

**MEMORANDUM OF AGREEMENT FOR PUBLIC FUNDING TO THE
CHARLOTTESVILLE REDEVELOPMENT AND HOUSING AUTHORITY FOR THE
CONSTRUCTION OF AFFORDABLE FOR-RENT HOUSING UNITS AT 900 FIRST
STREET SOUTH, CHARLOTTESVILLE, VIRGINIA IN A NOT-TO-EXCEED
AMOUNT OF SIX MILLION DOLLARS (\$6,000,000.00) FOR HOUSEHOLDS OF
LOW AND MODERATE AREA MEDIAN INCOME LEVELS.**

This MEMORANDUM OF AGREEMENT (this “MOA” or this “Funding Agreement” or this “Agreement”) for a single-time and purpose financial commitment for the South First Street Phase Two Redevelopment is entered into as of _____ day of _____, 2024, by and between the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia (the “City”), and **CHARLOTTESVILLE REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“CRHA” or the “Grantee”), and CRHA’s entities, and the Project’s Owner, i.e., **CHARLOTTESVILLE COMMUNITY DEVELOPMENT CORPORATION**, a Virginia non-profit corporation (“CCDC”), and **SOUTH FIRST PHASE TWO, LLC** collectively referred to in this Agreement as the “Signatories” or as “Signatory Entities.”

SECTION 1: RECITALS AND TERMS OF FUNDING AGREEMENT

WHEREAS, CRHA has requested a total funding commitment of \$6,000,000 (six million dollars) inclusive in support of CRHA and its South First Street Phase Two Redevelopment Project located at 900 First Street South, Charlottesville, Virginia (the “Property”).

WHEREAS the Project now and shall maintain the purpose of using public funding to subsidize the construction of for-rent affordable housing to be occupied by low—and moderate-income households; and the production of new housing for persons of low and moderate-income is a public purpose and use for which the General Assembly has authorized public funds to be expended. Such production is a governmental function of concern to the Commonwealth of Virginia.

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

WHEREAS, pursuant to the City’s Charter, Sec. 50.7, Powers Relating to Housing and Community Development, the City shall have the power to make grants and loans of funds to the benefit of low- or moderate-income households to further a public purpose.

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

WHEREAS, pursuant to Virginia Code § 36-19.2, the City has entered into this Agreement with the CRHA for its Project.

WHEREAS the redevelopment of existing public housing sites and the provision of additional affordable housing units that will be committed for rental to persons of low and moderate-income

align with the aims of the City's Affordable Housing Plan and its Strategic Outcome Area: housing.

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

WHEREAS, CRHA has requested the City award a grant of funding to subsidize the costs of producing new units of residential rental property occupied, or to be occupied, following construction, by persons of low and moderate-income, said undertaking being described in CRHA's Mixed Finance Development Proposal submitted to the Department of Housing and Urban Development, referred to as "South First Street Phase Two," and

WHEREAS the City is willing to provide the requested local funding, subject to specific certifications, assurances, and binding obligations as set forth in this MOA.

WHEREAS, considering the City's funding for the Project, CRHA has agreed to give certifications and assurances and to enter certain binding obligations, as set forth within this MOA.

NOW, THEREFORE, for and in consideration of the Project and undertakings of the Signatories of this MOA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Signatories hereto covenant and agree as follows: the City Council hereby agrees that that local public funding is approved, subject to the following conditions:

SECTION 1 PUBLIC PURPOSE OF CITY GRANT AND TERMS OF AGREEMENT

Under the terms of this Agreement, this funding commitment shall be in the form of a grant of City funding ("Grant Funds") that is at this moment authorized for the following:

A. The Grantee shall provide the following project documentation:

1. The Signatories agree to provide a signed memo detailing the project timeline and milestones. This document shall outline the key stages of the project and associated deadlines, ensuring transparency and accountability throughout the duration of the project.
2. The CRHA shall furnish written correspondence, outlining the request as detailed and reported in the staff report. This correspondence shall serve to formalize the communication between the Signatories and ensure clarity regarding the scope and objectives of the project.
3. The Signatories shall submit a comprehensive project budgetary analysis/statement. This document shall provide a detailed breakdown of anticipated expenses, funding sources, and financial projections related to the project. It will enable a thorough evaluation of the project's financial feasibility and resource allocation.
4. The Signatories shall provide an updated Community Engagement Summary Report reflecting activities up to the date preceding this allocation request. This report shall document all community engagement efforts undertaken, including outreach events, stakeholder consultations, and feedback received from residents and stakeholders.

