Agreement.
- (B) Recipient is a nonprofit 501(c)(3) organization whose 501(c)(3) status remains in effect as of the date of its execution of this Agreement.
- (C) Recipient will use its best efforts to ensure the Loan funds will be used only for the public purposes referenced in Section 1. Recipient may expend the Loan funds itself, or Recipient may loan the funds to a third party who is legally obligated to use the funds only for the public purpose referenced in Section 1. A loan to a third party shall be secured by a lien on the land within Phase 1. Recipient shall execute an assignment of such lien and interests as further security for the Loan from the City to the Recipient, subject to certain requirements of lenders and the investor member of Phase 1 Project Owner, including this Agreement and the Master Affordable Housing Covenant (or any phase-specific replacement covenant) being subordinate and subject to the lien of all lenders to the Project and including the forbearance of certain creditor’s rights and remedies during the applicable federal tax credit “compliance period” when the investor member has an ownership interest in the Phase 1 Project Owner.
- (D) Recipient shall in good faith take all measures necessary to ensure that one hundred percent (100%) of the dwelling units constructed within the Project will be Rental Affordable Units or For Sale Affordable Units for by low and moderate income persons, in accordance with the Master Affordable Housing Covenant attached to this Ordinance and any amendments thereto.
- (E) Recipient will use its best efforts to ensure the number of newly constructed affordable dwelling units constructed within subsequent phases of the development are in accordance with the Master Site Requirements attached as Exhibit E to the Master Affordable Housing Covenant (Attachment 1 to this Ordinance).

At all times within the Subject Property there will be one hundred fifty (150) for-rent affordable dwelling units subject to project-based federal Section 8 operating subsidies,

including a combination of pre-existing and new units. This represents the current number of units existing within the Subject Property as of the date of this Agreement.

- (F) Recipient shall record a Master Affordable Housing Covenant for the Project (the “Covenant”) within the land records of the City, in the format attached hereto as **Attachment 1**.
- (G) To the best of its knowledge, NHTE Piedmont Garrett Square Limited Partnership (the “**Landowner**”) currently owns all right, title and interest in and to the land comprising the development site of the Project, and Recipient has verified that the Landowner does not intend to transfer or convey title to any such land to any third party, other than the Phase 1 Project Owner, until the Affordable Housing Covenant has been recorded in the City’s land records..
- (H) Recipient will use its best efforts to ensure the development of all phases of the Project shall be consistent with the Master Plan developed by the Recipient with public input from the community, a copy of which is depicted in ***Illustration 1***, following below, as may be amended from time to time consistent with the provisions of the Master Affordable Housing Covenant and the public purposes for which this Loan is offered pursuant to Virginia Code §15.2-958.

Illustration 1.



- (I) Recipient will execute any and all documents reasonably requested by the City to finalize the Loan authorized by this Ordinance, including, without limitation, any note, deed of trust, security agreement or guaranty.
- (J) The representations set forth within paragraphs (A) through (H) preceding above are material provisions of this Agreement.

Section 3. Authorized Expenditures; Budget

- (A) The Project is planned as a multi-phased redevelopment of land currently identified by Tax Parcel Identification No. 280112000, currently assigned the street address of 400-426 Garrett Street, Charlottesville, Virginia. As of the date of this Agreement, only Phase 1 is being designed for construction. As subsequent phases are designed, the parties may amend this Agreement as necessary or desirable to reflect additional public funding for the Project.
- (B) Phase 1 shall include no fewer than one hundred six (106) for-rent affordable dwelling units, of which: (i) forty-six (46) will be subject to project-based federal Section 8 operating subsidies; and **(ii)** a minimum of sixty (60) additional For-Rent dwelling units will be provided for rental to households having incomes from thirty percent (30%) to eighty percent (80%) AMI, as mutually agreed to by the City and the Recipient on or before [any disbursement of Loan funds].
- (C) Loan proceeds may be expended as follows:

