

ACTIONS		
Board of Supervisors Meeting of August 21, 2024		
		August 22, 2024
AGENDA ITEM/ACTION	ASSIGNMENT	VIDEO
1. Call to Order. <ul style="list-style-type: none"> <li>The Meeting was called to order at 1:00 p.m. by the Chair, Mr. Andrews. All BOS members were present except for Mr. Pruitt who participated remotely. Also present were Jeff Richardson, Steve Rosenberg, Claudette Borgersen, and Travis Morris.</li> </ul>		<a href="#">Link to Video</a>
Remote Participation Request. <ul style="list-style-type: none"> <li>By a vote of 5:0, <b>APPROVED</b> the request to allow Mr. Pruitt to participate remotely in accordance with applicable Board Rules of Procedure enacted pursuant to the Freedom of Information Act, stating that he was unable to attend the meeting in person due to a personal matter.</li> </ul>		
4. Adoption of Final Agenda. <ul style="list-style-type: none"> <li><b>ADDED</b> a request to authorize the chair to sign a Letter of Support for the Botanical Garden of the Piedmont Nomination for the National Medal for Museum and Library Service under item #21.</li> <li>By a vote of 6:0, <b>ADOPTED</b> the final agenda as amended.</li> </ul>		
5. Brief Announcements by Board Members. <u>Ned Gallaway:</u> <ul style="list-style-type: none"> <li>Reminded community members that the first day of school for Albemarle County students started that day and wished the students and families well.</li> <li>Informed the Board that he would be leaving the meeting for a short time.</li> </ul> <u>Bea LaPisto-Kirtley:</u> <ul style="list-style-type: none"> <li>Announced that the St. John Family Life and Fitness Center would hold free health screening on Saturday, September 28.</li> <li>Encouraging community members to attend the VDOT design public hearing meeting for the U.S. 250 at Route 20 intersection and Pantops Corridor improvements on September 10<sup>th</sup> from 4:30 pm - 6:30 pm at the Hilton Garden Inn.</li> <li>Mentioned that the Rockfish Wildlife Sanctuary would be holding their 20<sup>th</sup> Anniversary Gala Friday, September 13, at Potters Craft Cider.</li> </ul> <u>Ann Mallek:</u> <ul style="list-style-type: none"> <li>Commented that veterans who served in Vietnam or since, or who faced toxic exposure, could find more information on how apply for VA benefits through the PACT Act at the following link:  <a href="https://www.va.gov/resources/the-pact-act-and-your-va-benefits/">https://www.va.gov/resources/the-pact-act-and-your-va-benefits/</a> <ul style="list-style-type: none"> <li>Ms. LaPisto-Kirtley added that there was a Community Care program that would assist veterans with scheduling appointments with community providers if they were more than 40 miles away from a VA facility.</li> </ul> </li> </ul>		

<ul style="list-style-type: none"> <li>Announced that the Rivanna River Basin Annual Conference would be held on September 27 from 9:30 – 1:00 p.m. and more information could be found at on the Rivanna River Basin Commission website.</li> <li>Reported on the VACo (Virginia Association of Counties) Region 5 meeting that was held the previous Monday.</li> </ul> <p><u>Diantha McKeel:</u></p> <ul style="list-style-type: none"> <li>Announced that (Jefferson Area Board for Aging) JABA was offering a one-day free life planning event on October 9 from 9:00 am – 3:00 pm with advanced registration required.</li> <li>Announced that there would be a traffic pattern change at Hydraulic and U.S. 29 beginning on the following Monday morning.</li> </ul> <p><u>Mike Pruitt:</u></p> <ul style="list-style-type: none"> <li>Expressed his concerns regarding the Scottsville levee and commented on the role of the Board and local government in articulating the needs for assistance.</li> <li>Commented that early voting would be held from September 20 - November 2 at the 5<sup>th</sup> Street County Office Building. He also commented on the Scottsville election.</li> </ul> <p><u>Jim Andrews:</u></p> <ul style="list-style-type: none"> <li>Announced that the Ivy Solid Waste and Recycling Center signups had begun at <a href="http://www.rivanna.org">www.rivanna.org</a> for the following collection days: <ul style="list-style-type: none"> <li>eWaste – September 14, 2024.</li> <li>Household Hazardous Waste – September 20-21, 2024.</li> <li>Furniture – September 28, 2024.</li> <li>Appliances – October 5, 2024.</li> <li>Tires – October 12, 2024.</li> </ul> </li> <li>Mentioned that the Batesville Apple Butter Weekend would be held in October, and signups for stirring and preparing the apple butter would begin on September 1, 2024.</li> </ul>		
<p>6. Proclamations and Recognitions.</p> <p>a. Resolution of Appreciation for Steve Rosenberg.</p> <ul style="list-style-type: none"> <li>By a vote of 6:0, <b>ADOPTED</b> resolution and presented it to Steve Rosenberg.</li> </ul>	(Attachment 1)	
<p>7. From the Public: Matters on the Agenda but Not Listed for Public Hearing or on Matters Previously Considered by the Board or Matters that are Pending Before the Board.</p> <ul style="list-style-type: none"> <li><b><u>The following individuals addressed the Board concerning agenda item # 9. Ranked Choice Voting:</u></b> <ul style="list-style-type: none"> <li><u>Nancy Muir</u></li> <li><u>Karen Juul-Neilsen</u></li> <li><u>John Linder</u></li> <li><u>Susan Perry</u></li> <li><u>Eli Weinger</u></li> <li><u>Christopher Seaman</u></li> <li><u>Kerin Yates</u></li> <li><u>Bruce Kirtley</u></li> </ul> </li> </ul>		