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- B. Purpose of Funds: to support the construction of new for-rental housing units within the Project, as more specifically described below, and to support the redevelopment of affordable residential units within the Project into residential rental units over a period of no less than fifteen (15) years or the expiration of the initial compliance period applicable to the Project under the Low-Income Housing Tax Credit Program ("LIHTC"), whichever first occurs.
- C. Accounting: The Grantees are responsible for maintaining adequate supporting records that document the expenditure of the funds in accordance with this MOA.
- D. Return of Grant Funds: The Grantees will return to the City of Charlottesville any funds not expended if the City Council makes a demand following a determination that the Grantees have not met the specific terms and conditions specified within this MOA.

SECTION 2: REPRESENTATIONS AND WARRANTIES; REMEDIES FOR BREACH

- (A) CRHA's Charlottesville Community Development Corporation ("CCDC") and South First Phase TWO, LLC (the "Project Owner") shall, through their duly authorized officers, members, or agents, execute a written acceptance of the terms and conditions of this MOA.
- (B) No sub-agreements of any type or form, verbal or written, shall be entered into without advance written notice to the City. They shall be communicated in writing and, upon approval of the City Manager, attached as an amendment to this agreement.

No subsequent or subordinate agreement between and any third party, service provider, or vendor shall effectuate a material change order to the funding amount, the disbursement schedule, or any rights reserved by the City.

- (C) As part of that written acceptance, each entity shall verify that they have made the following representations and warranties to the City, each of which is a material representation and warranty that has induced the City to make this Grant:
 - 1. The CCDC is the Developer of the Project.
 - 2. Grant Funds provided to support the production of affordable residential rental units shall be used or expended exclusively for costs and expenditures expressly authorized within Section 3, Paragraph (A).
 - 3. In the event of a breach of this warranty, in addition to any other remedies available to the City, CRHA and the CCDC shall be jointly and severally obligated to repay the City all amount(s) used or expended in breach of this warranty. All amounts to be repaid to the City shall be due and owing to the City within thirty (30) days after the written notice of breach unless the CCDC or CRHA cures the violation within the 30-day period. (Due Date: 30 days after the date of written notice of the breach).

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4. City shall receive payment in full within thirty (30) days. If full payment is not received within thirty (30) days, the City shall not make any additional disbursement(s) of Grant Funds referenced within Section 3 (A) of this MOA and shall have the right to institute proceedings to collect the amounts due under this paragraph.
5. Following construction completion, each of the residential units within the Project shall be reserved for rental by low—and moderate-income individuals throughout a term ("Affordability Period") that is co-extensive with the term of a long-term ground lease entered into between CRHA, as landlord, and the Project Owner, as tenant ("Ground Lease").
 - a. Subject to HUD approval, the Ground Lease shall contain the following terms and conditions: for the first forty (40) years of the term of the Ground Lease, the demised premises described therein shall be used exclusively for residential purposes and related amenities; after that, in addition to residential uses previously established within the Project, the premises may also be used for commercial purposes. CRHA shall not amend the Ground Lease to modify or delete the provisions required by this paragraph, except with the advance written notice to the City.
 - b. In the event of a breach of this warranty, the City shall give written notice to CRHA and the Project Owner. If the breach is not cured within thirty (30) days after the date of such notice, the City shall not thereafter make any additional payment(s) of Grant Funds under Section 3(B) of this MOA and/or subsequent amendment if applicable, in addition to any other remedies which may be available to City.

