

## AGREEMENT

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

### Recitals

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

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

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

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

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

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

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

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

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

11. **This Agreement is Contingent Upon, But Not in Exchange for, Approval of ZMA 2018-00003.** This Agreement is contingent upon the County Board of Supervisors approving ZMA 2018-00003 which, as currently proposed, would allow the uses and densities to enable the Project. However, this Agreement is not, and should not be construed to be, an Agreement by the Board to rezone the Property. In its consideration of ZMA 2018-00003, the Board may and will exercise its full legislative powers and discretion as authorized by law.

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

- A. **Virginia Code § 15.2-953.** Virginia Code § 15.2-953 enables the County to give funds to any charitable institution that provides services to residents of the County, that provides housing for persons 60 years of age or older, and to provide funds to the Authority for the purposes of promoting economic development.
- B. **Virginia Code § 15.2-959.** Virginia Code § 15.2-959 enables the County to engage in research, studies, and experimentation in housing alternatives, including the rehabilitation of existing housing stock and the construction of additional housing.

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

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

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

The parties agree as follows:

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

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

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

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

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

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

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

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

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

3. **Term of this Agreement.** The term of this Agreement is from June \_\_, 2019 until the last period of affordability expires pursuant to Section 5(C)(1).
4. **Contributions by the County and the Authority.** The County agrees to appropriate to the Authority, and Authority agrees to transfer to Habitat, cash contributions as provided below:

**A. Prerequisites to Transferring the First Cash Contribution or Rebate.** Before the County appropriates the first Cash Contribution described in Section 4(B) or the first Rebate described in Section 4(C), Habitat shall provide to the County the following information which must demonstrate to the County’s satisfaction that the Project is economically viable:

1. **Budget.** A project budget for the Project.
2. **Funding Plan.** A plan showing how the Project and Southwood will be funded, with evidence satisfactory to the County, that it has or will have the financial ability to design and construct the Project, including proof that it has or will secure funds necessary, obtained commitments for any construction loans, received contributions, or received pledges.
3. **Other Economic Information.** Any other information reasonably requested by the County to ensure to the County’s satisfaction the economic viability and Habitat’s ability to achieve a minimum of 75 Habitat-built or Habitat-contracted ADUs within the Project.
4. **Habitat Professional Team.** A list of the persons filling professional positions employed by Habitat and who are assigned to the Project, and any consultants hired, having experience in large mixed-use, mixed income developments that meets the requirements of Section 5(K).
5. **Non-Displacement.** A Non-Displacement Plan that meets the requirements of Section 5(E).

**B. Phased Cash Contributions.** The County and the Authority will contribute up to \$1,800,000.00 to Habitat in separate contributions (the “Cash Contribution”) as follows:

1. **Milestones for the Cash Contributions.** Each Cash Contribution will be made in the stated sums when Habitat reaches the following milestones:
  - a. **Fiscal Year 2020 or later; \$100,000.00.** \$100,000.00 will be contributed to Habitat in Fiscal Year 2020 or later upon written request by Habitat to the County Executive, to support Habitat’s planning work and applications.
  - b. **Fiscal Year 2020 or later; \$300,000.00.** \$300,000.00 will be contributed to Habitat in Fiscal Year 2020 or later when Habitat provides written evidence that: (i) it or a third party has been awarded Low Income Housing Tax Credits for 80 or more rental units of affordable housing within the Project, specifically, within the area referred to as Phase 1, Block B in the documents submitted by Habitat for ZMA 2018-00003; or (ii) a developer obtains one or

more building permits to construct 80 or more affordable dwelling units (ADUs) within the Project.

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

Habitat pursuant to Section 4(B)(1) shall be reasonably made and shall be binding on the Authority. The County Executive may delegate this responsibility to any County officer.