	<ul style="list-style-type: none"> <li>Donna Price, former Supervisor and resident of the Scottsville Magisterial District, addressed the Board and spoke to the commemoration of County Attorney Steve Rosenberg.</li> </ul>	
8.2	<p>Fiscal Year 2026 Operating and Capital Budget Calendar.</p> <ul style="list-style-type: none"> <li><b>ADOPTED</b> the preliminary budget calendar.</li> </ul>	<u>Clerk:</u> Add to 2025 Board meeting schedule. (Attachment 2)
8.3	<p>Solar Power Purchase Agreement to Lease Roof of 5th Street County Office Building.</p> <ul style="list-style-type: none"> <li><b>SET</b> public hearing on October 2, 2024, to consider a proposed lease agreement.</li> </ul>	<u>Clerk:</u> Schedule on October 2 agenda and advertise in the Daily Progress.
8.4	<p>Construction Easement for Southwood Community Development Block Grant Phase 2.</p> <ul style="list-style-type: none"> <li><b>ADOPTED</b> resolution authorizing the County Executive to accept a temporary construction easement on portions of Parcel 90A1-1D.</li> </ul>	<p><u>Clerk:</u> Forward copy of signed resolution to Housing and County Attorney's office. (Attachment 3)</p> <p><u>County Attorney:</u> Provide Clerk with copy of recorded Easement. (Attachment 4)</p>
8.5	<p>Resolution Declaring that Local Emergency is Ended (Tropical Storm Debby).</p> <ul style="list-style-type: none"> <li><b>ADOPTED</b> resolution.</li> </ul>	<u>Clerk:</u> Forward copy of signed resolution to County Executive's office and County Attorney's office. (Attachment 5)
9.	<p><b>Discussion:</b> Ranked Choice Voting.</p> <ul style="list-style-type: none"> <li><b>HELD.</b></li> </ul>	
10.	<p><b>Presentation:</b> Zoning Modernization Phase 1 Article Review.</p> <ul style="list-style-type: none"> <li><b>RECEIVED.</b></li> </ul>	
	<p><b>Recess.</b></p> <ul style="list-style-type: none"> <li>At 4:34 p.m., the Board recessed and reconvened at 4:42 p.m.</li> </ul>	
11.	<p><b>Presentation:</b> Strategic Plan Execution Analysis and Reporting.</p> <ul style="list-style-type: none"> <li><b>RECEIVED.</b></li> </ul>	
12.	<p>Closed Meeting.</p> <ul style="list-style-type: none"> <li>At 5:25 p.m., the Board went into Closed Meeting pursuant to section 2.2-3711(A) of the Code of Virginia:</li> <li>under subsection (3), to discuss or consider the acquisition of real property for transportation improvements, a public purpose, in the Rio Magisterial District, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the County;</li> <li>under subsection (5), to discuss the expansion of an existing business in the southern part of the County in the Scottsville Magisterial District, where no previous announcement has been made of the business's interest in expanding its facilities in the community; and</li> <li>under subsection (39), to discuss or consider information subject to the exclusion in subsection (3) of § 2.2-3705.6 related to business development in the Rio Magisterial District.</li> </ul>	
13.	<p>Certify Closed Meeting.</p> <ul style="list-style-type: none"> <li>At 6:01 p.m., the Board reconvened into an open meeting and certified the closed meeting.</li> </ul>	
	Non-Agenda. Resolution	<u>Clerk:</u> Forward copy of signed resolution to Economic

<ul style="list-style-type: none"> <li>By a vote of 6:0, <b>ADOPTED</b> resolution Approving a Development Grant Agreement Among the County, the Economic Development Authority, and Home Depot U.S.A., Inc.</li> </ul>	<p>Development Office and County Attorney's office. (Attachment 6)</p> <p><u>County Attorney:</u> Provide Clerk with copy of fully executed agreement. (Attachment 7)</p>	
<p>14. From the County Executive: Report on Matters Not Listed on the Agenda. <u>Jeff Richardson:</u></p> <ul style="list-style-type: none"> <li>Presented the August 2024 Progress Albemarle Report.</li> </ul>		
<p>15. From the Public: Matters on the Agenda but Not Listed for Public Hearing or on Matters Previously Considered by the Board or Matters that are Pending Before the Board.</p> <ul style="list-style-type: none"> <li><b><u>The following individuals addressed the Board concerning agenda item # 9. Ranked Choice Voting:</u></b> <ul style="list-style-type: none"> <li><u>James Farmar</u></li> <li><u>Doug Earle</u></li> <li><u>Randy Zackrisson</u></li> </ul> </li> <li><u>Judy Schlussel</u>, Rio Magisterial District, spoke regarding traffic and the development around Dunlora.</li> <li><u>Kent Schlussel</u>, Rio Magisterial District, spoke regarding clear-cutting and the benefits of trees.</li> </ul>		
<p>16. <b><u>Pb. Hrg.: Fiscal Year 2025 Budget Amendment and Appropriations.</u></b></p> <ul style="list-style-type: none"> <li>By a vote of 6:0, <b>ADOPTED</b> resolution approving appropriations #2025003; #2025004; #2025005; #2025006; #2025007; and #2025008 for local government projects and programs.</li> </ul>	<p><u>Clerk:</u> Forward copy of signed resolution to Finance and Budget and County Attorney's office. (Attachment 8)</p>	
<p>17. <b><u>Pb. Hrg.: SP202300018 Kappa Sigma International Headquarters.</u></b></p> <ul style="list-style-type: none"> <li>By a vote of 6:0, <b>ADOPTED</b> resolution to approve SP202300018 Kappa Sigma International Headquarters with the proposed revised conditions.</li> </ul>	<p><u>Clerk:</u> Forward copy of signed resolution to Community Development and County Attorney's office. (Attachment 9)</p>	
<p>18. <b><u>Pb. Hrg.: SP202400008 Crown Orchard Solar.</u></b></p> <ul style="list-style-type: none"> <li>By a vote of 6:0, <b>ADOPTED</b> resolution to approve special use permit SP202400008.</li> </ul>	<p><u>Clerk:</u> Forward copy of signed resolution to Community Development and County Attorney's office. (Attachment 10)</p>	
<p>19. <b><u>Pb. Hrg.: SP202400011 The Gray.</u></b></p> <ul style="list-style-type: none"> <li>By a vote of 6:0, <b>ADOPTED</b> resolution to approve proposed special use permit SP202400011.</li> </ul>	<p><u>Clerk:</u> Forward copy of signed resolution to Community Development and County Attorney's office. (Attachment 11)</p>	
<p>20. <b><u>Pb. Hrg.: Cost Recovery Ordinance.</u></b></p> <ul style="list-style-type: none"> <li><b>CONSENSUS</b> to <b>DIRECT</b> staff to include Cost Recovery in the Board of Supervisors Legislative Priorities.</li> </ul>	<p><u>County Attorney:</u> Proceed as directed.</p>	
<p>21. From the Board: Committee Reports and Matters Not Listed on the Agenda.</p> <p>a. Request to Authorize the Chair to Sign a Letter of Support for the Botanical Garden of the Piedmont Nomination for the National Medal for Museum and Library Service.</p> <ul style="list-style-type: none"> <li>By a vote of 6:0, <b>AUTHORIZED</b> the Chair to</li> </ul>		

<p>sign a Letter of Support for the Botanical Garden of the Piedmont Nomination for the National Medal for Museum and Library Service.</p> <p>b. Other Matters. <u>Ned Gallaway:</u></p> <ul style="list-style-type: none"> <li>• Asked for clarity regarding requirements for cameras during remote participation meetings. <ul style="list-style-type: none"> <li>• Mr. Rosenberg and Mr. Herrick clarified that members of public bodies must always be seen on camera during meetings that are held all virtually, but that the Board of Supervisors was not eligible to meet all virtually; if a member of the Board is participating virtually in an in-person meeting, Supervisors do not need to always be seen, but they must be able to be heard.</li> </ul> </li> <li>• Request to Authorize the Chair to Sign a Letter of Support for NAACP (National Association for the Advancement of Colored People).</li> <li>• By a vote of 6:0, <b>AUTHORIZED</b> the Chair to sign a Letter of Support for the NAACP for inclusion in the 2024 Freedom Fund Banquet booklet.</li> </ul>	<p><u>Clerk:</u> Prepare letter for Chair's signature.</p> <p><u>County Attorney:</u> Provide updated compliance information to local public bodies and Supervisors.</p> <p><u>Clerk:</u> Prepare letter for Chair's signature.</p>	
<p>24. Adjourn to September 4, 2024, 1:00 p.m., Lane Auditorium.</p> <ul style="list-style-type: none"> <li>• The meeting was adjourned at 10:04 p.m.</li> </ul>		

ckb/tom

Attachment 1 – Resolution of Appreciation for Steven L. Rosenberg

Attachment 2 – Fiscal Year 2026 Budget Calendar

Attachment 3 – Resolution Accepting Temporary Construction Easement From Southwood Charlottesville, LLC

Attachment 4 – DRAFT Temporary Construction Easement

Attachment 5 – Resolution Declaring that Local Emergency Is Ended

Attachment 6 – Resolution Approving a Development Grant Agreement Among the County of Albemarle, the Economic Development Authority, and Home Depot U.S.A., Inc.