- i. Up to **\$1,386,000.00** shall be expended for the installation, construction, or reconstruction of public streets (inclusive of sidewalk, curb and gutter, stormwater, landscaping), utilities, and parks, essential to the Project (“Public Infrastructure” or “Public Infrastructure Construction”), and
 - ii. Up to **\$3,604,159.00** shall be expended to prevent the displacement of low and moderate income residents of the existing property to be redeveloped, and for construction of new Phase 1 housing units for rental by low and moderate income persons (“ADU Construction”).
 - iii. Up to **\$555,000.00** is expected to cover “soft costs” associated with the planning and design for construction of infrastructure for the Project and/or construction of Rental Affordable Units within Phase 1 of the Project. Any portion of this amount not expended for Soft Costs may be expended in accordance with (i) or (ii), above;
- (D) Public Infrastructure Construction will commence within six months following loan closing on Phase 1 of the Project, and be diligently prosecuted by Recipient to completion.
- (E) Phase 1 Project Owner, with consultation from Recipient, shall establish a Budget for Public Infrastructure Construction for the Project and for construction of Rental Affordable Units within Phase 1, and will submit the Budget to the City for approval. Once the Budget is approved by the City, all material changes to the Budget shall be subject to the prior written approval of the City. Whenever any change order is under consideration by Recipient which would materially increase the cost of any aspect of construction, a Budget amendment shall be prepared for the City’s approval prior to execution of the change order.
- (F) [Reserved.]
- (G) The Budget shall establish stand-alone line items for Public Infrastructure Construction. The Budget shall also include line items for a Construction Contingency Amount, soft costs and other reserves acceptable to the City.

Section 4. Disbursement of Loan Proceeds

(A) **Preconditions, General**

Prior to the first disbursement of any Loan proceeds for expenses incurred pursuant to Section 3(C)(i) or (ii), the Recipient shall furnish all of the following documents to the City for Phase 1 of the Project, in a form acceptable to the City in all respects, for the City’s approval:

- i. A Public Infrastructure Plan: providing for construction of public streets, sidewalks, curb and gutter, utilities, stormwater, landscaping, and street lights (“Public Infrastructure”) for the Project, prior to commencement of construction of any building(s) or structure(s) within Phase 1, or providing for the phased construction

of Public Infrastructure, by (a) delineating sections within the Project in which infrastructure will be constructed in coordination with housing that will be served by that infrastructure, (b) within each delineated section, establishing a schedule for completion of construction of the Public Infrastructure, within that section in relation to the completion of construction and occupancy of dwelling units within that section; (c) providing a Cost Estimate establishing the cost of constructing the Public Infrastructure in each section, and (d) in the event that Public Infrastructure within a delineated section has been substantially constructed but has not met all requirements necessary for final acceptance into the City's public system for maintenance, then Recipient shall provide a maintenance and indemnifying bond, with surety acceptable to the City, in an amount sufficient for and conditioned upon the maintenance of the Public Infrastructure until such time as the Public Infrastructure is accepted into the City's public system for maintenance.

- ii. A Resident Relocation Plan establishing a schedule, consistent with the schedule established within the construction plan referenced in (i) above: (a) identifying how many of the newly constructed units in each section will be occupied by then-current residents of Friendship Court, (ii) establishing a budget for the relocation of Friendship Court residents, and (iii) setting forth how the Recipients will determine what Friendship Court residents will be relocated first, etc. The relocation plan shall demonstrate zero displacement.
- iii. A Construction Schedule that implements construction of the Rental Affordable Units in Phase 1, in all aspects, in accordance with paragraphs (i) – (ii) preceding above.
- iv. The Budget required by Section 3, above.
- v. Master Affordable Housing Covenant, in the form attached hereto as **Attachment 1**, executed by Recipient and recorded within the land records of the Circuit Court for the City of Charlottesville.

If the above-referenced documents demonstrate the adequacy of the Budget to complete the Public Infrastructure and the Rental Affordable Units within Phase 1, and if the Construction Schedule is realistic, then the City's approval shall not unreasonably be withheld.

(B) Disbursements for Infrastructure

- i. **Following the date on which the Master Affordable Housing Covenant is recorded within the City's land records**, the Recipient may request disbursements of the Loan funds, and disbursements may be made by the City from time to time during construction of the Public Infrastructure, as such construction progresses, no more frequently than once per calendar month, until the City has disbursed the aggregate amount specified within Section 3(C)(i) above (and upon request, any amount(s) not previously disbursed under Section 3(C)(iii)).

