DEVELOPMENT AGREEMENT

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

PURPOSE OF THE AGREEMENT

A. The Developer is the owner of certain property located in Crozet, Virginia and described as Albemarle County Tax Map Parcels Nos. 56A2-0-25, 26, 71 and 71B containing 20 +/- acres and shown on the attached **Exhibit A** (the "Property") which the Developer intends to develop for commercial, retail and residential uses (the "Project").

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

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

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

E. **The Project is Consistent With, Promotes, and Implements the County's Comprehensive Plan.** The Project is consistent with, promotes, and implements several policies, objectives, and strategies of the Albemarle County Comprehensive Plan (the "Comprehensive Plan"):

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

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

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

d. Crozet Master Plan: Vision. The Vision of the Crozet Master Plan includes the statement that "successful redevelopment of Downtown . . . requires public/private collaboration. The Downtown will be a vibrant place with a library, employment area, shops, and housing. Parks and open space will be key features of the community." The Vision's guiding principles include the statement that "Community facilities and services must accommodate the changing needs of the community as it grows over time."

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

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

F. The Investment in the Project. The amount of funding and private investment by the Developer, the County, and the EDA, in the Project is estimated to be approximately $5,200,000.

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

a. Promoting Economic Development. Promoting the economic development and the increased vitality of the County and the Crozet area.

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

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

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

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

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

J. This Agreement is Contingent Upon, But Not in Exchange for, Approval of ZMA 2010-00018. This Agreement is contingent upon the County Board of Supervisors approving ZMA 2010-00018 which, as currently proposed, would allow the uses and densities to enable the Project. However, this Agreement is not, and should not be construed to be, an Agreement by the Board to rezone the Property. In its consideration of ZMA 201X-000XX, the Board may and will exercise its full legislative powers and discretion as authorized by law.

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

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

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

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

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

Section 1. INTERPRETATION.

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

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

1.3 **Gender; Number; Including.** The use of any gender in this Agreement shall refer to all genders, and the use of the singular shall refer to the plural, as the context may require. The term "including" and variants thereof shall mean "including without limitation."

1.4 **Not Construed Against Drafter.** The Parties and their respective legal counsel have fully participated in the preparation and negotiation of this Agreement, and accordingly waive any rule of construction that this Agreement be construed against its drafter.

1.5 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be severable and the remainder of this Agreement shall continue in full force and effect.

1.6 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same instrument.

1.7 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflicts of law principles.

Section 2. **PRE-DEVELOPMENT OBLIGATIONS**

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

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

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

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

(d) Environmental Planning Grant. The Developer will contribute the County's local match for the Virginia Department of Environmental Quality (the "VDEQ") Brownfields Grant in an amount not to exceed $48,000 (the "Brownfields Match"). The Brownfields Match shall be paid by the Developer upon the County receipt of the funds for the Brownfields Grant from VDEQ. Brownfields Grant funds shall be used in accordance with the terms of the Brownfields Grant.

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

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

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

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

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

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

Section 3. **ROAD PLAN AND CONSTRUCTION**

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

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

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

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

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

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

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

Section 4. PLAZA DEVELOPMENT, CONSTRUCTION AND CONVEYANCE

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

4.2 **County Obligations.**

(a) County Plaza Contribution.

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

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

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

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

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

4.3 **Developer Obligations.**

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

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

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

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

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

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

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

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

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

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

Section 5. **SYNTHETIC TAX INCREMENT FINANCING.**

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

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

5.3 **SYNTIF Payments**.

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

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

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

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

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

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

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

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

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

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

Section 6. DEFAULT AND TERMINATION.

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

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

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

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

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

6.4 **Effect of Termination**. The termination of this Agreement for any reason shall not affect any right, obligation or liability which has accrued under this Agreement on or before the effective date of such termination.

Section 7. MISCELLANEOUS.

7.1 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, the following limitations on assignment shall apply:

(a) The Developer shall not assign its rights or obligations under this Agreement without the prior written approval of the EDA and the County.

(b) Neither the EDA nor the County shall assign its rights or obligations under this Agreement to any Entity other than the EDA or the County without the prior written approval of the Developer.

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

approvals required under this Agreement.