Attachment 7 – DRAFT Development Grant Agreement

Attachment 8 – Resolution to Approve Additional FY 2025 Appropriations

Attachment 9 – Resolution to Approve SP202300018 KAPPA SIGMA International Headquarters

Attachment 10 – Resolution to Approve SP202400008 Crown Orchard Solar

Attachment 11 – Resolution to Approve SP202400011 The Gray Restaurant

**Resolution of Appreciation for Steven L. Rosenberg**

**WHEREAS**, following nearly seven years in private legal practice, Steven L. Rosenberg has served the City of Alexandria, Augusta County, the University of Virginia, the City of Staunton, and Albemarle County with distinction over a combined 27 years; and

**WHEREAS**, during his tenure as the Albemarle County Attorney, Steve's legal expertise and leadership have advanced many important County priorities, including the Rivanna Futures project to acquire 462 acres for the proposed Intelligence & National Security Innovation Acceleration Campus (INSIAC); and

**WHEREAS**, as an exceptional attorney who has consistently provided the highest level of dedicated, ethical, and valuable service, Steve has been a true public servant, and integral to the County's success.

**NOW THEREFORE BE IT RESOLVED**, that we the Albemarle County Board of Supervisors do hereby honor and commend Steven L. Rosenberg for his many years of exceptional service to the public sector, the County Attorney's Office, Albemarle County, and the entire Commonwealth of Virginia, with knowledge that Albemarle County is strengthened and distinguished by Steve's dedication, commitment, and professionalism in meeting County government needs.

**BE IT FURTHER RESOLVED** that a copy of this Resolution be spread upon the minutes of this meeting of the Albemarle County Board of Supervisors as a lasting testament to the esteem in which Steve is held by this Board for his legacy of government service and the work he has done to make Albemarle County better for future generations.

Signed this 21st day of August 2024.



## FISCAL YEAR 2026 BUDGET CALENDAR

<b>July 2024</b>	
17 (Wed.)	Outside Agency Funding Process Modifications
<b>August 2024</b>	
21 (Wed.)	Approval of FY 26 Budget Calendar
21 (Wed.)	Strategic Plan Execution and Reporting
<b>September 2024</b>	
17 (Tue.)	Joint Meeting with the City of Charlottesville
18 (Wed.)	Septic to Sewer Program Update
<b>October 2024</b>	
16 (Wed.)	Economic Outlook Report
<b>November 2024</b>	
20 (Wed.)	Long-Range Financial Planning – Overview, Assumptions, and Connection to Strategic Plan
<b>December 2024</b>	
4 (Wed.)	Long-Range Financial Planning – Joint meeting with School Board for capital
<b>February 2025</b>	
26 (Wed.)	County Executive's presentation to Board – Recommended Budget and Capital Improvements Program
<b>March 2025</b>	
05 (Wed.)	Public Hearing on County Executive's Recommended Budget and CIP
10 (Mon.)	Work Session #1
12 (Wed.)	Work Session #2
13 (Thur.)	School Board approves Public Schools budget request
17 (Mon.)	Work Session #3 – School Board presents budget
19 (Wed.)	Work Session #4 – Board proposes budget and sets maximum tax rate for advertisement
26 (Wed.)	If needed - Work Session #5
31	Spring Break
<b>April 2025</b>	
1-4	Spring Break
7 (Mon.)	If needed - Work Session #6
23 (Wed.)	Public Hearing on Board's Proposed Budget
24 (Thur.)	School Board adopts Public Schools Final budget
30 (Wed.)	Public Hearing on the CY 25 tax rates
<b>May 2025</b>	
7 (Wed.)	Board approves and appropriates FY 26 Budget and sets tax rates

**RESOLUTION ACCEPTING TEMPORARY CONSTRUCTION EASEMENT  
FROM SOUTHWOOD CHARLOTTESVILLE, LLC**

**WHEREAS**, Southwood Charlottesville, LLC owns Parcel ID Number 090A100-00-001D0; and

**WHEREAS**, an easement across this property is necessary in order for the County to comply with the requirements for the Southwood Phase 2 Community Development Block Grant, which will support the funding for the construction of new infrastructure development in Village 3.

**NOW, THEREFORE, BE IT RESOLVED** that the Albemarle County Board of Supervisors hereby approves the County's receipt of a temporary construction easement on Parcel ID Number 090A1-00-00-001D0, and authorizes the County Executive to sign\, the Deed of Easement and any other necessary related documents, as approved to form and substance by the County Attorney.



This document was prepared by:  
 Albemarle County Attorney  
 County of Albemarle  
 401 McIntire Road  
 Charlottesville, Virginia 22902

Parcel ID Number 090A1-00-00-001D0

This deed is exempt from taxation under *Virginia Code* § 58.1-811(A)(3) and from Court Clerk's fees under *Virginia Code* § 17.1-266.

**THIS TEMPORARY CONSTRUCTION DEED OF EASEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between **SOUTHWOOD CHARLOTTESVILLE, LLC**, a Virginia limited liability company (hereinafter, the "Grantor"), and the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (hereinafter, the "Grantee").

**WITNESSETH:**

That for and in consideration of the sum of ONE DOLLAR (\$1.00), receipt of which is hereby acknowledged, the Grantor does hereby GRANT and CONVEY unto the Grantee a temporary construction easement over the following property:

That certain real property shown and designated as "Temporary Construction Easement Area" (hereinafter, the "Property"), shown on the plat of Roudabush, Gale & Assoc., Inc., dated June 24, 2024, entitled "TMP 90A1-ID | Temporary Construction Easement, Southwood Redevelopment | Phase II | Village III" (hereinafter, the "Plat"), a copy of which is attached hereto and recorded herewith. Reference is made to the Plat for a more particular description of the easement conveyed herein.

The conveyance of this temporary construction easement includes the right of ingress and egress for the above-mentioned purpose. This temporary construction easement will expire upon completion of construction of 59 residential dwelling units. Any improvements constructed within the public right-of-way will be the property of the Grantee.

The Grantor covenants that it will perform all construction work in a proper and careful manner. At the conclusion of the construction, the Grantor will restore any disturbed surfaces to their prior condition. This deed conveys to the Grantee the right, but no responsibility or obligation whatsoever, to perform any construction work on the Property.

The Grantee, acting by and through its County Executive, duly authorized by resolution adopted by the Board of Supervisors of the County of Albemarle, Virginia, accepts this conveyance

pursuant to *Virginia Code* § 15.2-1803, as evidenced by the County Executive's signature hereto and the recordation of this Deed.