On the date on which construction of the Project is complete:

6. The Project shall include no fewer than 113 units of Public and/or Affordable Housing legally obligated to be operated in accordance with Va. Code §36-22 and/or federal public housing requirements, under either Section 8 or Section 9 of the US Housing Act of 1937 including, without limitation, a Declaration of Trust/ Restrictive Covenants recorded in the land records of the City; and
7. In addition to the required public housing units, the Project shall contain no fewer than 113 for-rent affordable dwelling units legally obligated to be operated as follows: 56 units shall participate in the project-based [federal] Section 8 program, and 34 units shall be legally obligated to be reserved for occupancy by persons having a household income at or below sixty-percent (60%) of Charlottesville's Area Median Income.
 - a. For purposes of this paragraph (C), the term "legally obligated" refers either to a land use restriction imposed within an instrument recorded in the land records of the Charlottesville Circuit Court or to a grant assurance or obligation given to the Department of Housing and Urban Development, the Virginia Department of Housing and Community Development, Virginia Housing or another federal or state public agency or funding source.
 - b. In the event of a breach of the warranties set forth in this paragraph (C), in addition to any other remedies available to the City, the City shall give written notice of a breach to CRHA and the Signatory Entities.

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If the violation is not cured within thirty (30) days after the date of such notice, the City shall not thereafter make any additional payment(s) of Grant Funds under Section 3 (B) of this MOA.

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

(E) CRHA Sustainability Plan:

1. The CRHA shall adhere to its 2023 Sustainability Plan and any approved updates to said plan. In the event of any updates, CRHA shall demonstrate through the revised plan the levels at which it and the Project Owner will establish and provide operational funding, capital, and other reserves to ensure the continued use of all residential units within the Project as affordable rental units for a minimum period of forty (40) years from the Commencement Date of the Ground Lease for the Project.
2. If the 2023 Sustainability Plan as presented to the Council separately before this agreement should change, CRHA shall provide an updated Plan to the City Council upon the Council's request. The Plan, whether original or updated, shall be submitted in writing, and presented at a public meeting for the Council's discussion and consideration.

(F) Miscellaneous:

1. The City shall have all rights to compel the performance of these warranties by CRHA, the Signatory Entities, and to collect any payments due to the City through legal action initiated within a court having jurisdiction within the City of Charlottesville, Virginia and/or the State of Virginia.
2. Interest shall accrue at the rate of six percent (6%) per annum on all amounts due and owing to the City pursuant to this Section 2 from the Due Date until paid.
 - a. No forbearance by the City in exercising any right or remedy afforded either by this MOA or by the laws of the Commonwealth of Virginia shall constitute a waiver of or preclude the exercise of any such right or remedy. The rights and remedies set forth within this MOA are cumulative, and the City's use of any one right or remedy shall not preclude or waive its right to use any or all other remedies. All rights and remedies are in addition to any other rights the City may have by law, statute, MOA, or otherwise.
 - b. Throughout the fifteen (15) year initial compliance period of the LIHTC program, the Project Owner will promptly notify the City of its receipt of any notice or determination stating that the Project does not comply with the requirements of the LIHTC program and shall provide a copy of any such notice or determination to the City Attorney, and the Office of Community Solutions.

SECTION 3: FUNDING, AUTHORIZATIONS, AND DISBURSEMENT TERMS

- (A) Pursuant to the terms of this MOA, the City commits to providing a grant in an amount not to exceed six million dollars (\$6,000,000) in support of the Project.

This grant is intended to subsidize the production of new residential rental units for occupancy by low and moderate-income individuals. The following disbursement schedule outlines the conditions and timelines for the allocation of these funds, ensuring compliance with the designated purposes of soft costs, programmatic and operational support, and construction-related expenses.