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

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

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

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

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

7.6 **Non-appropriation.** The obligation of the County to contribute the County Plaza Contribution and the SYNTIF Payments as provided in this Agreement is subject to, and dependent upon, appropriations being made from time to time by the Board. Therefore:

(a) Obligations in the Event of Non-appropriation. If the Board of Supervisors does not appropriate the County Plaza Contribution then this Agreement shall terminate and the Developer shall have no further obligation under this Agreement. If the Board does not appropriate the SYNTIF Payments then the Developer shall have the right to terminate the Plaza Lease, and the Developer shall have no obligation to convey the Plaza to the County.

(b) This Agreement does not Establish an Irrevocable Obligation**.** Under no circumstances shall this Agreement be construed to establish an irrevocable obligation on the County to contribute the County Plaza Contribution to the Developer as provided in this Agreement.

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

sent by regular mail. All notices shall be sent to the addresses set forth below. Any Party may change its address by notice given in accordance with this Section 7.7.

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

Developer:

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

With a copy (which shall not constitute notice):

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

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

Economic Development EDA
Albemarle County
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Rod Gentry, Chair
Email: _____
Designated Representative: _____

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

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

With a copy (which shall not constitute notice):

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

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

discussions, agreements or understandings.

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

7.10 **Non-severability.** If any provision of this Agreement is determined by a court having competent jurisdiction to be unenforceable to any extent, the entire Agreement is unenforceable.

7.11 **Governing Law and Venue.** This Agreement is to be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Venue for any litigation arising out of our involving this Agreement shall lie in the Circuit Court of the County of Albemarle or in the United States District Court for the Western District of Virginia. An action shall not be brought in any other court.

7.12 **Interpretation of this Agreement.** This Agreement shall be interpreted in accord with how any terms are defined in this Agreement and otherwise by applying the plain and natural meaning of the words used, and not for or against any party by reason of authorship.

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

(a) Designation of a Senior Representative; Negotiation. Each of the parties to whom the dispute pertains will designate one or more senior representative to negotiate with the other parties' senior representative in good faith and as necessary to attempt to resolve the dispute without any formal proceedings.

(b) Corrective Action. If the negotiated resolution of the dispute requires any party to take, cause to be taken, or cease taking some action or practice, that party shall do so within a reasonable period of time, not to exceed 90 days.

(c) Dispute Resolution Process a Prerequisite to Starting Court Proceedings. No party may initiate court proceedings by filing an action in a court of competent jurisdiction to resolve a dispute until the earlier of: (i) a good faith mutual conclusion by the senior representatives that amicable resolution through continued negotiation of the dispute does not appear likely; or (ii) 90 days after the initial request to negotiate the dispute. After either condition has occurred, a party may file an action in the jurisdiction and venue provided in this Agreement and may pursue any other remedy available at law or in equity. Each party shall pay its own attorney's fees.

(d) When the Dispute Resolution Process is Not Required. Nothing in this Section 7.13 will, however, prevent or delay a Party from instituting court proceedings to: (i) avoid the expiration of any applicable limitations period; or (ii) seek declaratory and injunctive relief.

7.14 **Relationship of the Parties.** This Agreement is intended solely for the purpose

of establishing the relative rights and obligations of the parties and does not create any type of partnership, joint venture, joint venture, purchaser-vendor, or employer-employee relationship.

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

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

EDA:

ECONOMIC DEVELOPMENT AUTHORITY OF THE COUNTY OF ALBEMARLE, VIRGINIA

By:_____
Name: _____
Title: _____

DEVELOPER:

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

By:_____
Name: _____
Title: _____

COUNTY:

COUNTY OF ALBEMARLE, VIRGINIA

By:_____
Name: _____
Title: _____

SCHEDULE 1

Definitions

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

Board shall have the meaning set forth in Section

Brownfields Grant shall have the meaning set forth in

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

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

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

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

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

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

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

Permanent Lender has the meaning set forth in Section 5.2.

Permanent Loan has the meaning set forth in Section 5.2.

Plaza has the meaning set forth in Section D.

Plaza Budget has the meaning set forth in Section 4.1.

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

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

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

Plaza Property has the meaning set forth in Section B.

Plaza Project means the project to construct the Plaza.

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

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

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

Project has the meaning set forth in Section A.

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

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

Roads have the meaning set forth in Section C.

Roads Completion Date means the date the Roads have been completed, accepted by the

VDoT and are open for use by the public.

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

Shortfall has the meaning set forth in Section 5.4.

