



**CITY COUNCIL AGENDA
November 2, 2020**

Members

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

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

Virtual/electronic meeting

6:30 p.m. Regular Meeting

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

CALL TO ORDER

MOMENT OF SILENCE

ROLL CALL

AGENDA APPROVAL

ANNOUNCEMENTS

CONSENT AGENDA*

1. Minutes: September 21 closed and regular meetings, September 30 work session
2. Resolution: Measurements and Solutions Group reporting deadline extension (1 reading)
3. Appropriation: Victim Witness Assistance Program Grant - \$265,024 (2nd reading)
4. Appropriation: Annie E. Casey Foundation Grant Award - \$10,000 (2nd reading)
5. Appropriation: Virginia Juvenile Community Crime Control Act Grant (VJCCCA) - \$452,704 (2nd reading)
6. Ordinance: Authorizing a Grant of Public Funding to Subsidize Construction of For-Rent Affordable Housing to be Occupied by Persons of Low and Moderate Income as Part of a Redevelopment of Public Housing (2nd reading):
 - a. South First Street Phase One Redevelopment
 - b. Crescent Halls Redevelopment
7. Ordinance*: Authorization of a Forgivable Loan to Piedmont Housing Alliance to Support Redevelopment of Friendship Court for the Purpose of Producing New Housing for Low and Moderate Income Persons (2nd reading)
8. Appropriation: Housing Opportunities for People with AIDS/HIV (HOPWA) Covid Supplement- \$20,050 (2nd reading)
9. Appropriation: Virginia Department of Education Special Nutrition Program Child and Adult Care Food Program - \$30,000 (1st of 2 readings)
10. Appropriation: Virginia Outdoors Foundation Grant - Ragged Mountain Land Acquisition - \$65,000 (1st of 2 readings)
11. Appropriation: Runaway Emergency Shelter Program Grant - \$209,444.00 (1st of 2 readings)
12. Appropriation: Local Emergency Management Performance Grant (L.E.M.P.G.) - \$7,500 (1st of 2 readings)

CITY MANAGER RESPONSE TO COMMUNITY MATTERS (FROM PREVIOUS MEETINGS)

COMMUNITY MATTERS

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

ACTION ITEMS

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

GENERAL BUSINESS

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

OTHER BUSINESS**MATTERS BY THE PUBLIC**

*Action Needed

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

CITY COUNCIL REGULAR MEETING

September 21, 2020

Virtual/electronic Meeting via Zoom

The Charlottesville City Council met virtually/electronically on Monday, September 21, 2020, pursuant to the Continuity of Government ordinance passed by the Council of the City of Charlottesville on July 27, 2020, to prevent the spread of the novel coronavirus, commonly referred to as COVID-19.

5:30 PM CLOSED MEETING

Mayor Nikuyah Walker called the meeting to order at 5:32 p.m. with the following members present: Mayor Nikuyah Walker, Vice Mayor Sena Magill, Councilor Heather Hill, Councilor Michael Payne and Councilor Lloyd Snook.

On motion by Councilor Hill, seconded by Councilor Payne, Council voted 5-0 (Ayes: Hill, Magill, Payne, Snook, Walker. Noes: none) to meet in closed session as authorized by Virginia Code Sections 2.2-3711 and 2.2-3712, specifically:

- as authorized by Virginia Code Section 2.2-3711(A)(1) to discuss the consideration of prospective candidates for the CAT Advisory Board, the Charlottesville-Albemarle Airport Commission, the Charlottesville Economic Development Authority, the Citizens Transportation Advisory Committee, the Community Policy and Management Team, the Human Rights Commission, the Minority Business Commission, the Monticello Area Community Action Agency Board, the Parking Advisory Panel, the Personnel Appeals Board, the PLACE Design Task Force, Region Ten Community Services Board, Sister Cities Commission, Social Services Advisory Board, Towing Advisory Board, Vendor Appeals Board, and the Water Resources Protection Program Advisory Committee, and
- as authorized by Virginia Code Section 2.2-3711(A)(3) for the discussion of the disposition of publicly held real property on East Main Street in the City of Charlottesville, Virginia, where discussion in an open meeting would adversely affect the negotiating strategy of the City of Charlottesville, Virginia.