- (B) Disbursement Guidelines: Supporting materials must be provided to the applicable city, housing, compliance, legal, finance, and executive staff for review and approval. In furtherance to these stated parameters, CRHA agrees that the remaining balance of the award shall be used strictly for hard costs for the redevelopment of the Project. For this MOA, hard costs shall be taken to mean at least direct expenses related to the physical construction of the project, including materials, labor, equipment, and fixtures.
1. **Soft Costs Limitation:** Up to the not-to-exceed amount of ten percent (10%) of the total award, six hundred thousand dollars (\$600,000), is allocated towards soft costs associated with the Project. For the purposes of this MOA, soft costs shall be taken to mean costs that are indirect or intangible expenses that support the construction project but do not directly impact the construction process, including planning, administration, legal fees, insurance, and property management. Note this not-to-exceed amount of six hundred thousand dollars (\$600,000) shall be used without limitation towards the cost of plans and specifications, surveys and estimates of cost and revenues, the cost of engineering, environmental assessment and mitigation, soil testing, legal and other professional services, expenses incident to determining the feasibility or practicability of the project.
 2. **Construction and Development Costs:** The remaining balance of the award, after allocations for soft costs have been deducted, shall be disbursed between July 2024 and July 2026. These disbursements will occur on an as-needed basis, but no more than monthly, contingent upon the review and approval by the City staff of appropriate documentation that the funds have been spent toward the construction of the Project as defined above. Appropriate documentation shall include but not be limited to Applications for Payment from the General Contractors and invoices from vendors and other professionals associated with the project.
 3. **Retainage:** An amount equal to 5% of the total grant award, or three hundred thousand dollars (\$300,000) will be retained by the City until the project achieves 100% construction completion of the residential units as documented by a Certificate of Occupancy issued by the City's Building Official.
 4. **Pre-Disbursement Conditions:** Prior to the execution of this Agreement, and as a condition precedent to any disbursement of funds under the terms herein, CRHA shall provide to the City a detailed list of milestones, activities, and deliverables for each phase of the South First Street Phase Two redevelopment project.

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This list shall encompass, but not be limited to, the following phases:

- a. Predevelopment Completed (June 2024): All preparatory work was completed, all necessary permits were secured, and financing arrangements were finalized.
 - b. Financial Closing and Construction Start (July 2024) is scheduled to take place in July 2024. This includes the execution of financial agreements and the commencement of construction activities. If the construction of the buildings within the Project does not begin on or before July 31, 2024, this MOA (Memorandum of Agreement) will expire, and the city will not have any obligation to the CRHA or its assigns. The CRHA can request a one-time 90-day extension in writing, and this request must be filed with the City Manager's Office by certified mail no later than July 1, 2024.
 - c. Construction Completed (July 2026): Final construction deliverables, occupancy permits, and initial tenant placements. The CRHA and the Signatory Entities shall make commercially reasonable efforts to complete construction and equipping of the Improvements no later than July 2026 (the "Completion Date"), which may be extended due to force majeure or other reasons approved by the City Manager.
 - d. The CRHA or the assigned Signatory Entities: establish a budget for the construction of the project and submit it to the city for review. The City will communicate in writing to the CCDC and/or the CRHA within ten (10) business days after receipt of the Budget whether it has any concerns. After the Budget is reviewed and the City has responded to the Recipient, all subsequent changes to the Budget shall likewise be subject to review and comment by the City.
 - e. Comply with all applicable federal, state, and local laws and secure all plans, approvals, bonds, and permits as may be necessary or appropriate for the construction of the Improvements and the occupancy thereof.
 - f. Encourage contractors and sub-contractors during the construction of the Project to provide employment opportunities for City residents, and to that end, may work closely with the City of Charlottesville Office of Economic Development and the Central Virginia Partnership for Economic Development and the Virginia Workforce Center to support the recruitment, screening, and training residents and public housing residents within the City of Charlottesville is encouraged.
- (C) Other City Subsidies: In addition to the funding approved in Section 3(A), above, the City Council also hereby approves an annual recurring subsidy for the purpose of inducing CRHA, CCDC, and the Project Owner to undertake and complete the Project and as an inducement for the Project Owner to operate the Project pursuant to the terms of this Ordinance.
1. The amount of the annual subsidy shall be the dollar amount of the real estate taxes assessed and billed to the Project owner for each tax year (January 1 - December 31).
 2. This subsidy shall be available with respect to the Project for a total of fifteen (15) tax years, beginning with the first tax year in which the Project Owner receives a real estate assessment and bill for the Project, or until the expiration of the LIHTC initial compliance period, whichever first occurs.
 3. Notwithstanding the foregoing, the subsidy shall not be payable by the City within any tax year in which the household incomes of renters, and maximum rents, of residential units within the Project are not in compliance with income and rent requirements set forth within

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the Extended Use Agreement executed by the Project Owner for and in connection with the LIHTC Tax Credit program.