SYNTIF means synthetic tax increment financing.

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

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

VDoT means the Virginia Department of Transportation.

EXHIBIT A

Property Sketch

VIRGINIA GRID NORTH

SOUTH ZONE
(NAD-83) (1994)

40' HIGHWAY EASEMENT

15' DRIVE

15' ALLEY

CSX TRANSPORTATION, INC.
(TRACK MAP V2-115)

THREE NOTCH'D ROAD
(S.R. 240)

POB

50'

C1

C2

L3

L4

L5

IR

TMP 56A2-1-25

TMP 56A2-1-71B

N 26°17'24" E 322.15'

S 12°06'22" W 279.06'
(TOTAL)

PHASE 1
6.2407 ACRES

TMP 056A2-01-00-07100
CROZET NEW TOWN ASSOCIATES, LLC
D.B. 4568, PG. 724
D.B. 806, PG. 249, 252 (PLAT)
(PARCEL TWO)
ZONED: (HI) HEAVY INDUSTRY

TMP 056A2-01-00-02500
CROZET NEW TOWN ASSOCIATES, LLC
D.B. 4565, PG. 223, 233 (PLAT)
ZONED: (C1) COMMERCIAL

TMP 56A2-1-71B
TMP 56A2-1-71

NL

C5

C6

L2

LIBRARY AVENUE

N 72°59'22" W 548.21'
563.95' (TOTAL)

15.74'

C3

C4

L1

HIGH STREET

TMP 056A2-01-00-071B0
CROZET NEW TOWN ASSOCIATES, LLC
D.B. 4568, PG. 724
D.B. 1925, PG. 372 (PLAT)
D.B. 1440, PG. 568 (PLAT)
(PARCEL ONE)
ZONED: (HI) HEAVY INDUSTRY

LEGEND

NL = NAIL
IR = IRON ROD
D.B. = DEED BOOK
PG. = PAGE
(#) = ADJOINING PROPERTY OWNER

EXHIBIT B

Roads

R:\103\38593-CrozetSquare\DWG\Sheet\CD\C4.0 LAYOUT.dwg | Plotted on 8/9/2018 12:50 PM | by Catherine Gayner

TIMMONS GROUP

YOUR VISION ACHIEVED THROUGH OURS.

THIS DRAWING PREPARED AT THE
CHARLOTTESVILLE OFFICE
608 Preston Avenue, Suite 200 | Charlottesville, VA 22903
TEL 434.295.5624 FAX 434.295.8317 www.timmons.com

SHEET NO. C4.0

JOB NO. 38593

BARNES LUMBER

ALBEMARLE COUNTY, VIRGINIA

OVERALL LAYOUT

SCALE 1" = 60'

CHECKED BY C. KOTARSKI

DESIGNED BY C. SHUFFLETT

DRAWN BY C. SHUFFLETT

DATE 1/4/2017

DATE	REVISION DESCRIPTION

These plans and associated documents are the exclusive property of TIMMONS GROUP and may not be reproduced in whole or in part and shall not be used for any purpose whatsoever, inclusive, but not limited to construction, bidding, and/or construction staking without the express written consent of TIMMONS GROUP.