5. **Non-appropriation.** Any Cash Contribution to be made by the County and the Authority pursuant to this Section 4(B) in any Fiscal Year is subject to non-appropriation by the County Board of Supervisors as provided in Section 7.
6. **Extinguishing an Obligation.** Any obligation of the County and the Authority to make a particular Cash Contribution pursuant to this Section 4(B) is extinguished if Habitat does not reach the corresponding milestone by June 30, 2025 or another date as extended by a written agreement of the parties. Habitat must submit any evidence that it has reached a milestone to the County Executive by July 31, 2025.

C. **Rebated Real Property Taxes.** The County and the Authority will rebate up to \$1,400,000.00 to Habitat the equivalent of a portion of the increase in real property taxes collected from the Project in annual contributions as follows:

1. **Real Property Tax Baseline.** The “Real Property Tax Baseline” is the amount of real property taxes assessed by the County on the Property for the Calendar Year in which ZMA 2018-00003 is approved by the County Board of Supervisors.
2. **Duration of the Rebate Period.** The “Rebate Period” begins in the Calendar Year following the Calendar Year in which the Real Property Tax Baseline is established and continues for 10 Calendar Years, or sooner, when \$1,400,000.00 has been rebated to Habitat pursuant to this Section 4(C).
3. **Calculation of the Rebates.** The amount of the real property taxes that will be rebated to Habitat (the “Rebate”) is as follows:
  - a. **Until the End of Calendar Year 2024.** One hundred percent of the increase in real property taxes collected by the County for the Property above the Real Property Tax Baseline will be rebated to Habitat until the end of Calendar Year 2024.
  - b. **Calendar Year 2025 and Thereafter.** Fifty percent of the increase in real property taxes collected by the County for the Property above the Real Property Tax Baseline will be rebated beginning in Calendar Year 2025 and until the Rebate Period ends.
4. **How and When the Rebate Will Be Transferred.** Within 45 days after the full amount of the real property taxes have been paid for the Property for the applicable half of the Calendar Year, the County Board of Supervisors will semi-annually appropriate a Rebate to the Authority. The Authority will transfer the Rebate to Habitat within 30 days after it is received from the County. The Authority has no responsibility to transfer any Rebate to Habitat that the Authority has not received from the County. Each Rebate from the Authority to Habitat is a grant.
5. **Purposes for Which the Rebates May be Used.** Habitat may use each Rebate received under this Section 4(C) as follows:
  - a. **First: Construct Affordable Dwelling Units.** Habitat shall first use the Rebate only to construct or install the foundation, framing, windows and doors, roofing, exterior siding, drywall and other interior wall materials, insulation, rough and finish electrical, plumbing, and heating and cooling systems, underlayment, countertops and cabinets, trim, painting, appliances, flooring, kitchen appliances, finish work such as book shelves, and connections to utilities, and the like, of a Habitat-built or Habitat-contracted ADU, until the 75<sup>th</sup>

certificate of occupancy is issued for Habitat-built or Habitat-contracted ADUs within the Project. The Rebate may not be used for site preparation or to construct or install within the Project any streets, utilities, common area improvements and amenities, or for any other purpose.

- b. Second: Apply to Habitat Debt to Construct Affordable Dwelling Units.** Any Rebate received by Habitat that can no longer be used as provided by Section 4(C)(5)(a) (because, for example, all Habitat-built or Habitat-contracted ADUs have been constructed in the Project), shall next be applied by Habitat to pay any debt incurred by Habitat to build Habitat-built or Habitat-contracted ADUs within the Project.
- c. Third: Rebates Deposited in Escrow Account for Affordable Dwelling Units in Subsequent Phases of Southwood.** Any Rebate to be received by Habitat that can no longer be used as provided by Sections 4(C)(5)(a) and 4(C)(5)(b) shall be deposited in an escrow account established by the County instead of being directly transferred to Habitat. Habitat shall inform the County Executive in writing, with any supporting evidence it may have or that may be requested by the County Executive, that the Rebates can no longer be used as provided by Sections 4(C)(5)(a) and 4(C)(5)(b). Any Rebates deposited in an escrow account may be withdrawn by Habitat upon prior approval by the County Executive for the sole purpose of using the Rebate to construct or install ADUs outside of the Project but within Southwood. The transfer schedule established in Section 4(C)(4) applies to Rebates that will be deposited in an escrow account to the extent that it is practicable, allowing adequate time for the County Executive to reasonably consider the information provided by Habitat.
- 6. Non-appropriation.** Any Rebate to be made by the County and the Authority pursuant to this Section 4(C) in any Fiscal Year is subject to non-appropriation by the County Board of Supervisors as provided in Section 6 of this Agreement.
- 7. Extinguishing an Obligation.** Any obligation of the County and the Authority to make a particular Rebate pursuant to this Section 4(C) is extinguished on December 31 of the tenth Calendar Year following the Calendar Year in which the Real Property Tax Baseline is established, or when the County and the Authority have rebated to Habitat \$1,400,000.00, whichever occurs first.