**WITNESS** the following signatures.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

**GRANTOR:**

**SOUTHWOOD CHARLOTTESVILLE, LLC**  
a Virginia limited liability company

By: \_\_\_\_\_  
Daniel H. Rosensweig, Manager

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ by Daniel H. Rosensweig, Manager, on behalf of Southwood Charlottesville, LLC ,  
Grantor.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Registration number: \_\_\_\_\_

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

GRANTEE:

COUNTY OF ALBEMARLE, VIRGINIA

By: \_\_\_\_\_  
Jeffrey B. Richardson  
County Executive

COMMONWEALTH OF VIRGINIA  
CITY OF CHARLOTTESVILLE:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Jeffrey B. Richardson, on behalf of the County of Albemarle, Virginia, Grantee.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
Notary Registration No. \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
County Attorney

**RESOLUTION DECLARING THAT LOCAL EMERGENCY IS ENDED  
(Tropical Storm Debby)  
(Virginia Code § 44-146.21)**

**WHEREAS**, Tropical Storm Debby was forecast to bring flooding, property damage, downed trees, widespread power outages, and hazardous travel conditions to the Commonwealth of Virginia, including Albemarle County, Virginia (the “County”) beginning Thursday, August 8, 2024 (the “Event”); and

**WHEREAS**, because of the potential adverse impacts of the Event, County Executive Jeffrey B. Richardson, acting in his capacity as the Director of Emergency Management, declared a local emergency on August 8, 2024, pursuant to Virginia Code § 44-146.21; and

**WHEREAS**, the Board of Supervisors confirmed the declaration of local emergency on August 14, 2024; and

**WHEREAS**, there is no longer a need for the County to provide aid or assistance pursuant to or to exercise the powers conferred by Virginia Code § 44-146.21.

**NOW THEREFORE, BE IT RESOLVED**, that there are no further emergency actions related to the Event to be taken; and

**BE IT FURTHER RESOLVED**, the declared local emergency is ended.

**RESOLUTION APPROVING A DEVELOPMENT GRANT AGREEMENT AMONG THE COUNTY OF  
ALBEMARLE, VIRGINIA, THE ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY,  
VIRGINIA,  
AND HOME DEPOT U.S.A., INC.**

**WHEREAS**, the Board of Supervisors of Albemarle County, Virginia ("Board") finds it is in the best interest of Albemarle County, Virginia ("County") to enter into a Development Grant Agreement with the Economic Development Authority of Albemarle County, Virginia ("EDA") and Home Depot U.S.A., Inc. ("Home Depot"), to support the redevelopment and improvement of the former Sears department store and the former Sears Auto Center and the marketing of the former Red Lobster site both located at Fashion Square Mall.

**WHEREAS**, Home Depot purchased a majority of the improvements and land constituting Fashion Square Mall and the former Red Lobster site and plans to invest \$26 million in their redevelopment and marketing.

**WHEREAS**, the project presents increased development costs estimated to total at least \$750,000.00 because of the need for demolition of the former Sears department store and remediation of brownfield conditions related to the former Sears Auto Center.

**WHEREAS**, Home Depot is willing to commit to an accelerated demolition and construction schedule and to dedicate land to public use for a future Hillsdale Road realignment with the County's and EDA's financial support through a development grant gauged to the incremental increase in real property taxes that will be paid to the County as a direct result of Home Depot's project.

**WHEREAS**, the project and this grant promote the economic development, improvement, and increased vitality of the Rio29 corridor and are consistent with several County plans and policies, including Project ENABLE, the Comprehensive Plan, the Places29 Master Plan, and the Rio29 Small Area Plan.

**WHEREAS**, the Development Grant Agreement will promote the welfare, convenience, and prosperity of the inhabitants of the County.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Albemarle County, Virginia:

1. Approves the Development Grant Agreement among the County, the EDA, and Home Depot, in the form presented to the Board at its meeting on this date, to support the redevelopment and improvement of the former Sears department store and Sears Auto Center and the marketing of the former Red Lobster site.
2. Authorizes the County Executive to execute the Development Grant Agreement in substantially such form, with such completions, omissions, insertions and changes that are not inconsistent with this resolution as may be approved by the County Executive and the County Attorney, which approval shall be evidenced conclusively by their execution and delivery of the Development Grant Agreement.
3. Authorizes the County Executive or his designee to execute on behalf of the County such other requisite documents in connection with the transaction contemplated by the Development Grant Agreement. Such officer or his designee is authorized to execute and deliver on behalf of the County such instruments, documents or certificates, and to do and perform such things and acts, as they shall deem necessary or appropriate in connection with the transaction authorized by this Resolution or contemplated by the Development Grant Agreement; and all of the foregoing, previously done or performed by such officer or agents of the County are in all respects approved, ratified and confirmed.

DRAFT VERSION 8.15.2024

## DEVELOPMENT GRANT AGREEMENT

THIS DEVELOPMENT GRANT AGREEMENT (“Agreement”) is made as of September \_\_, 2024 (the “Effective Date”), by and among the COUNTY OF ALBEMARLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the “County”), the ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA (the “EDA”), a political subdivision of the Commonwealth of Virginia, and HOME DEPOT U.S.A., INC., a stock corporation registered to and authorized to transact business in Virginia (the “Company”). The EDA, the County, and the Company are each individually referred to herein as a “Party” and collectively as the “Parties.”

## PURPOSE OF THE GRANT AGREEMENT

A. The Company is the owner of certain property located in Albemarle County, Virginia, and described as Albemarle County Tax Map Parcels Nos. 61-131, 61-131A, 61-132, and 61-133 and shown on Exhibit 1 attached hereto and incorporated herein by this reference (together with the improvements on such parcels, referred to herein as the “Property”). The Property includes approximately 37.28 acres of land and approximately 364,000 square feet of improvements thereon. Of those improvements, approximately 357,000 square feet are part of the Fashion Square Mall shopping center and approximately 7,000 square feet are located on an outparcel (Tax Map Parcel No. 61-133). The Property is located adjacent to the intersection of U.S. Route 29 and Rio Road.

B. The Company intends to develop the Property for commercial and retail uses, including the development which is the subject of the Proposal Summary shown in Exhibit 2 attached hereto and incorporated herein by this reference (“Phase 1”).

C. The County seeks to promote the economic development, improvement, and increased vitality of the area which is the subject of its Rio29 Small Area Plan; catalyze the redevelopment of the Fashion Square Mall property; and ensure certainty concerning the occurrence and timing of the Phase 1 redevelopment.

D. Phase 1 is consistent with, promotes, and implements several policies, objectives, and strategies of the Albemarle County Comprehensive Plan (the “Comprehensive Plan”), including the following sections of the Places29 Master Plan and the Rio29 Small Area Plan:

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

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

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

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

E. **The Phase 1 Investment.** The amount of funding and private investment by the Company in Phase 1 is estimated to be approximately \$26 million.

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

1. Promoting Economic Development. Promoting the economic development, the redevelopment, and reuse of existing improvements, increasing the vitality of the County’s economy, and promoting vibrancy in the Route 29 and Rio Road area.

2. Enhancing the County’s Tax Base and Jobs Base. Enhancing the County’s tax base and jobs base by facilitating the redevelopment of a distressed and underutilized commercial center that, when fully developed, will reinvigorate retail uses, include public spaces, provide new employment opportunities, and establish a diversified, mixed use community environment.