EXHIBIT C

Plaza Budget

CROZET PLAZA
CROZET, VIRGINIA
SCHEMATIC DESIGN SUBMISSION

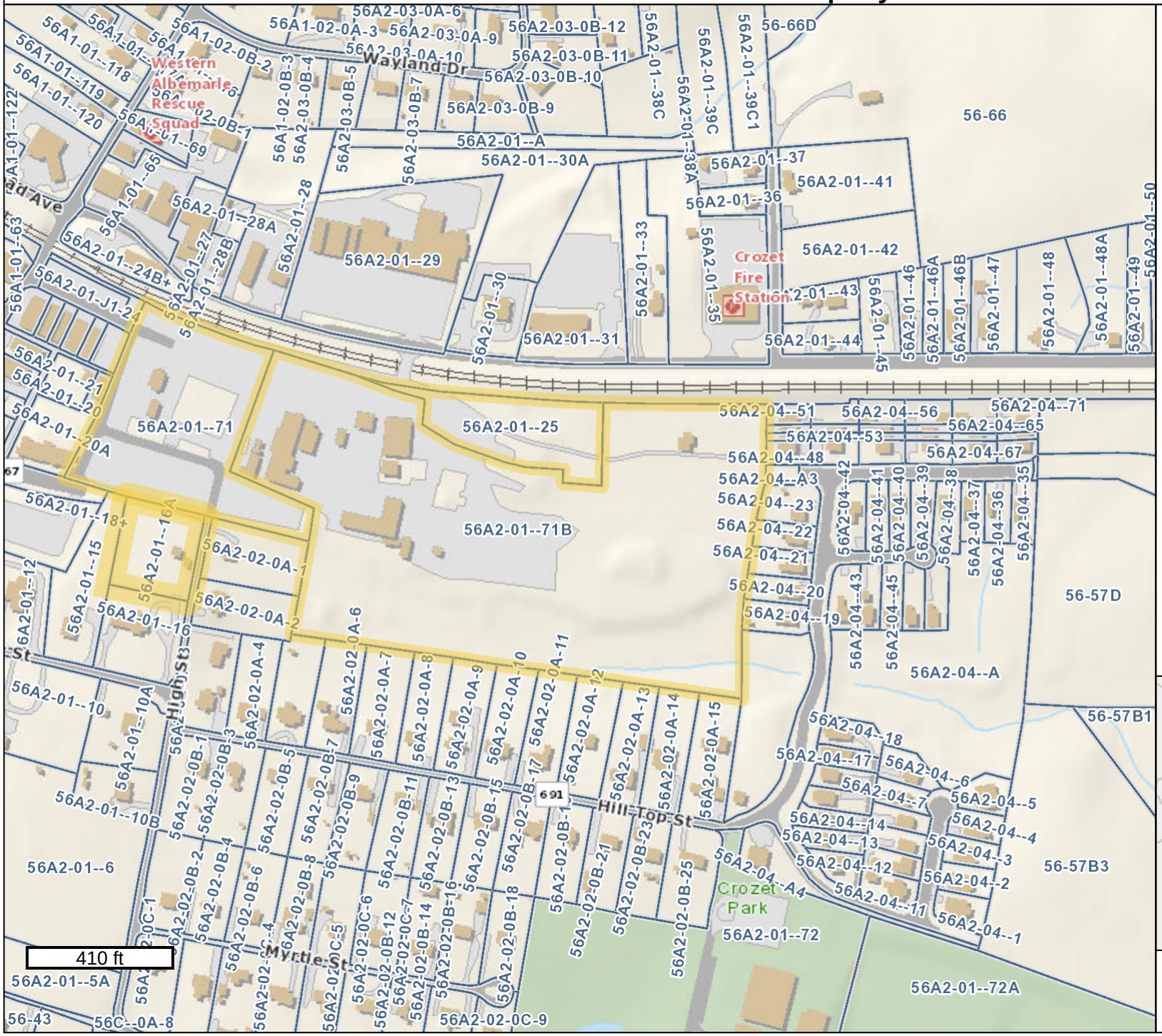
DIVISION SUMMARY **28,000 GSF**

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

EXHIBIT D

SYNTIF Property

Exhibit D - SYNTIF Property

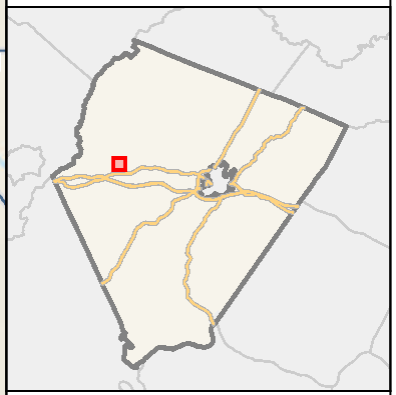


Legend

(Note: Some items on map may not appear in legend)

Parcel Info

- ☐ Parcels



GIS-Web
Geographic Data Services
www.albemarle.org/gis
(434) 296-5832

Any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.

June 4, 2019

EXHIBIT E

Sample SYNTIF Calculation

Formula

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

$SYNTIF_t = (((AV_{REC} – BV) / 100) \times TR_t) / 2$

where

$SYNTIF_t$ = The synthetic TIF payment at point "t" in time;

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

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

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

Example

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

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

$AV_{REC} – BV = \$3,000,000 - \$1,200,000 = \$1,800,000.$

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

$SYNTIF_t = (\$1,800,000 / 100) \times 0.854) / 2 =$ **$7,686**.