**D. Suspending Transfers of Cash Contributions or Rebates.** The transfer of any Cash Contribution or Rebate from the Authority to Habitat shall be suspended at any time while Habitat is not in compliance with any obligation it has pursuant to Section 5.

- 1. Decision.** The decision as to whether Habitat is not in compliance with any obligation it has pursuant to Section 5 shall be reasonably made by the County Executive.
- 2. Notice from the County to Habitat.** The County shall provide written notice to Habitat that Habitat is not in compliance with one or more obligations it has pursuant to Section 5. The notice shall identify the obligations that Habitat is not in compliance with and recommend corrective actions to return to compliance.
- 3. Resolution.** Habitat shall make good faith efforts to return to compliance with its obligations. If it disagrees with the County as to whether it is not in compliance with one or more of its obligations, Habitat may request to meet with the County pursuant to the dispute resolution procedure in Section 9(G) of this Agreement. The request must be made by Habitat in writing and be received by the County within 30 days after the date Habitat received the written notice from the County pursuant to Section 4(D)(2).

**E. Returning the Cash Contributions and Rebates.** Habitat shall return any Cash Contribution and Rebate (collectively, “County Funds”) to the Authority, which in turn shall return the County Funds to the County, in the following circumstances:

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

- a. **Tax Credits Awarded or Other Affordable Housing Project.** The \$300,000.00 Cash Contribution transferred pursuant to Section 4(B)(1)(b) shall be returned in the prorated amount of \$3,750.00 for each certificate of occupancy not obtained from the County for an ADU within the Project by December 31, 2027 that is less than 80, provided that at least one certificate of occupancy has been issued for an ADU developed or installed as provided in Section 4(B)(1)(b). Example: If 70 certificates of occupancy for ADUs have been issued by the County by December 31, 2027, 10 certificates of occupancy were not timely obtained and Habitat must return \$37,500.00.
- b. **Certificates of Occupancy Issued for Fewer than 75 Habitat-built or Habitat-contracted ADUs.** The Cash Contribution transferred pursuant to Section 4(B)(1)(c) through (f) shall be returned in the prorated amount of \$20,000.00 for each certificate of occupancy not obtained from the County for a Habitat-built or Habitat-contracted ADU within the Project by December 31, 2027 that is less than 75, up to the amount of Cash Contributions that it received. Example: If 70 certificates of occupancy for Habitat-built or Habitat-contracted ADUs have been issued by the County by December 31, 2027, five certificates of occupancy were not timely obtained and Habitat must return \$100,000.00.

3. **Milestones Reached, Failed, Re-attained.** Any Cash Contribution made pursuant to the milestones being reached pursuant to Section 4(B)(1)(c), (d), or (e), then returned by Habitat because Habitat thereafter no longer satisfied the milestone, shall be transferred again as provided in this Agreement if Habitat again timely reaches the milestone.
4. **Timing of Returns.** Habitat shall return any Cash Contribution or Rebate required by this Section 3(E) within 30 days after it receives a written demand for a return from the County. The Authority shall transfer any return to the County within 45 days after it receives the return from Habitat.