4. The annual subsidy shall be paid as a grant by the City to CRHA. CRHA agrees to provide said grant funds to CCDC, which will in turn provide a loan of those funds to the Project Owner for use in the development and operation of the Project in compliance with the terms of this Ordinance.
 - a. While recognizing that it is not empowered under Virginia law to make any binding commitment beyond the current fiscal year of the City, it is the current intention of the Council to make sufficient annual appropriations to fund the annual subsidy for which Grant Funds are approved under this Section 3 (B). To that end, the City Manager or other officer charged with the responsibility of preparing the City's budget shall include in the proposed budget for each fiscal year of the City a request that the Council appropriate sufficient amounts to cover the annual subsidy referenced within this Section 3 (B).
 - b. If at any time during any fiscal year of the City, the amount appropriated in the City's annual budget is insufficient to pay the annual subsidy referenced within this Section 3 (B), then the City Manager or other officer charged with the responsibility of preparing the City's budget shall submit to the Council, as promptly as practicable, a request for a supplemental appropriation sufficient to cover the deficit.

(D) The payment of any Grant is dependent upon:

1. CRHA or its assigns making an investment in the Property no later than the Completion Date and providing the City and the City Manager or designee with reasonable evidence of the amount of such Investment, and evidence of continued compliance with the other requirements of the Investment in the Property, including, if requested by the City Manager or designee, copies of invoices that were paid.
2. CRHA or its assigns and any subsequent owner or owners of all or any portion of the Property agreeing not to contest any increase in assessed value for the Property for any year on which a Grant is based.
3. To the extent that the assessed value of the Property is decreased for any reason during the term of this Agreement, the amount of Grant shall be reduced by the tax decrease based on the decrease in Incremental Increased Value.
4. No Grant shall be paid so long as any taxes of any kind due and owing to the City by the Developer or subsequent owner or owners of all or any portion of the Property remain unpaid or if the assessed value for the Property is being contested. The CRHA or assigned Signatory Entities agree to pay all taxes due to the City in a timely manner.

(E) While recognizing that it is not empowered under Virginia law to make any binding commitment beyond the current fiscal year of the City, it is the current intention of the Council to make sufficient annual appropriations during the term of this Agreement to fund all financial obligations of the City Manager or designee hereunder. To that end, the Council has directed the City Manager or other officer charged with the responsibility of preparing the City's budget to include in the proposed budget for each fiscal year of the City during the term of this Agreement a request that the Council appropriate the amounts due under this Agreement during such fiscal year.