3. Brownfield Remediation. Remediating an identified brownfield on and around the former Sears Auto Center facility.

4. Development Area Investment. Catalyzing additional investment, productive economic activity, and positive social and recreational development in the County’s Development Areas.

5. Advancement of Community’s Vision. Advancing the County’s community vision as expressed through the Comprehensive Plan.



**G. The Incentives to Enable the County to Achieve the Animating Public Purposes.** To induce and incentivize the Company to complete Phase 1 and, in accordance with the terms of this Agreement, to dedicate and convey land to be used as a right of way to accommodate the realignment of Hillsdale Drive, the County will, subject to the terms and conditions of this Agreement, pay the Company up to \$750,000.00 through funds transferred to the EDA as Development Grants (the "Grant" or "Grants") originating from the incremental increases in the real estate tax paid to the County on TMP 61-132 and TMP 61-133.

**H. Company's Acceptance of the Incentives and Related Obligations.** The Company accepts these Grants as an incentive for the Company (i) to redevelop TMP 61-132 to remediate an identified brownfield and construct an approximately 134,262 square foot Home Depot retail establishment that includes an approximately 25,475 square foot garden center; (ii) to market TMP 61-133 for redevelopment; and (iii) in accordance with the terms of this Agreement, to dedicate and convey land to be used as a right of way to accommodate the realignment of Hillsdale Drive.

**I. Enabling Authority.** The County and the EDA are authorized to enter into this Agreement and to pay the Company as provided in this Agreement to the Company pursuant to the following:

1. Virginia Code § 15.2-940. Virginia Code § 15.2-940 enables the County to expend funds from its locally derived revenues of the locality for the purpose of promoting the resources and advantages of the locality.
2. Virginia Code § 15.2-953(B). Virginia Code § 15.2-953(B) enables the County to give funds to the EDA for the purposes of promoting economic development.
3. Virginia Code § 15.2-1205. Virginia Code § 15.2-1205 enables the County Board of Supervisors to give, lend, or advance in any manner that it deems proper funds, not otherwise specifically allocated or obligated, to the EDA.
4. Virginia Code § 15.2-4905(13). Virginia Code § 15.2-4905(13) enables the EDA to make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of the Industrial Development and Revenue Bond Act (Virginia Code § 15.2-4900 et seq.), including for the purposes of promoting economic development, provided that any loans or grants are made only from revenues of the EDA which have not been pledged or assigned for the payment of any of the EDA's bonds.

#### **AGREEMENT**

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

1. **Interpretation.**

- a. **Purpose of the Grant Agreement.** The foregoing statements of the Purpose of the Grant Agreement are, by this reference, incorporated into the body of this Agreement as if the same had been set forth in the body of this Agreement in their entirety.
- b. **Captions.** Captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement.
- c. **Gender; Number; Including.** The use of any gender in this Agreement shall refer to all genders, and the use of the singular shall refer to the plural, as the context may require. The term “including” and variants thereof shall mean “including without limitation.”
- d. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same instrument.
- e. **Exhibits.** Any Exhibit referenced and attached to this Agreement shall not be interpreted as a site plan, application, or other submission to the County for planning purposes, but is intended to illustrate the proposed redevelopment and show the general locations of items referenced in this Agreement.

2. **Company’s Obligations.**

- a. **Phase 1 Redevelopment of TMP 61-132.** The Company will demolish and remove the existing structures located on TMP 61-132 (the former Sears department store facility and Auto Center facility located at 1531 Rio Road East), remediate brownfield conditions related to the former Sears Auto Center and other such conditions as they may be discovered in accordance with federal and state laws and regulations (to include receipt of a certification of satisfactory completion of remediation from the Virginia Department of Environmental Quality), and construct a stand-alone home improvement retail store building and accompanying garden center. The Company must complete Phase 1, on or before December 24, 2025, the date which is eighteen (18) months after the date of issuance of the requisite demolition permit. Phase 1 shall only be considered complete when the Company receives a final Certificate of Occupancy from the County.
- b. **Active Marketing of TMP 61-133.** The Company must actively market TMP 61-133 for redevelopment.
- c. **Documentation.** The Company must provide documentation satisfactory to the County Executive that the costs associated with completing Phase 1 total at least \$750,000.
- d. **Governmental Approval and Permitting.** The Company must use due diligence in applying for and obtaining all governmental approvals and permits necessary to complete Phase 1.
- e. **Progress Reporting.** The Company, or its designee, at the Company’s expense must provide the County Executive with written reports on June

1, 2025, and thereafter on each anniversary of the Effective Date until completion of Phase 1, verifying and describing Phase 1 progress, delays, challenges, milestone schedule, and development plan. The report must be in a form and contain content reasonably satisfactory to the County Executive or his designee. Upon the County's reasonable request for additional information, the Company will provide such additional information related to Phase 1 to the County before disbursement of Grant funds. No Grant payment shall be made until the County receives a timely and reasonably satisfactory report.

- f. **Good Standing.** At all times during the Term (as hereinafter defined) of this Agreement, the Company must remain in good standing with the County and Commonwealth of Virginia, including, without limitation, County regulations related to Phase 1 redevelopment activities, permits, zoning and building code regulations, and County taxes and fees.
- g. **Dedication and Conveyance of Right of Way.** Upon the written request of the County or the Commonwealth of Virginia (and regardless of the status of completion of Phase 1 or this Agreement), the Company shall dedicate to public use and convey, by instrument in a form mutually acceptable to the Company and the County or the Commonwealth of Virginia, as the case may be, a right of way of no less than 50 feet in width to accommodate a realignment and extension of Hillsdale Drive in material conformity with Exhibit 3 attached hereto and incorporated herein by this reference, provided that (i) the location of the right of way and the plans and specifications for the right of way shall be subject to the approval of the Company, which it shall not unreasonably withhold, condition, or delay, and (ii) the Company shall have no obligation to complete any work or incur any costs in connection with any such reservation, realignment, extension, dedication and conveyance. Additionally, upon request of the County at any time subsequent to execution and delivery of this Agreement, the County, EDA and the Company agree to execute and record among the land records of the Clerk's Office of the Circuit Court of Albemarle County, Virginia, a memorandum of agreement, evidencing as a matter of record the obligations of the Company, its successors and assigns, under this Section 2(g). The Parties expressly acknowledge and agree that, subject to the Section 16 dispute resolution obligations set forth below, the provisions of this Section 2(g) are enforceable by a suit for specific performance.

### 3. County's Obligations.

- a. The County, through its Economic Development Office, will support the Company's requests for expedited development and governmental agency review of Phase 1 if it is deemed eligible under County development and review guidelines.