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

5. **Obligations of Habitat.** Habitat will provide ADUs within the Project as follows:
  - A. **Construct or Contract to Construct at Least 75 Affordable Dwelling Units.** Habitat shall provide a minimum of 75 Habitat-built or Habitat-contracted ADUs within the Project.
  - B. **Construct or Install at Least 80 LIHTC Affordable Dwelling Units; Alternative.** Habitat, or a third party, shall construct or install a minimum of 80 LIHTC ADUs within the Project. If Habitat is unable to enter into a contract with a third party by June 30, 2020, or Habitat or the third party is not awarded Low

Income Housing Tax Credits for 80 or more ADUs by June 30, 2020, Habitat shall diligently pursue until June 30, 2021 other third parties to seek and obtain an award of 80 or more LIHTC ADUs or to otherwise contract with a developer to construct or install 80 or more ADUs within the Project. If Habitat sells, leases, or otherwise transfers land in Block B in the Project to construct or install 80 or more LIHTC or other ADUs, all funds received by Habitat for the sale, lease, or transfer shall be used by Habitat for the Project. In addition:

1. **“Diligent pursuit” described.** In order for Habitat to be deemed by the County to be diligently pursuing a third party as required by this Section 5(B), Habitat shall, at a minimum, continuously market sufficient land within the Project to allow 80 or more ADUs to be constructed and to market the land for that purpose. The marketing shall continue until the land is conveyed to a developer for the purposes described herein, or until June 30, 2021, whichever occurs first. The land shall be marketed at a price that will allow it to be developed for affordable housing.
2. **Appraisal.** If the County does not agree that the land is being so marketed at an appropriate price, it may request that an appraisal be prepared at its cost. The appraiser shall be selected by agreement of the County and Habitat.
3. **Extinguishment of Obligation.** If Habitat is unable to obtain a buyer and developer by June 30, 2021 to construct or install 80 or more ADUs within the Project, the obligation of this Section 5(B) is extinguished.
4. **Waiver by the County Board of Supervisors of the Obligation to Market the Land Until June 30, 2021.** Upon the written request by Habitat, the County Board of Supervisors may waive Habitat’s obligation to market the land until June 30, 2021 if Habitat has an interested purchaser who would not be constructing or installing 80 or more LIHTC or other ADUs in Block B in the Project, but would be developing a project that promotes the economic and community development of Southwood. In evaluating a request, the Board will consider any relevant criteria including, but not limited to: (i) whether the development will provide civic space for Southwood; (ii) whether the development will lease at affordable rates commercial space for Southwood residents and their businesses; (iii) enhanced open space for Southwood; (iv) funding for affordable housing within Southwood; and (v) other features, elements, improvements, or services that promote the economic and community development of Southwood. If the transfer of the land by Habitat to a developer is not completed, the June 30, 2021 deadline shall be extended an equivalent amount of time that the land was not actively marketed.

**C. Ensure Long-term Affordability.** Habitat will ensure the long-term affordability of the ADUs within the Project as follows:

1. **Dwelling Units that are Habitat-built, Habitat-contracted, Habitat-sold.** Habitat-built, Habitat-contracted, and Habitat-sold ADUs shall qualify as affordable housing for a minimum of 40 years. Affordability may be achieved through deed restrictions, reserving in all ADUs a right of first refusal and granting the County a right of second refusal, by providing forgivable final mortgages, and other incentives. The period of affordability begins on the date that the certificate of occupancy is issued by the County for each ADU. To simplify tracking the periods of affordability, Habitat may group all the certificates of occupancy for ADUs issued in a Calendar Year to begin their period of affordability on January 1 of the next Calendar Year.
2. **Dwelling Units Within Low Income Housing Tax Credit Projects.** LIHTC ADUs shall qualify as affordable housing for a minimum of 30 years. The period of affordability begins on the date that the certificate of occupancy is issued by the County for each ADU.