- ii. As a condition precedent to each disbursement of loan proceeds for the Public Infrastructure, the Recipient shall furnish or cause to be furnished to the City all of the following documents for each disbursement, in form and substance satisfactory to the City: **(a)** a Disbursement Certification in a form approved in advance by the City; **(b)** copies of payment approval forms, certified by an architect or engineer authorizing payment of specific amount(s), and documentation that such amount(s) have actually been paid to construction contractor(s) and subcontractor(s), for work completed; **(c)** inspection report(s) signed by a City inspector, verifying that the work for which payment is sought was inspected by the City and was installed or completed in accordance with City standards and specifications; **(d)** a budget-to-actual expenditure report for the Public Infrastructure, current through the date of the disbursement request; **(e)** a Construction Schedule report, documenting the actual progress of construction (inclusive of Public Infrastructure and housing) compared with the approved Construction Schedule. In the aggregate, items (a)-(e) shall constitute a “Disbursement Request”.
- iii. Following receipt of a complete Disbursement Request, the City shall issue payment of Loan proceeds to the Recipient for the amounts documented within the Disbursement Request as having actually been paid to construction contractor(s) and subcontractor(s), for completed work. Payment shall be made within 30 days of the City’s receipt of a complete Disbursement Request.

(C) Disbursements for costs of tenant relocation and construction of affordable housing

- i. Following the date on which the Master Affordable Housing Covenant is recorded within the City’s land records: the Recipient may request disbursements, and disbursements may be made by the City from time to time during construction of new Rental Affordable Units, as such construction progresses, no more frequently than once per calendar month, until the City has disbursed the aggregate specified within Section 3(C)(ii), above (and, upon request, any amount(s) not previously disbursed under Section 3(C)(iii)).
- ii. As a condition precedent to each disbursement of loan proceeds for relocation and construction of new units of Rental Affordable Housing, the Recipient shall furnish or cause to be furnished to the City all of the following documents for each disbursement, in form and substance satisfactory to the City: **(a)** a Disbursement Certification in the form approved in advance by the City; **(b)** copies of payment approval forms, certified by an architect or engineer authorizing payment(s) which have been made by the Phase 1 Project Owner or Recipient, together with documentation of amount(s) actually paid to construction contractor(s) and subcontractor(s), for completed work referenced within such payment approval forms; **(c)** a budget-to-actual expenditure report, current through the date of the disbursement request, for the relocation and housing

construction Budget line items; **(d)** a Construction Schedule report, documenting the actual progress of construction compared with the approved Construction Schedule; **(e)** documentation of amount(s) actually paid by the Phase 1 Project Owner or Recipient to relocate tenants into a new affordable housing unit for which a certificate of occupancy (non-temporary) has been issued. In the aggregate, items (a)-(d) shall constitute a “Disbursement Request” for reimbursement of construction costs, and items (a), (c) and (e) shall constitute a “Disbursement Request” for reimbursement of relocation expenditures.

- iii. Following receipt of a complete Disbursement Request seeking reimbursement for tenant relocation costs, the City shall issue payment to Recipient reimbursing amounts documented within a Disbursement Request as having actually been paid to relocate tenants. Payment shall be made within 30 days of the City’s receipt of a complete Disbursement Request.

(D) Disbursements for Soft Costs

Following the date on which the Master Affordable Housing Covenant is recorded within the City’s land records, the Phase 1 Project Owner or Recipient may request disbursements of the Loan funds for the purposes referenced in Section 3(C)(iii), above. As a condition precedent to each disbursement of loan proceeds for Soft Costs, the Phase 1 Project Owner or Recipient shall furnish or cause to be furnished to the City all of the following documents for each disbursement, in form and substance satisfactory to the City (“Disbursement Request”): (i) a Disbursement Certification in a form approved in advance by the City; and (ii) documentation evidencing expenditure of the Soft Costs to one or more independent contractors for work or services associated with the planning or design for construction of the Public Infrastructure or the For Rent Affordable Units within Phase 1 of the Project.

Following receipt of a complete Disbursement Request, the City shall issue payment of Loan proceeds to the Phase 1 Project Owner or Recipient for the amounts documented within the Disbursement Request as having actually been paid to independent contractors. Payment shall be made within 30 days of the City’s receipt of a complete Disbursement Request.

(E) Execution of Loan Instruments

This Loan is in the amount of the total disbursements made by the City to the Recipient, pursuant to Section 4(B), 4(C) and 4(D) preceding above. Disbursement shall be made up to the Loan maximum specified in Section 3(C), above. All disbursements shall be added to the principal of the Loan, and interest at the rate of this Loan shall accrue thereon from the date each disbursement is made. The City shall not disburse any loan proceeds to the Recipient unless and until the Recipient has executed and delivered to the City all documents or legal instruments deemed by the City to be necessary to effectuate the Loan and to secure the City’s ability to enforce the requirements of this Loan Agreement. The following terms and conditions are material to the City’s agreement to enter into this Loan Agreement and shall be requirements of this Agreement enforceable in accordance with this Loan Agreement as well as through any documents or legal instruments that effect and secure the Loan of public funds to the Recipient:

- i. Recipient will use commercially available best efforts to negotiate provisions in a subordination agreement with the senior lender for the development of Phase 1 that provide the City with the right to cure a default and exercise rights pursuant

to a collateral assignment of Recipient's interest in Phase 1 under a Deed of Trust securing the Sponsor Loan, with wording acceptable to the City Manager and City Attorney. The income, rent and use restrictions required by this Agreement shall terminate upon a foreclosure of the Sponsor Loan, except: (i) twenty percent (20%) of the units within the Project may remain at sixty percent (60%) of area median income following such a foreclosure, and (ii) Virginia Housing may permit additional units at 60% AMI to survive such a foreclosure, provided that Virginia Housing determines, in its sole discretion, that the development will achieve a targeted debt service coverage rate (DCSR) of at least 1.25 while subject to such additional set-aside. The City Manager, after consultation with the City Attorney's Office, is the City official hereby designated as having authority as the agent of City Council to renegotiate income, rent and use restrictions required by this Agreement and the Master Affordable Housing Covenant, and to enter into a binding amendment of this Agreement, if such renegotiation or amendment is necessary to facilitate Recipient's receipt of financing from Virginia Housing, provided that (i) the renegotiated terms are no less than those Virginia Housing itself requires in its own Lending Policy and (ii) in accordance with Virginia Code §15.2-958, a minimum of twenty percent (20%) of the housing units within Phase I shall be Rental Affordable Units for a minimum of ten (10) years.

- ii. Deferred Payment Loan; Payment Date. This Loan shall be a deferred payment loan. The deferral period shall commence on the Commencement Date specified in subparagraph (iii), below, and shall expire at midnight on December 31 of the fortieth (40th) calendar year thereafter ("Deferral Period"). Interest shall accrue during the Deferral Period, in the amount specified in subparagraph (iv) following below.
- iii. Each Disbursement of funds made by the City to the Recipient shall constitute loan proceeds (individually and collectively, the "Loan") of the Loan that is the subject of this Agreement. The term of the Loan shall be forty (40) years, commencing on the date of the final disbursement of Loan proceeds by the City to the Recipient pursuant to this Agreement ("Commencement Date"). If the Project is completed and operated continuously in accordance with the requirements of this Agreement and the Master Affordable Housing Covenant throughout the entire Deferral Period (i.e., continuously from the Commencement Date through the expiration of the Deferral Period) then the Loan shall be forgiven. Recipient will grant to the City, as security for the Loan, an assignment of its subordinate interest in Phase 1, which secures its Sponsor Loan to the Phase 1 Project Owner. The assignment shall be subordinate to loans from Virginia Housing or any federal agency.
- iv. Interest shall accrue on outstanding amounts of the Loan, at the annual rate of three percent (3%), beginning on the Commencement Date specified in (iii), above. If the Project is completed and operated continuously in accordance with the requirements of this Agreement and the Master Affordable Housing Covenant throughout the entire Deferral Period referenced in paragraph (ii) preceding above (i.e., continuously from the Commencement Date through the expiration of the Deferral Period) then the accrued interest shall be forgiven.

- v. Payment. All Loan proceeds disbursed to the Recipient shall immediately become due and owing to the City in full, in each case following any applicable notice and cure period:
- a. on the date of any Uncured Event of Default on the Loan;
 - b. upon the insolvency or dissolution of the Recipient;
 - c. on the date of any foreclosure of Phase 1; or
 - d. upon the sale or transfer of the Phase 1 property, or any portion(s) thereof, to any person other than a related entity, or other assignee, who has been approved by the City in advance. For purposes of this Agreement, the term “related entity” means any transferee that is controlled by the Recipient, the Landowner, or both.
- vi. For so long as the City Loan proceeds are subsidizing Phase 1, Recipient, on behalf of itself and its heirs, successors and assigns (collectively, “Owner”) agree that, prior to the first refinancing of the senior lien debt, or prior to the next new tax credit financing (but subject to any senior lender approvals, in their sole discretion, if such new tax credit financing does not include a refinancing of the senior debt) it will propose an Affordability Analysis to the City for the City’s review and approval. The Affordability Analysis will determine and detail if any qualified tenants have incomes permitted under the federal low income housing tax credit program that are in excess of one hundred thousand dollars (\$100,000) and the Owner will agree either (a) to escrow such rents that exceed thirty percent (30%) of such tenants’ income above \$100,000 and to use such reserves when sufficient and with the approval of the City to target deeper income restrictions on future tenancies of the other restricted units by providing a rental subsidy to such tenants, or (b) to propose further income restriction to the other restricted units to the reasonable satisfaction of the City.
- vii. **Default.** If any Event of Default shall occur and is not cured within sixty (60) days from the date that written notice of such Event of Default is given by the City to the Recipient or such longer period as was reasonably necessary for cure, provided the Recipient requested an extension prior the expiration of the 60-day cure period and the City approved the request in writing (“Uncured Event of Default”, the Loan shall immediately become due and payable in full to the City. Each of the following shall constitute an Event of Default:
- a. Use of Loan funds for any purpose(s) other than those articulated within Section One of this Ordinance;
 - b. Failure to comply with the terms and conditions of this Loan Agreement that apply to Phase 1;