- b. During the Term of this Agreement, the County will disburse funds to the EDA for a Grant, subject to the County's Board of Supervisors annual appropriation and the following terms and conditions:
- i. The term of this Agreement (the "Term") commences on the date on which upon all Parties have executed and delivered this Agreement and continues until the date which is ten (10) years after the Company obtains a final Certificate of Occupancy for the improvements comprising Phase 1 redevelopment of TMP 61-132 in accordance with this Agreement.
  - ii. The Grant funding throughout the Term will total no more than \$750,000.00;
  - iii. The County will fund the Grant annually. The obligation to fund the Grant begins after the County issues the first real estate tax bill after the Term commences and where the real estate assessments for TMP 61-132 (2024 assessed value of \$6,993,400.00) and TMP 61-133 (2024 assessed value of \$3,617,400.00), in the aggregate, exceed the "Base Assessment" (herein so called), which is \$10,610,800.00;
  - iv. The "Tax Increment" (herein so called) will be calculated by subtracting the Base Assessment from the total aggregate assessed value of TMP 61-132 and TMP 61-133, as determined by the County's Real Estate Assessor, Department of Finance, for the year in which taxes assessed by the County are due;
  - v. The Grant funding obligation will be based on and equal to 100% of real estate taxes paid to the County on the Tax Increment for TMP 61-132 and TMP 61-133;
  - vi. The County will disburse the required Grant funding to the EDA annually within thirty (30) days after the annual second-half real estate tax due date;
  - vii. The County's obligation to fund the Grant will continue until the earlier of (1) the County having disbursed \$750,000.00 to the EDA, and the EDA having disbursed \$750,000.00 to the Company, or (2) the expiration of the Term;
  - viii. The County's and the EDA's obligation to disburse an annual Grant payment due under this Agreement shall be tolled whenever the Parties are engaged in litigation commenced by the Company where the litigation is related to this Agreement, the Phase 1 redevelopment, or the correction of an erroneous local tax assessment; and
  - ix. The Base Assessment will be adjusted to account for any boundary line adjustment initiated by the Company and approved by the County, to reflect the addition of acreage to, or the withdrawal of acreage from, TMP 61-132 or TMP 61-133, using 2024 property assessments.

4. **EDA's Obligations.**

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

5. **Default.** The following constitute default and allow the non-defaulting Party to seek a remedy:

- a. A Party fails to make a payment when the payment becomes due and payable, and such failure continues uncured for at least 30 days after receipt of written Notice (as hereinafter defined) of failure from the non-defaulting Party; or
- b. A Party fails to perform any other obligation this Agreement requires as such performance is required, and such failure continues uncured for at least 60 days after receipt of written Notice of failure from the non-defaulting Party. If the failure is not reasonably susceptible of being cured within the 60-day period, then the 60-day period to cure will be extended so long as the defaulting Party starts making efforts to cure within the 60-day period and thereafter diligently pursues completion of the cure.

6. **Remedies.** Upon a default that is not cured pursuant to Section 5, the non-defaulting Party shall have the option, subject to Section 16, to:

- a. Terminate this Agreement by written Notice to the defaulting Party; or
- b. Pursue such other rights and remedies as may be available under law.

If the Company is in default, then any Grant funds remaining in escrow with the EDA and not paid to the Company shall be returned to the County upon the County's written demand of the EDA, with a copy to the Company.

Notwithstanding anything to the contrary herein, in the event the Company fails to complete Phase 1 by the deadline set forth herein or by any extension to which the Parties agree and/or the Company does not receive any Grant funds from the EDA, the sole remedy of the County and the EDA shall be to terminate this Agreement by written Notice to the Company, in which event the Parties shall have no further rights or obligations hereunder.

TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL ANY PARTY OR ITS RESPECTIVE REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS

AGREEMENT, REGARDLESS OF (I) WHETHER SUCH DAMAGES WERE FORESEEABLE, (II) WHETHER OR NOT THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (III) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

7. **Effect of Termination.** The termination of this Agreement for any reason shall not affect any right, obligation, or liability which has accrued under this Agreement on or before the effective date of such termination.
8. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, the following limitations on assignment shall apply:
  - a. The Company shall not assign its rights or obligations under this Agreement to any party other than a Related Entity (as hereinafter defined) without the prior written approval of the County and the EDA.
  - b. The Company shall provide the County and EDA advance written notice prior to assigning its rights or obligations under this Agreement to any Related Entity.
  - c. As used in this Agreement, "Related Entity" means an entity which controls, is controlled by, or is under common control with Company; an entity will be deemed to control Company if it has the power to direct or cause the direction of the management or policies of Company, whether through ownership or voting securities, by contract, or otherwise.
  - d. Neither the County nor the EDA shall assign its rights or obligations under this Agreement to any entity other than the EDA or the County without the prior written approval of the Company.
9. **Notice.** All notices and other communications given or made pursuant to this Agreement ("Notice") shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or: (a) personal delivery to the Party to be notified, (b) when sent, if sent by electronic mail, during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. Any Notices sent by email shall only be valid with a read receipt and if a copy of the Notice is also sent by regular mail. All Notices shall be sent to the addresses set forth below. A Party may designate other or additional addresses in writing according to this section.

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

with a copy (which does not constitute Notice) to:

Albemarle County Attorney  
401 McIntire Road, Suite 325  
Charlottesville, Virginia 22902  
aherrick@albemarle.org

**EDA:** Albemarle Economic Development Authority  
401 McIntire Road, First Floor  
Charlottesville, Virginia 22902  
ATTN: Chair  
dlong@albemarle.org

with a copy (which does not constitute Notice) to:

Economic Development Office  
401 McIntire Road, First Floor  
Charlottesville, Virginia 22902  
economicdevelopment@albemarle.org

**Company:** Home Depot U.S.A., Inc.

2455 Paces Ferry Road, N.W.  
Atlanta, Georgia 30339  
ATTN: Tax

with a copy (which does not constitute Notice) to:

2455 Paces Ferry Road, N.W.  
Atlanta, Georgia 30339  
ATTN: Real Estate Legal, C-20

10. **Amendments.** Modification or amendment of this Agreement and waiver of any of its provisions must be done only in a writing executed by the Party against whom such modification, amendment, or waiver is sought to be enforced.
11. **Non-appropriation.** The obligation of the County to disburse the Grant as provided in this Agreement is subject to and dependent upon appropriations being made from time to time by the Albemarle County Board of Supervisors. Therefore:



- a. Obligations in the Event of Non-appropriation. If the Albemarle County Board of Supervisors does not appropriate funds for the Grant, then this Agreement terminates, and the Company shall have no further obligation under this Agreement.
  - b. This Agreement does not Establish an Irrevocable Obligation. Under no circumstances shall this Agreement be construed to establish an irrevocable obligation of the County to fund the Grant as provided in this Agreement.
12. **No Goods or Services Received by the County or EDA.** The Grant funds transferred by the EDA to the Company pursuant to this Agreement are solely to enable the Company to develop and construct all improvements associated with Phase 1 and to secure the Company's commitment to the dedication and conveyance of land to be used as a right of way to accommodate the realignment of Hillsdale Drive. The descriptions of the services and commitments that the Company will provide support the Grant's public and economic development purposes and are not a description of goods or services being procured by the EDA or the County.
13. **Severability.** If any provision of this Agreement is determined by a court having competent jurisdiction to be invalid, illegal or unenforceable to any extent, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible. In the event the Parties are unable to reach an agreement with respect to such modification, this Agreement shall terminate and be of no further force or effect.
14. **Governing Law and Venue.** This Agreement is to be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles, and the Albemarle County Code. Venue for any litigation arising out of or involving this Agreement shall lie in the Albemarle County Circuit Court or in the United States District Court for the Western District of Virginia - Charlottesville Division. An action shall not be brought in any other court.
15. **Interpretation of this Agreement.** This Agreement shall be interpreted in accord with how any terms are defined in this Agreement and otherwise by applying the plain and natural meaning of the words used, and not for or against any Party by reason of authorship.
16. **Dispute Resolution.** If there is a dispute of any kind between any Parties arising under this Agreement, upon the written request of a Party:
- a. Designation of a Senior Representative; Negotiation. Each Party to whom the dispute pertains will designate at least one senior representative to



negotiate with the other Parties' senior representative in good faith and as necessary to attempt to resolve the dispute without any formal proceedings.