3. **Dwelling Units that are Flexible Structure Types.** Flexible structure types, including modular housing and carriage units, serving as second dwelling units on a lot, shall qualify as affordable housing for a minimum of 10 years. For the purpose of Habitat satisfying its obligation to provide 75 or more Habitat-built or Habitat-contracted ADUs pursuant to this Agreement, only the first 10 flexible structure types will be counted toward Habitat's obligation. The period of affordability begins on the date that the certificate of occupancy is issued by the County for each ADU.
4. **Dwelling Units Using Other Affordable Housing Strategies.** Dwellings qualifying as affordable housing using a combination of strategies, including those described above or any other strategies, including land banks or land trusts, shall qualify as affordable housing for a minimum of 30 years. The period of affordability begins on the date that the certificate of occupancy is issued by the County for each ADU. To simplify tracking the periods of affordability, Habitat may group all the certificates of occupancy for ADUs issued in a Calendar Year to begin their period of affordability on January 1 of the next Calendar Year.

**D. Diligently Fundraise.** From the date of this Agreement and until the design and construction of the ADUs within the Project are 100 percent funded, Habitat shall actively and aggressively conduct a capital campaign to obtain contributions to pay for the cost of designing and constructing the ADUs within the Project.

1. **“Actively” conducting the capital campaign described.** In order for Habitat to be deemed to be “actively” conducting the capital campaign, the Habitat fundraiser required by Section 5(K) shall be dedicated exclusively to directing the capital campaign for its required duration. The fundraiser’s dedication to directing the capital campaign may be non-exclusive if Habitat demonstrates to the County Executive’s satisfaction that exclusive dedication to the capital campaign is not required for Habitat to meet its obligation under this Section 5(D). The County Executive shall not unreasonably withhold approval.
2. **“Aggressively” conducting the capital campaign described.** In order for Habitat to be deemed to be “aggressively” conducting the capital campaign, the Habitat fundraiser required by Section 5(K) shall conduct the capital campaign in a manner that is systematic, ambitious, and energetic for its duration.

**E. Develop and Implement a Non-Displacement Plan.** Habitat shall develop and implement a non-displacement plan for each current Southwood resident (the “Non-Displacement Plan”). The Non-Displacement Plan shall include at least 47 Habitat-built or Habitat-contracted ADUs, or market rate units, within the Project that will rehouse current residents and a plan for rehousing options for Southwood residents living in trailers or manufactured homes as they are impacted by the redevelopment of the Property for the Project. The Non-Displacement Plan shall meet or exceed the standards of the Residential Anti-Displacement and Relocation Assistance Plan developed by the Virginia Department of Housing and Community Development as required for the Vibrant Communities Initiative Grant. The Non-Displacement Plan is subject to review and approval by the County Housing Planner or another County officer designated by the County Executive (the “County Housing Planner”). As provided in Section 4(A)(5), Habitat must obtain approval of the Non-Displacement Plan before the County appropriates the first Cash Contribution described in Section 4(B) or the first rebate described in Section 4(C). The County Housing Planner shall not unreasonably withhold approval of the Non-Displacement Plan. Any amendment to the Non-Displacement Plan is also subject to review and approval by the County Housing Planner.

**F. Provide a Mixture of Housing.** Habitat shall provide for a mixture of ADUs within the Project. In combination with market rate dwelling units, the ADUs shall be a mixture of owned and rented dwellings, with tiers of affordability (*i.e.*, affordable to households with incomes not exceeding, for

example, 20 percent, 40 percent, 60 percent, and 80 percent of the area median income established by the United States Department of Housing and Urban Development adjusted by family size) (the “Housing Mixture Plan”). The Housing Mixture Plan is subject to review and approval by the County Housing Planner or another County officer designated by the County Executive (the “County Housing Planner”). Habitat must obtain approval of the Housing Mixture Plan before the first final site plan or subdivision plat within the Project that will include any dwelling units is approved by the County. The County Housing Planner shall not unreasonably withhold approval of the Housing Mixture Plan. Any amendment to the Housing Mixture Plan is also subject to review and approval by the County Housing Planner.