On motion by Councilor Hill, seconded by Councilor Snook, Council certified by the following vote: 5-0 (Ayes: Hill, Magill, Payne, Snook, Walker. Noes: none), that to the best of each Council member's knowledge only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the Motion convening the closed session were heard, discussed or considered in the closed session.

The meeting adjourned at 6:30 p.m.

BY Order of City Council

BY Kyna Thomas, Clerk of Council

6:30 PM REGULAR MEETING

Mayor Walker called the meeting to order at 6:31 p.m. with the following members in attendance: Mayor Nikuyah Walker, Vice Mayor Sena Magill, Councilor Heather Hill, Councilor Michael Payne and Councilor Lloyd Snook.

On motion by Councilor Hill, seconded by Councilor Snook, Council unanimously approved the meeting agenda.

City Council observed a moment of silence.

ANNOUNCEMENTS

Councilor Snook announced that he talked with Myra Anderson and they are interested in establishing the Mental Health Crisis Response Task Force with Councilor Snook and Vice Mayor Magill as Council representatives.

Mayor Walker announced the third annual CYM (Close Your Mouth) Day, presented by Mr. Alex-zan, with the purpose of having people listen to one another.

BOARD/COMMISSION APPOINTMENTS

On motion by Councilor Hill, seconded by Councilor Snook, Council by a vote of 5-0 (Ayes: Hill, Magill, Payne, Snook, Walker. Noes: none) APPROVED the following appointments to Boards and Commissions:

Charlottesville Area Transit Advisory Board - Hanan Hameed and Ethan Heil

Charlottesville-Albemarle Airport Commission – Adam Seid and Roy Van Doorn

Charlottesville Economic Development Authority – J. Addison Barnhardt

Citizens Transportation Advisory Committee – Patrick Healy

Minority Business Commission – Bellamy Brown

Parking Advisory Panel – Jamel Bouie, Joan Fenton, Kirby Hutto, Jake Mooney, Danny Yoder

Sister Cities Commission – Nana Ghartey

Water Resources Protection Program Advisory Committee – Chris Gyurisin and Patrick Healy

CONSENT AGENDA*

Clerk of Council Kyna Thomas read the following Consent Agenda items into the record:

2. MINUTES: August 17 closed and regular meetings, August 25 special meeting, August 27 special meeting

3. APPROPRIATION: Charlottesville-Albemarle Adult Drug Treatment Court Grant Award - \$240,000 (2nd reading)

APPROPRIATION

**Charlottesville/Albemarle Adult Drug Treatment Court Grant Award
\$240,000**

WHEREAS, the Supreme Court of Virginia awarded the Supreme Court of Virginia Drug Treatment Court Docket Grant in the amount of \$240,000 for the Charlottesville/Albemarle Drug Court Treatment Court in order to fund salaries, benefits, and operating expenses; and

WHEREAS, the City of Charlottesville serves as the fiscal agent for this grant program; and

WHEREAS, the City of Charlottesville and Albemarle County both have dedicated local matches to this grant, totaling \$124,725; and

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

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$240,000, received as a grant from the Supreme Court of Virginia, is hereby appropriated in the following manner:

Revenues

\$240,000 Fund: 209 Internal Order: 1900369 G/L Account: 430120

Expenditures

\$240,000 Fund: 209 Internal Order: 1900369 G/L Account: 530550

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$240,000 from the Supreme Court of Virginia.

4. APPROPRIATION: Virginia Housing Solutions Program Grant Award - \$539,333 (2nd reading)

APPROPRIATION
Virginia Housing Solutions Program Grant Award
\$539,333

WHEREAS, The City of Charlottesville, through the Department of Human Services, has received the V.H.S.P. Grant from the Virginia Department of Housing and Community Development in the amount of \$539,333.