- b. **Corrective Action.** If the negotiated resolution of the dispute requires any Party to take, cause to be taken, or cease taking some action or practice, that Party shall do so within a reasonable period of time, not to exceed 90 days, or as otherwise agreed by the Parties.
  - c. **Dispute Resolution Process a Prerequisite to Starting Court Proceedings.** No Party may initiate court proceedings by filing an action in a court of competent jurisdiction to resolve a dispute until the earlier of: (i) a good faith mutual conclusion by the senior representatives that amicable resolution through continued negotiation of the dispute does not appear likely; or (ii) 90 days after the initial request to negotiate the dispute. After either condition has occurred, a Party may file an action in the jurisdiction and venue provided in this Agreement and may pursue any other remedy available at law or in equity. Each Party shall pay its own attorneys' fees.
  - d. **When the Dispute Resolution Process is Not Required.** Nothing in this Section 16 will, however, prevent or delay a Party from instituting court proceedings to: (i) avoid the expiration of any applicable limitations period; or (ii) seek declaratory and injunctive relief.
17. **Relationship of Parties.** This Agreement is intended solely to establish the relative rights and obligations of the Parties and does not create any type of partnership, joint venture, purchaser-vendor, or employer-employee relationship.
18. **No Third-Party Beneficiaries.** This Agreement does not confer any rights on any person or entity who is not a Party, whether as a third-party beneficiary or otherwise.
19. **No Waiver of Sovereign Immunity or Other Immunities.** This Agreement and any action taken by the County, the EDA, or their respective Boards pursuant to this Agreement is not and shall not be construed to be a waiver of either sovereign immunity or any other governmental immunity that applies to the County, the County's Board of Supervisors, the EDA, or the EDA's Board of Directors.
20. **Non-liability of County and EDA Officers and Employees; Non-liability of Company Officers and Employees.**
- a. No County Supervisor or other County officer or employee, and no EDA Director or other EDA officer or employee, shall be personally liable to the Company if there is any default or breach by the County, the County's Board

of Supervisors, the EDA, or the EDA's Board of Directors pursuant to this Agreement.

- b. No Company officer or employee shall be personally liable to the County or the EDA if there is any default or breach by the Company pursuant to this Agreement.

21. **Indemnification and Hold Harmless.** The Company agrees to indemnify, hold harmless, and defend the County, the EDA, and their supervisors, officers, directors, agents, and employees from any and all liability, loss, damage, claims, causes of action, and expenses (including without limitation reasonable attorneys' fees), caused or asserted to have been caused, directly or indirectly, by the Company in connection with the performance of this Agreement. This includes any act or omission of an officer, director, agent, employee, or representative of the Company, its successors and assigns, to the extent that such liability, loss, damage, claims, causes of action, and expenses are caused in whole or in part by such Party's default or breach, negligence, or intentional misconduct.

22. **Surviving Provisions.** The following provisions of this Agreement shall survive the termination of this Agreement for any reason including the expiration of the Term: Sections 2(g), 14, and 16. The provisions of Section 21 shall survive as provided in this section only as to acts or omissions occurring prior to the effective date of termination.

23. **Force Majeure.** If any Party's timely performance of any obligation in this Agreement is interrupted or delayed by any occurrence that is not caused by the conduct of such Party's officers or employees, whether the occurrence is an "Act of God" such as lightning, earthquakes, floods, or other similar causes; a common enemy; the result of war, riot, strike, lockout, civil commotion, sovereign conduct, explosion, fire, or the act or conduct of any person or persons not under the direction or control of such Party, then performance is excused for a period of time that is reasonably necessary after the occurrence to remedy the effects thereof.

24. **Entirety of Agreement.** This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes any and all oral discussions, agreement, or understanding.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties have caused this Development Grant Agreement to be executed by their duly authorized representatives as of the date first written above.

COUNTY OF ALBEMARLE, VIRGINIA

By: \_\_\_\_\_ [SEAL]  
Jeffrey B. Richardson, County Executive

Approved as to form only:

\_\_\_\_\_  
Steven L. Rosenberg, County Attorney

ECONOMIC DEVELOPMENT  
AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA

By: \_\_\_\_\_ [SEAL]  
Jeff Morrill, Vice Chair

ATTEST:

\_\_\_\_\_  
Andrea Johnson  
Secretary/Treasurer

HOME DEPOT U.S.A., INC.

By: \_\_\_\_\_ [SEAL]  
Name & Title

## EXHIBITS

1. **TMP 61-131, TMP 61-131A, TMP 61-132, and TMP 61-133**
2. **Phase 1 Proposal**
3. **Hillsdale Drive Extension & Realignment Illustration**

DRAFT

**RESOLUTION TO APPROVE  
ADDITIONAL FY 2025 APPROPRIATIONS**

**BE IT RESOLVED** by the Albemarle County Board of Supervisors:

- 1) That the FY 25 Budget is amended to increase it by \$14,303,282;
- 2) That Appropriations #2025003; #2025004; #2025005; #2025006; #2025007 and #2025008 are approved;
- 3) That the appropriations referenced in Paragraph #1, above, are subject to the provisions set forth in the Annual Resolution of Appropriations of the County of Albemarle for the Fiscal Year ending June 30, 2025.

**RESOLUTION TO APPROVE  
SP202300018 KAPPA SIGMA  
INTERNATIONAL HEADQUARTERS**

**WHEREAS**, upon consideration of the staff report prepared for SP202300018 Kappa Sigma International Headquarters, the recommendation of the Planning Commission and the information presented at the public hearing, any comments received, and all of the relevant factors in Albemarle County Code §§ 18-13.2.2(2), 18-5.1.02, and 18-33.8(A), the Albemarle County Board of Supervisors hereby finds that the proposed special use would:

1. not be a substantial detriment to adjacent parcels;
2. not change the character of the adjacent parcels and the nearby area;
3. be in harmony with the purpose and intent of the Zoning Ordinance, with the uses permitted by right in the zoning district, the applicable provisions of Albemarle County Code § 18-5, and with the public health, safety, and general welfare (including equity); and
4. be consistent with the Comprehensive Plan.

**NOW, THEREFORE, BE IT RESOLVED** that the Albemarle County Board of Supervisors hereby approves SP202300018 Kappa Sigma International Headquarters, subject to conditions attached hereto.