**G. Develop and Implement Neighborhood Design Guidelines.** Habitat shall develop and implement neighborhood design guidelines for the Project that are consistent with the Albemarle County Comprehensive Plan and the Southern and Western Urban Neighborhood Master Plan, or provide for this in the Code of Development and the Application Plan submitted in conjunction with ZMA 2018-00003. For purposes of this Agreement, neighborhood design guidelines pertain to matters such as pocket parks, street lighting, benches, and other elements that pertain to the livability of the neighborhood (the “Neighborhood Design Guidelines”). If the Neighborhood Design Guidelines are not addressed in the Code of Development or the Application Plan, they shall be subject to review and approval by the County Director of Planning or another County officer designated by the County Executive (the “County Director of Planning”). Habitat must obtain approval of the Neighborhood Design Guidelines before the first final site plan or subdivision plat within the Project that will include any dwelling units is approved by the County. The County Director of Planning shall not unreasonably withhold approval of the Neighborhood Design Guidelines. Any amendment to the Neighborhood Design Guidelines that is not included in an amendment to the Code of Development or the Application Plan is also subject to the review and approval by the County Director of Planning.

**H. Develop and Implement Minimum External Standards.** Habitat shall develop and implement minimum external standards for ADUs within the Project to ensure that they will blend with market rate units with respect to materials and style such as roof pitches, foundations, window types, and building materials (the “Minimum External Standards”). The Minimum External Standards shall be subject to review and approval by the County Director of Planning or another County officer designated by the County Executive (the “County Director of Planning”). Habitat must obtain approval of the Minimum External Standards before the first building permit for any dwelling unit is approved by the County. The County Director of Planning shall not unreasonably withhold approval of the Minimum External Standards. Any amendment to the Minimum External Standards is also subject to the review and approval by the County Director of Planning.

**I. Develop and Implement Minimum Internal Standards.** Habitat shall develop and implement, in conjunction with the County Housing Planner or another officer designated by the County Executive (the “County Housing Planner”), minimum internal standards for ADUs within the Project that may include, by mutual consent, such standards as those for minimum and maximum square footage, bedrooms, bathrooms, kitchen features including kitchen cabinets, countertops, dishwasher, garbage disposal, oven, stove, and laundry room with hookups (the “Minimum Internal Standards”). The Minimum Internal Standards shall be developed in concert with the minimum requirements of any other funding sources for an ADU within the Project but shall, in any event, meet minimum livability requirements. Habitat must obtain approval of the Minimum Internal Standards before the first building permit for any dwelling unit is approved by the County. The County Housing Planner shall not unreasonably withhold consent to the Minimum Internal Standards. Any amendment to the Minimum Internal Standards is also subject to the consent of the County Housing Planner. Any ADUs constructed under the Low Income Housing Tax Credit program shall meet the internal standards established by the United States Department of Housing and Community Development.