- c. Failure to comply with the requirements of the Master Affordable Housing Covenant, as it may be amended, or any phase-specific replacement covenant thereto;
 - d. Failure to perform any of Recipient's obligations under this Loan Agreement with respect to construction of the Public Infrastructure or construction of units of housing within Phase 1;
 - e. Failure to perform any of Recipient's obligations under the Master Affordable Housing Covenant, as it may be amended or any phase-specific replacement covenant thereto;
 - f. A successful legal challenge initiated by the Landowner, PHA, NHT Communities or any Project Owner, asserting that the Master Affordable Housing Covenant or any amendment thereto is invalid or unenforceable, in whole or as applied to such person;
 - g. Failure to perform as required by any document that secures this Loan and relates to Phase 1;
 - h. Failure of Recipient to give the City notice of any anticipated sale of all or any portion of the Project to any person that is not controlled by the Recipient, the Landowner, or both and who will use it for any purpose other than that specified within Section 1 of this Agreement;
- viii. **Remedies for Default.** If Recipient fails to pay the Loan or fails to cure any Event of Default prior to the end of the 30-day notice period, the City may invoke foreclosure of this Loan Agreement or any other remedy allowed by the Loan Agreement, any document related to this Loan, or by the laws of the Commonwealth of Virginia. All of the City's rights and remedies are distinct and cumulative to any other rights and remedies under this Agreement, or otherwise at law, and may be exercised concurrently, independently, or successively.
- ix. **No Waiver.** No forbearance by the City in exercising any right or remedy hereunder, or otherwise afforded by Virginia law, shall constitute a waiver of, nor shall forbearance preclude the exercise of, any right or remedy.

Section 5. General Terms and Conditions

(A) Non-Appropriations Condition: The obligations of the City as to any funding beyond the end of Fiscal Year 2020 (June 30, 2020) are expressly made subject to the availability of and appropriation by the City Council of sufficient public funds to support continued performance of this agreement by the City in succeeding fiscal years. When public funds are not appropriated or are otherwise unavailable to support continuation of payment(s) by the City to Recipient in a subsequent fiscal year, the City's obligations hereunder shall automatically expire, without liability or penalty to the City. Within a reasonable time following City Council's adoption of a budget, the City shall provide the Recipient with

written notice of any non-appropriation or unavailability of funds affecting this Loan agreement.

- (B) Assignments. The City reserves the right to approve in advance any assignment of this Agreement by the Recipient to any individual or entity, and the ownership and membership of any such entity must be disclosed to the City. Any change in the Recipient's organizational structure, and any change in the Recipient's status or Recipient's relationship to either the Landowner, the Project Owner or the Phase 1 Project Owner shall also be subject to approval by the Authority. Any such assignee shall be bound by all the terms and conditions of this Agreement.
- (C) Public Disclosure of Agreement Documents: The Recipient acknowledges and understands that this agreement, and all related public proceedings and records, shall be open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (Va. Code §2.2-3700 et seq.) and the Virginia Public Procurement Act (Va. Code §2.2-4300 et seq.) to the extent that either of those laws applies.
- (D) No Waiver of Rights: No failure on the part of the City to enforce any of the terms or conditions set forth in this agreement shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the City of any default or failure to perform by the Recipient shall be construed as or deemed to be a waiver of any other and/or subsequent default or failure to perform. The acceptance of the performance of all or any part of this Agreement by the City, for or during any period(s) following a default or failure to perform by the Recipient, shall not be construed as or deemed to be a waiver by the City of any rights hereunder, including, without limitation, the City's right to terminate this Agreement.
- (E) Force Majeure. All dates in this Agreement shall be extended for a period of time equal to the period of any delay directly affecting such date which is caused by fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot, insurrection, pandemic (including COVID-19), disease, work shortages, acts beyond the control of the parties, declared state of emergency or public emergency, government mandated quarantine or travel ban, government shutdown or governmental regulation. All federal extensions permitted due to any pandemic (including COVID-19), declared state of emergency or public emergency, government mandated quarantine or travel ban, or any other similar event, shall also apply to the dates in this Loan Agreement.
- (F) Severability: In the event that any term, provision, or condition of this Agreement, or the application thereof to any person or circumstance shall be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and the application of any term, provision or condition contained herein to any person or circumstance other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