Revenues

\$455,982	Fund: 209	IO: 1900370	G/L: 430110 State Grant
\$83,218	Fund: 209	IO: 1900370	G/L: 430120 Federal Pass-Thru State

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$539,333 is hereby appropriated in the following manner:

Expenditures

\$539,333	Fund: 209	IO: 1900370	G/L: 530550 Contracted Services
-----------	-----------	-------------	---------------------------------

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon receipt of \$539,333 in funds from the Virginia Department of Housing and Community Development.

5. APPROPRIATION: Virginia Behavioral Health Docket Grant Award - \$40,000 (carried)
6. APPROPRIATION: Fiscal Year 2021 Fire Programs Aid to Locality Funding (Firefund) - \$165,628.00 (carried)
7. APPROPRIATION: Urban and Community Forestry Grant - \$20,000.00 (carried)
8. APPROPRIATION: Housing Opportunities for People with AIDS/HIV (HOPWA) - \$288,172 (carried)

Mayor Walker opened the floor for public comment on the Consent Agenda:

- Jeff Fogel spoke about concerns with drug court.

Mayor Walker advised that she reached out to the Director of O.A.R. (Offender Aid and Restoration) to join the call. Director Ross Carew shared information about the collaborative effort with other agencies. Councilor Snook provided additional background information about the origin of drug court in Charlottesville. Council agreed to have a Drug Court Advisory Board report-out at the October 5 City Council meeting. Neal Goodloe, Criminal Justice Planner, added context to the origins of drug court.

Director of Human Services Kaki Dimock provided clarification for Mayor Walker on appropriations for Items #4 and #8.

On motion by Councilor Hill, seconded by Councilor Snook, Council by the following vote ADOPTED the Consent Agenda as presented: 5-0 (Ayes: Hill, Magill, Payne, Snook, Walker. Noes: none).

CITY MANAGER RESPONSE TO COMMUNITY MATTERS (FROM PREVIOUS MEETINGS)

City Manager Tarron Richardson advised that there were no follow-up items from the September 8 City Council meeting. In response to contact from the public over the weekend regarding the SAFER (Staffing for Adequate Fire and Emergency Response) Grant received by the City for funding firefighter positions, Dr. Richardson addressed past news articles which portrayed him in a negative light. He made further statements about his budgeting practices and outcomes.

COMMUNITY MATTERS

Mayor Walker opened the floor for public comment.

Camilyn Leone of Crozet, Virginia, spoke in support of the Gregory Swanson Way honorary street designation proposal.

Myra Anderson, city resident, thanked Council for being in support of creating a mental health task force and iterated a need for the membership to be diverse. She voiced concerns about the Disproportionate Minority Contact report recommendations and holding decision-makers accountable.

Grey McLean, city resident, shared information about the impacts of climate change and asked the City to commit to a Climate Action Plan.

Jeff Fogel, city resident, spoke in support of a task force mentioned by Ms. Walker to address information in the Disproportionate Minority Contact report. He spoke about the departure of the City Manager and asked about the appointment of Mr. John Blair as Acting City Manager.

Marion Votaw asked about plans to address issues that may arise after the November 3rd Presidential election.

Harold Folley spoke about the Disproportionate Minority Contact report, and the need for the justice system to humanize black and brown people.

Tanesha Hudson thanked Dr. Richardson for the information that he shared about the SAFER Grant to hire firefighters. She made comments about the City Manager's departure.

Katrina Turner, city resident, spoke about comments from the previous Council meeting involving Mayor Walker and Dr. Richardson. She asked about targeted fines for protests during Covid-19, directing comments to Mayor Walker, who provided a response. Ms. Hill added comments regarding consistent enforcement of ordinances.

Carol Thorpe spoke about Dr. Richardson's performance contract and terms of his departure.

Don Gathers, city resident, shared thoughts that citizens have the right to question those in elected positions. He spoke about Dr. Richardson's departure and asked questions about the appointment of John Blair as Interim City Manager. He spoke about positive cases of coronavirus among university students.