**J. Reporting Obligations.** Habitat shall provide information regarding the Project to the County as follows:

1. **Annual Reports.** Habitat shall provide to the County, at Habitat's expense, a written report that verifies in a form and having a content reasonably satisfactory to the County Executive about Habitat's progress on the milestones and expenditures of the County Funds described in Section 4, the membership of Habitat's professional team as provided in Section 5(K) at the time of reporting, the status of its implementation of the Non-Displacement Plan as provided in Section 5(E), and the sales price of any parcel sold by Habitat in Phase 1, Block B. The report shall be provided to the County in June of each year until all County Funds have been transferred and expended in compliance with this Agreement.
2. **Affordable Dwelling Unit Tracking.** Either in conjunction with the Annual Report described in Section 5(J)(1) or independently, Habitat shall provide to the County, at Habitat's expense, a written report stating: (i) the number of Habitat-built and Habitat-contracted ADUs within the Project; (ii) the number of LIHTC or other ADUs in Phase 1, Block B; (iii) for the Habitat-built and Habitat-contracted ADUs, the number of units that are owner-occupied, rented, and qualifying as flexible structures to monitor the status of the Housing Mixture Plan as provided in Section 5(F); (iv) for the Habitat-built and Habitat-contracted ADUs, the number of households within the various income levels described in Section 5(F) to monitor the status of the Housing Mixture Plan; and (v) the date the County issued the certificate of occupancy and the period of affordability for each ADU to monitor Habitat's commitment to ensure long-term affordability as provided in Section 5(D). The report shall be provided to the County in June of each year during the term of this Agreement.
3. **Failure to Maintain a Reached Milestone and Noncompliance with Any Section 5 Obligation.** Habitat shall provide to the County, at Habitat's expense, a written report if, at any time, one of the milestones established in Section 3(A), having first been reached, is no longer satisfied (e.g., the 75 percent fundraising milestone is no longer satisfied because a funding source has withdrawn), or if Habitat is in noncompliance with any requirement (including any approved plan) of this Section 5. The report shall be submitted within 30 days after the milestone is no longer satisfied or noncompliance with any requirement of this Section 5 is discovered.
4. **Other Information Requested by the County or the Authority.** The County and the Authority may request any other information regarding the status of the Project as either party may reasonably require. Habitat shall provide the requested information within a reasonable period of time, not to exceed 30 days, unless otherwise agreed to by the County or the Authority.

**K. Habitat Professional Team.** Until the County issues the certificate of occupancy for the 75<sup>th</sup> Habitat-built or Habitat-contracted ADU in the Project, Habitat shall have professional staff in its employment or under contract with the skills, experience, and capacity to successfully complete the Project. The professional staff shall include, at a minimum, a fundraiser and a project manager/developer having experience in developing a mixed income residential housing project of at least 70 dwelling units.

**L. Maintain Status as a Charitable Organization.** Habitat shall maintain its status as a charitable institution under the rules of the United States Internal Revenue Service until all County Funds have been transferred and expended in compliance with this Agreement.

**M. Continue to Own Property.** Habitat or another entity wholly owned by Habitat including, but not limited to Southwood Charlottesville LLC, shall own land within the Project until all County Funds have been transferred and expended in compliance with this Agreement. The County Board of Supervisors may, in its sole discretion, determine that a change in the legal status of Habitat as a

corporation (*e.g.*, from a corporation to another entity) is not a change in ownership for purposes of this Agreement.

6. **This Agreement is Contingent Upon Approval of ZMA 2018-00003.** This Agreement is contingent upon the County Board of Supervisors approving ZMA 2018-00003 which, as currently proposed, would allow the uses and densities to enable the Project. If ZMA 2018-00003 is not approved by the County Board of Supervisors by June 30, 2020, this Agreement is void.
7. **Non-appropriation.** The obligation of the County to contribute County Funds as provided in this Agreement is subject to, and dependent upon, appropriations being made from time to time by the County Board of Supervisors. Therefore:
  - A. **Non-appropriation is not a Breach.** The failure of the County Board of Supervisors to appropriate County Funds to the Authority, and for the Authority to transfer County Funds to Habitat, or the County's failure to perform any term or condition pursuant to this Agreement resulting from the failure of the County Board to appropriate County Funds, is not a breach of this Agreement.
  - B. **Obligations in the Event of Non-appropriation.** During any Fiscal Year in which the County Board of Supervisors does not appropriate any County Funds, the other terms of this Agreement shall continue to apply. In particular, Sections 4(B)(3) and 4(C)(5) shall apply to any previously received County Funds that have not yet been expended; and Sections 5(C), 5(E), 5(F), 5(I), and 5(K) shall continue to apply to any Habitat-built or Habitat-contracted ADU in the Project for which Habitat has previously received County Funds.
  - C. **This Agreement does not Establish an Irrevocable Obligation.** Under no circumstances shall this Agreement be construed to establish an irrevocable obligation on the County to contribute the County Funds to Habitat as provided in this Agreement.
8. **Notices, Requests, Reports, and Correspondence.** Any notices, requests, reports, or other correspondence required by this Agreement must be given in writing, and they are deemed to be received upon receipt or refusal after their mailing in the United States Mail by certified mail, postage fully prepaid or by overnight courier ("refusal" means to return or when the certified mail or overnight courier package is not accepted by the addressee):