- (G) Governing Law: This Agreement shall be governed by the laws of the Commonwealth of Virginia, and, in the event of litigation, jurisdiction and venue shall be in the Circuit Court of the City of Charlottesville, Virginia, and all legal actions involving this Agreement shall be brought only in such court. All parties hereto agree that in the event of any action brought to enforce the terms and provisions hereof, the prevailing party shall be entitled to reimbursement of reasonable attorney's fees and court costs. All parties to this Agreement have standing to enforce any covenants, terms, provisions, and agreements set forth herein
- (H) Entire Agreement: This Agreement is the entire agreement between the parties hereto, sets forth all of promises, agreements, conditions, and understandings between the parties respecting the subject matter hereof and supersedes all prior and contemporaneous negotiations, conversations, discussions, correspondence, memoranda, and agreements between the parties concerning such subject matter.
- (I) Authorized City Signature: By its approval of this ordinance, the Charlottesville City Council authorizes the Charlottesville City Manager to execute this Agreement on its behalf.
- (J) Amendments. Except as otherwise specified within Section 5(D) of this Ordinance, the City Manager is hereby authorized to execute a Loan Agreement, or any amendment(s) thereof, that modify(ies) certain terms and conditions set forth within this Ordinance, without Council review and approval, but only if such modification(s) do **not** materially change: **(i)** the number of affordable dwelling units to be provided by Recipient, or the length of the Affordability Period, **(ii)** the requirement that Recipient provide a one-for-one replacement of all of the 150 for-rent, Section 8 subsidized dwelling units existing within Friendship Court as of the date of this Agreement (divided among all phases of the Project), **(iii)** the layout of land uses, or the general or approximate location of the public streets, as depicted in *Illustration 1*, above, within this Agreement, or **(iv)** the dollar amount(s) of the Loan, as set forth within Section 3(c) of this Agreement. Any amendments of the terms referenced in clauses (i) – (iv) preceding above within this paragraph must be approved by ordinance of City Council in the same manner as this Agreement. Upon executing a Loan Agreement, or any amendment thereof, that contains terms and conditions different than those set forth within this Ordinance, the City Manager shall notify City Council, in writing, of the nature of the modifications.
- (K) Notices. All notices required under this Agreement shall be given in writing, and shall be deemed to be received five (5) business days after being mailed by first class mail, postage prepaid, return receipt requested, or one (1) business day after being placed for next day delivery with a nationally recognized overnight courier service, or upon receipt when delivered by hand, addressed as follows: (i) if given to the City—to the City Manager, with a copy to the City Attorney, each to: 605 East Main Street, Second Floor, City Hall (P.O. Box 911), Charlottesville, Virginia, 22902, or (ii) if given to the Recipient—to Piedmont Housing Alliance, Attention: Executive Director, 682 Berkmar Circle, Charlottesville, Virginia, 22901, with a copy to Erik T. Hoffman, Klein Hornig, LLP, 1325 G Street, N.W., Suite 770,

Washington, DC, 20005 and a copy to the Project Lender at an address provided by the Recipient.

**APPROPRIATION
H.O.P.W.A. Grant \$20,050**

WHEREAS, The City of Charlottesville, through the Department of Human Services, has received the H.O.P.W.A. Grant from the Virginia Department of Housing and Community Development in the amount of \$20,050

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the sum of \$20,050 is hereby appropriated in the following manner:

Revenues

\$20,050 Fund: 209 IO: 1900390 (H.O.P.W.A.) G/L: 430120 Federal Pass-Thru State

Expenditures

\$20,050 Fund: 209 IO: 1900390 (H.O.P.W.A.) G/L: 530550 Contracted Services

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon receipt of \$20,050 in funds from the Virginia Department of Housing and Community Development.