\* \* \* \*

**SP202300018 Kappa Sigma International Headquarters Conditions**

1. Development of the use must be in general accord with the conceptual plan (Attachment D) entitled "Special Use Permit Kappa Sigma Int'l Headquarters", prepared by Roudabush, Gale & Associates, Inc and dated 11-2-2023, last revised 08-07-2024. To be in accord, development must reflect the following major elements essential to the design of the development:
  - a. Location of buildings
  - b. Location of parking areas
  - c. Building height
  - d. Minimum yard requirements of County Code §18-21.7
  - e. Pedestrian improvements along Route 20

Minor modifications to the plan that do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.
2. Lighting of the site must be limited as follows:
  - a. Light levels at the property lines must be no greater than 0.3 foot candles;
  - b. No flood lighting of the building is permitted;
  - c. Only the parking lot north of the building is allowed pole lights;
  - d. Utilize bollard type lights in place of pole lights whenever possible. Use only full cutoff fixtures;
  - e. Site and building illumination is subject to the review of the ARB; and
  - f. The lighting for any recreational facility may only be inside the picnic pavilions. Lighting must be excluded from other recreational areas.
3. Final site plans must show a reservation, or provide a note, for future vehicular and pedestrian connections to adjacent parcels to the north and south;
4. A right turn and taper must be constructed at the entrance in Route 20 to the satisfaction of VDOT;
5. Landscaping must be provided to limit the impact of the storm water area on the Entrance Corridor to the satisfaction of the ARB;
6. The applicant must construct public water service to the site via extension of the existing Albemarle County Service Authority water line located on the west side of Route 20 and public sewer service via extension of the existing Albemarle County Service Authority sewer line located along Route 20 and the Cow Branch Creek, generally as provided in the report entitled, Preliminary Engineering Report Water and Sewer Facilities for Kappa Sigma Headquarters by Draper Aden Associates, dated March 30, 2004;
7. A plat to combine the parcels must be submitted concurrently with the amended site plan submittal or an SP will be required; and
8. All grass parking areas must be "Grasspave" unless a product deemed equivalent is approved by the County Engineer. The amended site plan must include "Grasspave" manufacturers material specifications, requirements for installation, provisions for watering (ex. sprinkler system, etc.), and

maintenance requirements (ex. fertilizing, watering, mowing, etc.) to the satisfaction of the County Engineer.

9. The base elevation must not exceed 528 feet.

**RESOLUTION TO APPROVE SP202400008  
CROWN ORCHARD SOLAR**

**WHEREAS**, upon consideration of the staff report prepared for SP202400008 Crown Orchard Solar, the recommendation of the Planning Commission and the information presented at the public hearing, any comments received, and all of the factors relevant to the special use permit in Albemarle County Code §§ 18-10.2.2(58) and 18-33.8(A), the Albemarle County Board of Supervisors hereby finds that the proposed special use would:

1. not be a substantial detriment to adjacent parcels;
2. not change the character of the adjacent parcels and the nearby area;
3. be in harmony with the purpose and intent of the Zoning Ordinance, with the uses permitted by right in the Rural Areas (RA) district, with the applicable provisions of Albemarle County Code § 18-5, and with the public health, safety, and general welfare (including equity); and
4. be consistent with the Comprehensive Plan.

**NOW, THEREFORE, BE IT RESOLVED** that the Albemarle County Board of Supervisors hereby approves SP202400008 Crown Orchard Solar, subject to conditions attached hereto.

\* \* \* \*

**SP202400008 Crown Orchard Solar Conditions**

1. Development and use must be in general accord (as determined by the Director of Planning and the Zoning Administrator) with the Concept Plan titled "CROWN ORCHARD-AFTON 491.7kW SOLAR PROJECT" dated May 22, 2024. To be in general accord with the Concept Plan, development and use must reflect the following major elements as shown on the Concept Plan:
  - a. Location of solar development envelope
  - b. Retention of wooded vegetation

Minor modifications to the Concept Plan that do not otherwise conflict with the elements listed above may be made, with the approval of the Zoning Administrator and the Director of Planning, to ensure compliance with the Zoning Ordinance, and State or Federal laws.
2. All solar panels must be set back at least two hundred (200) feet from property lines and at least one hundred (100) feet from Crown Orchard Road.
3. The applicant must submit a decommissioning and site rehabilitation plan (hereinafter "Decommissioning Plan") with the building permit application that must include the following items:
  - a. A description of any agreement (e.g. lease) with the landowners regarding decommissioning;
  - b. The identification of the party currently responsible for decommissioning;
  - c. The types of panels and material specifications being used at the site;
  - e. Standard procedures for removal of facilities and site rehabilitation, including recompacting and reseeding;
  - f. An estimate of all costs for the removal and disposal of solar panels, structures, cabling, electrical components, roads, fencing, and any other associated facilities above ground or up to thirty-six (36) inches below grade or down to bedrock, whichever is less;
  - g. An estimate of all costs associated with rehabilitation of the site; and
  - h. Provisions to recycle materials to the maximum extent possible.
4. Prior to issuance of a building permit, the Decommissioning Plan must be recorded by the applicant in the office of the Circuit Court Clerk of the County of Albemarle.



- a. The Decommissioning Plan and estimated costs must be updated every five years, upon change of ownership of either the property or the project's owner, or upon written request from the Zoning Administrator. Any changes or updates to the Decommissioning Plan must be recorded in the office of the Circuit Court Clerk of the County of Albemarle.
  - b. The Zoning Administrator must be notified in writing within 30 days of the abandonment or discontinuance of the use.
  - c. All physical improvements, materials, and equipment (including fencing) related to solar energy generation, both above ground and underground, must be removed entirely, and the site must be rehabilitated as described in the Decommissioning Plan, within 180 days of the abandonment or discontinuance of the use. If a piece of an underground component breaks off or is otherwise unrecoverable from the surface, that piece must be excavated to a depth of at least 36 inches below the ground surface.
5. The facility must comply with Albemarle County Code § 18-4.14.
6. Products used to clean panels are limited to water and biodegradable cleaning products.
7. No above ground wires are permitted, except if associated with (a) the panels and attached to the panel support structure or (b) tying into the existing overhead transmission wires.
8. Prior to activation of the site, the applicant must provide training to the Albemarle County Department of Fire/Rescue. This training must include documentation of onsite materials and equipment, proper firefighting and lifesaving procedures, and material handling procedures.

**RESOLUTION TO APPROVE SP202400011  
THE GRAY RESTAURANT**

**WHEREAS**, upon consideration of the staff report prepared for SP202400011 The Gray Restaurant, the recommendation of the Planning Commission and the information presented at the public hearing, any comments received, and all of the relevant factors in Albemarle County Code §§ 18-22.2.2(16)(c) and 18-33.8(A), the Albemarle County Board of Supervisors hereby finds that the proposed special use would:

1. not be a substantial detriment to adjacent parcels;
2. not change the character of the adjacent parcels and the nearby area;
3. be in harmony with the purpose and intent of the Zoning Ordinance, with the uses permitted by right in the (C-1) Commercial zoning district, with the applicable provisions of Albemarle County Code § 18-5, and with the public health, safety, and general welfare (including equity); and
4. be consistent with the Comprehensive Plan.

**NOW, THEREFORE, BE IT RESOLVED** that the Albemarle County Board of Supervisors hereby approves SP202400011 The Gray Restaurant, provided that the gross floor area for the restaurant is limited to 2,100 square feet.