If to Habitat, to:

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

If to the County, to:

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

If to the Authority, to:

Economic Development Authority  
Albemarle County  
401 McIntire Road  
Charlottesville, Virginia 22902

Attention: Rod Gentry, Chair

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

**9. Miscellaneous**

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

**G. Dispute Resolution.** If there is a dispute of any kind between any parties arising under this Agreement, upon the written request of a party:

1. **Designation of a Senior Representative; Negotiation.** Each of the parties to whom the dispute pertains will designate one or more senior representative to negotiate with the other parties' senior representative in good faith and as necessary to attempt to resolve the dispute without any formal proceedings.
2. **Corrective Action.** If the negotiated resolution of the dispute requires any party to take, cause to be taken, or cease taking some action or practice, that party shall do so within a reasonable period of time, not to exceed 90 days.
3. **Dispute Resolution Process a Prerequisite to Starting Court Proceedings.** No party may initiate court proceedings by filing an action in a court of competent jurisdiction to resolve a dispute until the earlier of: (i) a good faith mutual conclusion by the senior representatives that amicable resolution through continued negotiation of the dispute does not appear likely; or (ii) 90 days after the initial request to negotiate the dispute. After either condition has occurred, a party may file an action in the jurisdiction and venue provided in this Agreement and may pursue any other remedy available at law or in equity. Each party shall pay its own attorney's fees.
4. **When the Dispute Resolution Process is Not Required.** Nothing in this Section 8(G) will, however, prevent or delay a Party from instituting formal proceedings to: (i) avoid the expiration of any applicable limitations period; or (ii) seek declaratory and injunctive relief.

**H. Venue.** Venue for any litigation arising out of our involving this Agreement shall lie in the Circuit Court of the County of Albemarle or in the United States District Court for the Western District of Virginia. An action shall not be brought in any other court.

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

**J. No Third-Party Beneficiaries.** This Agreement does not confer any rights on any person or entity who is not a party, whether as a third-party beneficiary or otherwise.

**K. No Waiver of Sovereign Immunity or Other Immunities.** This Agreement and any action taken by the County, the County Board of Supervisors, and the Authority pursuant to this Agreement is not, and shall not be construed to be, a waiver of either sovereign immunity or any other governmental immunity that applies to the County, the County Board of Supervisors, or the Authority.

**L. Non-liability of County and Authority Officers and Employees.** No County Supervisor or other County officer or employee, and no Authority Director or other Authority officer or employee, shall be personally liable to Habitat if there is any default or breach by the County, the County Board of Supervisors, the Authority, or the Authority's Board of Directors pursuant to this Agreement.

**M. Force Majeure.** If Habitat's timely performance of any obligation in Section 5 of this Agreement is interrupted or delayed by any occurrence that is not caused by the conduct of the officers or employees of either the County, the Authority, or Habitat, whether the occurrence is an "Act of God" such as lightning, earthquakes, floods, or other similar causes; a common enemy; the result of war, riot, strike, lockout, civil commotion, sovereign conduct, explosion, fire, or the act or conduct of any person or persons not a party to or under the direction or control of the County, the Authority, or Habitat, then performance of Section 5 is excused for a period of time that is reasonably necessary after the occurrence to remedy the effects thereof.

**WITNESS**, the following authorized signatures:

**COUNTY OF ALBEMARLE, VIRGINIA**

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Jeffrey B. Richardson, County Executive

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

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W. Rod Gentry, Chairman

Approved as to form:

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County Attorney

**HABITAT FOR HUMANITY OF GREATER  
CHARLOTTESVILLE, INC.**

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