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- (F) If at any time during any fiscal year of the City, the City Manager or designee or the Developer determines that the amount appropriated in the budget is insufficient to pay such funds when due that fiscal year, then the City Manager (or other officer charged with the responsibility of preparing the City's budget) shall submit to the Council at the next scheduled meeting of the Council or as promptly as practicable, a request for a supplemental appropriation sufficient to cover the deficit.
- (G) This Agreement shall not create a joint venture or any relationship of agency, employer-employee, or contractor between any of the Signatories of this Agreement.
- (H) The CRHA reserves the right to approve any assignment of this Agreement by the Signatory Entities to any individual or entity and, the ownership interests of any such entity must be disclosed to the City Manager or designee. Any change in the organizational structure of CRHA and/or Signatory Entities shall also be subject to approval by the City Manager or designee. Any such assignee shall be bound by all the terms and conditions of this Agreement, including but not limited to the Investment amounts and other requirements set forth in this Agreement.
- (I) The covenants of the City Manager or designee as stated in this Agreement shall not be interpreted to establish any pledge, security interest, lien, or other encumbrance on the property of the City and/or the City Manager or designee. All obligations of the City Manager or designee hereunder are contingent upon the satisfaction and continued performance by the Developer of its obligations set forth in paragraph numbered 1 above and the appropriation and receipt of funding from the City.
- (J) This Agreement shall be governed by the laws of the Commonwealth of Virginia, and, in the event of litigation, jurisdiction, and venue shall be in the Circuit Court of the City of Charlottesville, Virginia, and all legal actions involving this Agreement shall be brought only in such court. All Signatories hereto agree that in the event of any action brought to enforce the terms and provisions hereof, the prevailing party shall be entitled to reimbursement of reasonable attorney's fees and court costs. All Signatories to this Agreement have standing to enforce any covenants, terms, provisions, and agreements set forth herein.
- (K) This Agreement is the entire agreement between the Signatories hereto, sets forth all of promises, agreements, conditions, and understandings between the Signatories respecting the subject matter hereof, and supersedes all prior and contemporaneous negotiations, conversations, discussions, correspondence, memoranda, and agreements between the Signatories concerning such subject matter.
- (L) This Agreement is subject to modification only by written agreement signed by all Signatories hereto and all notices required under this Agreement shall be given in writing, and shall be deemed to be received five (5) business days after being mailed by the first class mail, postage prepaid, return receipt requested, or one (1) business day after being placed for next day delivery with a nationally recognized overnight courier service, or upon receipt when delivered by hand, addressed as follows:

If to the City Manager or designee, to:

The City Manager: Samuel Sanders Jr.
City of Charlottesville, Virginia
c/o Office of Community Solutions (OCS): OCS Housing Program Manager or Director
P.O. Box 911 Charlottesville, Virginia 22902

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With a copy to:

City Attorney
City of Charlottesville
P.O. Box 911 Charlottesville, Virginia 22902

If to the Developer or Signatory Entities, to:

c/o John Sales, Executive Director
Charlottesville Redevelopment and Housing Authority (CRHA)
PO Box 1405, Charlottesville, VA 22902

With a copy to

Delphine G. Carnes, Esq.
Delphine Carnes Law Group, PLC
101 W. Main Street
Norfolk, VA 23510

- (M) This Agreement may be executed, via facsimile or email and, in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument. This Agreement shall be binding upon and inure to the benefit of the Signatories hereto and their respective successors and assigns.
- (N) If any provision of this Agreement is determined to be unenforceable, then the remaining provisions of this Agreement shall be interpreted as in effect as if such unenforceable provisions were not included therein. Each of the Signatories to this Agreement represents that it is fully authorized to enter and that it will be bound by, this Agreement.
- (O) The provisions of this Agreement are intended to and shall survive closing, the delivery of any deed or other instrument, and any other event.

***** Signatures to Follow *****

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IN WITNESS WHEREOF, the Signatories hereto have executed this Agreement to be effective as this day the ____ of _____, 2024.

CITY OF CHARLOTTESVILLE:

City Manager (Printed)

City Manager (Signature)

Date: _____

ACCEPTED/ AGREED BY RECIPIENT:

CHARLOTTESVILLE REDEVELOPMENT AND HOUSING AUTHORITY,

By: _____
Name: John Sales, Executive Director

SOUTH FIRST PHASE TWO, LLC
a Virginia limited liability company

By: SOUTH FIRST PHASE TWO MANAGEMENT, LLC,
a Virginia limited liability company,
its Managing Member

By: CHARLOTTESVILLE COMMUNITY DEVELOPMENT CORPORATION,

By: _____
Name: John Sales, President

CHARLOTTESVILLE COMMUNITY DEVELOPMENT CORPORATION,

By: _____
Name: John Sales, President

LEGAL REVIEW AND CONFORMANCE AS TO FORM:

City Attorney's Office (Printed)

City Attorney's Office (Signature)

Date: _____

FINANCE REVIEW

Dept. of Finance (Printed)

Dept. of Finance (Signature)

Date: _____