Jay James, city resident and Assistant Director of the Bridge Ministry substance abuse and re-entry program offered support for those who have concerns with the drug court program.

Gloria Beard, city resident, asked about regulations around public demonstrations. She spoke about Police Civilian Review Board (PCRB) authority. She shared well wishes with Dr. Richardson.

Rosia Parker spoke about a march that she planned last month. She spoke about issues with consistency in enforcing the Covid-19 ordinance, and concerns with the permit process.

Zyahna Bryant, city resident and student at the University of Virginia, spoke in support of community engagement work done by Dr. Richardson, and requested that Council be more pointed and accurate in conversation to ensure consistency in enforcement of ordinances and to move Council meetings along more quickly.

Dr. Richardson offered that staff would bring the special events ordinance before City Council. He emphasized the importance of First Amendment rights. Councilor Snook added that Council does not make prosecutorial decisions. Police Chief Brackney shared perspective from the Police Department on special events regulations versus Covid-19 ordinance regulations. City Attorney Blair shared information about special events regulations, thresholds in the special events permitting process, the Covid-19 Declaration of Emergency, and a City ordinance about rights-of-way.

Robin Hoffman, city resident, spoke about marches over the summer and the use of distancing and about concerns with the novel coronavirus. She spoke in support of Dr. Richardson. She spoke about Covid-19 case reporting from schools and precautions that should be taken.

Joy Johnson shared thanks with Dr. Richardson. She advised Council members to support each other.

The meeting recessed at 8:44 p.m. and reconvened at 9:00 p.m.

ACTION ITEMS

PUBLIC HEARING/APPROPRIATION: CARES Act Funding appropriation - \$4.1M (1st of 2 readings)

This item was pulled from the agenda for presentation at a future meeting.

PUBLIC HEARING/RESOLUTION: Program Year July 1, 2019 through June 30, 2020 Consolidated Annual Performance and Evaluation Report (CAPER) and Setting Priorities for Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) funds for Program Year 21-22

Grants Coordinator, Erin Atak, introduced the public hearing and summarized the Consolidated Annual Performance and Evaluation Report (CAPER) for the Community Development Block Grant (CDBG) for the program year ending June 30, 2020. She summarized the priorities for program year ending June 30, 2021.

Mayor Walker advised that she would abstain from voting as she needed more time to review the details of the report.

Ms. Atak answered clarifying questions for Councilors related to funding allocation and priorities.

Mayor Walker opened the public hearing:

Mr. Brandon Collins spoke about public housing redevelopment and the addition of new affordable homes.

Mayor Walker closed the public hearing.

On motion by Ms. Hill, seconded by Mr. Snook, Council by the following vote APPROVED the Program Year July 1, 2019 through June 30, 2020 Consolidated Annual Performance and Evaluation Report (CAPER) report and Set Priorities for Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) funds for Program Year 21-22: 4-0-1 (Ayes: Hill, Magill, Payne, Snook. Noes: None. Abstention: Walker).

RESOLUTION COUNCIL PRIORITIES FOR CDBG and HOME FUNDS FY 21-22

WHEREAS, the City of Charlottesville is a U.S. Department of Housing and Urban Development (HUD) Entitlement Community for the Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) programs and as such expects to receive an award of funding July 1, 2021; and

WHEREAS, in accordance with the City of Charlottesville’s Citizen Participation Plan for HUD funding, the CDBG Task Force composed of citizen and community representatives will need to review potential projects and make recommendations for funding in Spring 2021;

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the priorities and spending allowances for FY 2021-2022 shall be as follows:

- Council’s priorities for the CDBG and HOME program for FY 21-22 shall be access to affordable housing (including but not limited to low income housing redevelopment), workforce development (including but not limited to efforts to bolster Section 3 training opportunities and partnerships with the City’s GO programs), microenterprise assistance, access to quality childcare, homeowner rehabilitation, and down payment assistance.
- For FY 21-22, \$61,249.28 CDBG entitlement shall be set aside for Economic Development
- For FY 21-22, \$61,249.28 CDBG entitlement shall be set aside for Housing Programs.
- For FY 21-22, the Priority Neighborhood shall be Ridge Street and the allocation shall be \$150,000 of the total CDBG entitlement. If the CDBG entitlement received is less than the estimate amount of \$150,000 this amount will be decreased accordingly.
- The CDBG Admin and Planning budget shall be set at 20% of the total CDBG entitlement.
- The Public Services budget shall be set at 15% of the total CDBG entitlement.

ORDINANCE: Extension of Ordinance for COVID-19 approved July 27, 2020

Mr. Blair shared a summary of the ordinance and addressed questions that were raised about public demonstrations. He added information about exceptions and about the recent Albemarle County ordinance extension.

Councilors agreed to amend the end date of the ordinance to coincide with the end date for the City Manager’s Declaration of Emergency.

On motion by Councilor Hill, seconded by Councilor Magill, Council by the following vote APPROVED the Extension of Ordinance for COVID-19 approved July 27, 2020: 5-0 (Ayes: Hill, Magill, Payne, Snook, Walker; Noes: None). This ordinance passed on one reading with four-fifths vote.

AN ORDINANCE TO PREVENT THE SPREAD OF THE NOVEL CORONAVIRUS, SARS-CoV-2, AND THE DISEASE IT CAUSES, COMMONLY REFERRED TO AS COVID-19

GENERAL BUSINESS

PUBLIC COMMENT: Council Strategic Plan Update

Mayor Walker shared information about the new dates for the Strategic Planning sessions: September 29, October 20, and October 27 from 11:00 a.m. - 5:00 p.m. each day. She then opened the floor for public comment on the strategic plan.

- Joy Johnson shared comments submitted by the Public Housing Association of Residents (PHAR).
- Brandon Collins shared additional comments submitted by the Public Housing Association of Residents (PHAR), and emphasized racial equity.
- Don Gathers spoke on behalf of PHAR and asked that whomever replaces Dr. Richardson prioritize affordable housing.

REPORT: Disproportionate Minority Contact Report Recommendations Follow-up

Kaki Dimock, Director of Human Services, provided a summary of report findings and areas for activity consideration. She advised of the need for additional data in order to complete a full evaluation across jurisdictions of the City of Charlottesville and the County of Albemarle, and reduce redundancies. Attorney Neal Goodloe provided answers to Councilor questions. Police Chief Brackney provided additional information and concerns about challenges.

Mayor Walker asked that budget figures for the implementation of recommendations be submitted by the second Council meeting in November with the City Budget process. Chief Brackney advised of significant costs related to data collection systems, and challenges with inter-agency data sharing. City Attorney Blair suggested involving the Procurement Department.

Mayor Walker suggested that the October 5th City Council meeting include an update about the Disproportionate Minority Contact Task Force convened by Mayor Walker and that the group provide an update every other month. Council agreed.

Mayor Walker recessed the meeting at 11:00 p.m. and reconvened at 11:10 p.m.

DISCUSSION: Discussion of Honorary Street Designation process

Mayor Walker started the discussion as follow-up to the September 8 agenda item at which applications for honorary street designations were considered.

Councilor Snook suggested that the Historic Resources Committee handle the process, including the evaluation of existing street names that should be changed.

Mayor Walker stated that the most recent applications received during the process given a deadline of August 31 should be considered at this meeting. She advised that the most recent application process was brought about in response to the murder of George Floyd in Minneapolis, MN, and should honor the black community in Charlottesville.

Councilor Hill asked that Council recuse itself from the process as it seems to have become personal.

Council discussed whether to make changes to the Honorary Street Designation policy, and incorporate previous efforts to make a deeper impact to honor people and history in public spaces.

On motion by Councilor Hill, seconded by Councilor Snook, Council by the following vote agreed to MOVE the Honorary Street Designation Policy and applications to the Historic Resources Commission for review and recommendations: 4-1 (Ayes: Hill, Magill, Payne, Snook. Noes: Walker).

REPORT: City Financial Report for August 2020

City Manager Tarron Richardson introduced the item and Ryan Davidson, Senior Budget and Management Analyst, shared details of General Fund Revenues and Expenditures through August 31, 2020.

Staff recommended presenting the second round of CARES Act funding during the September 29 Strategic Planning Retreat. Mayor Walker suggested starting the meeting early to allow for public comment. Council agreed on a 10:00 a.m. meeting start time on September 29.

OTHER BUSINESS

There were no additional business items.

MATTERS BY THE PUBLIC

Mayor Walker opened the floor for comments from the public:

Harold Folley applauded Council efforts to take action on the Disproportionate Minority Contact report. He spoke about also attaining data from UVA police records and about presenting related legislative needs to the General Assembly.

- City Attorney John Blair shared information about Legislative Agenda timeline.

Tanisha Hudson spoke about State Police driving City vehicles, and about the Honorary Street Designation policy as related to a request that she submitted in comparison with another requestor's submission. She spoke about Council micromanagement of the City Manager.

Carol Thorpe followed up on her points made earlier in the meeting. She advised that there was confusion around the honorary street designation call for applications. She thanked Dr. Richardson for his service.

Don Gathers thanked Dr. Richardson for his service and asked that people cease discussing how late Council meetings run. He advised that Council should handle the honorary street designation process instead of passing it to a committee.

The meeting adjourned at 12:09 a.m.

BY Order of City Council

BY Kyna Thomas, Clerk of Council

CITY COUNCIL WORK SESSION
September 30, 2020
Virtual/electronic meeting via Zoom
4:00 PM

The Charlottesville City Council met in a virtual/electronic work session on Monday, September 30, 2020, pursuant to the Continuity of Government ordinance passed by the Council of the City of Charlottesville on July 27, 2020, to prevent the spread of the novel coronavirus, commonly referred to as COVID-19.

The purpose of the work session was to hear an update and discuss the West Main Streetscape Project.

Mayor Walker called the meeting to order at 4:07 p.m. with the following members present: Mayor Nikuyah Walker, Vice Mayor Sena Magill, Councilor Heather Hill, Councilor Michael Payne, and Councilor Lloyd Snook.

Acting City Manager John Blair introduced the panel of subject matter experts from the following City departments: Public Works, Utilities, Neighborhood Development Services, and Budget.

Jeanette Janiczek, Urban Construction Initiative (UCI) Program Manager, reviewed the agenda and objectives for the meeting and shared project history. She gave an update on Phases 1 through 4 of the West Main Streetscape project and costs associated, including new improvements required.:

- Phase 1 – Ridge Street to 6th Street NW
- Phase 2 – 6th Street NW to 8th Street NW
- Phase 3 – 8th Street NW to Roosevelt Brown Avenue
- Phase 4 – Roosevelt Brown Avenue to Jefferson Park Avenue

There was discussion about SmartScale funding and leveraging the 2018 commitment from the University of Virginia, about existing and future maintenance needs, as well as coordination of water and gas line replacement.

Krisy Hammill, Senior Budget and Management Analyst, shared information about available funding.

The presentation ended with a review of next steps:

- Value engineering study
- Statue relocation for the Lewis, Clark and Sacajawea memorial
- Update Project Website
- Coordinate Phase II with Phase I with the VDOT
- Finalize Consultant Contract for Phase I & II
- Add state requirements
- Next Public Meeting – Design Public Hearing

Council agreed that they would like for staff to explore options for removal of the Lewis, Clark and Sacajawea statue, giving direction that the request for proposal advertisement should include language about intent for contextualizing the statue. It was determined that the statue would not be moved as a part of the West Main project.

In addition to Jeanette Janiczek, the following staff answered questions for City Council: Deputy Director of Public Works Marty Silman, City Engineer Jack Dawson, and Public Works Director David Brown.

Mayor Walker opened the floor for public comment and the following participants spoke:

- Mr. Peter Krebs
- Ms. Kay Slaughter
- Peggy Van Yahres

Ms. Walker closed public comment.

Councilors made final comments about the streetscape project with consideration for other historical projects and the need to have the University of Virginia participate at a higher level.

The meeting adjourned at 5:36 p.m.

BY Order of City Council

BY Kyna Thomas, Clerk of Council

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	November 2, 2020
Action Required:	Approve Extension of Resolution
Presenter:	Kaki Dimock, Director, Human Services
Staff Contacts:	Kaki Dimock, Director, Human Services
Title:	Extending the Timeline for the Measurements & Solutions Workgroup

Background:

After substantial revisions to the Agency Budget Review Process, now called the Vibrant Community Fund, in the Spring of 2019, City Council passed a resolution establishing a Measurements and Solutions Workgroup on June 17, 2019.

The Measurements & Solutions Group was established to identify appropriate measurements, benchmarks, solutions and metrics for the designated priority areas (Jobs/Wages, Affordable Housing, Public Health Care, and Education) for use in The Vibrant Community Funding process.

Specifically, the commission was charged with establishing measurements, benchmarks, solutions and metrics in a formal report to council in May 2020 after:

- Conducting best practice research on the five priority areas
- Engaging the community to understand what solutions community members prefer in each priority area including but not limited to:
 - Community meetings & stakeholder interviews
 - Formal liaison with Nonprofit Leaders of Color network
 - Active engagement of people from marginalized communities

Discussion:

Due to the COVID-19 pandemic, this workgroup was unable to meet the deadline for the expected report to City Council identified in the June 17, 2019 resolution. Staff request an extension of the resolution establishing this workgroup and a new timeline for its required report to City Council. Staff request that the workgroup present its recommendations in May 2021 for consideration in advance of the FY23 Vibrant Community Fund process.

Alignment with City Council's Vision and Strategic Plan:

This proposal aligns with City Council Strategic Goal #5 – A well-managed and responsive

organization; specifically 5.4: Foster effective community engagement. Funds provided to area nonprofits are most likely to impact City Council Strategic Goals #1: An inclusive community of self-sufficient residents and #2: A healthy and safe city.

Community Engagement:

The mayor's ad hoc workgroup included several community members. A worksession was held that included two opportunities for public comment and results of surveys and community meetings of nonprofit partners. Staff created a survey for the city's website which was promoted on Facebook, which yielded 478 responses over the 30 day period in which it was live. The Center for Nonprofit Excellence sought information and feedback from the nonprofit community through surveys and community meetings which was presented in full at the May 8 worksession.

Budgetary Impact:

There is no anticipated impact to the general fund.

Recommendation:

Staff recommend that the City Council adopt a new timeline for the Measurements & Solutions Workgroup with a report date of May 2021.

Alternatives:

Council could dissolve the Measurements & Solutions Workgroup.

RESOLUTION

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

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

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

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

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	October 19, 2020
Action Required:	Appropriation
Presenter:	Pat O'Donnell, Coordinator Victim and Witness Assistance Program
Staff Contacts:	Pat O'Donnell, Coordinator Victim and Witness Assistance Program Ryan Davidson, Sr. Budget and Management Analyst
Title:	<i>Victim Witness Assistance Program Grant \$265,024</i>

Background:

The City of Charlottesville, through the Commonwealth's Attorney's Office, has received the Victim Witness Program Grant from the Virginia Department of Criminal Justice Services in the amount of \$168,018 in Federal Funds and \$56,006 in State General Funds, and \$41,000 supplement from the Commonwealth Attorney's operating budget for a total award of \$265,024.

Discussion:

The victim's rights movement began in the 1970s as a result of victims being re-victimized by the criminal justice process. Victims had difficulty navigating the complexities of the criminal justice system and no voice or recourse when their cases were continued or pled out without their knowledge or consent. Prosecutors did not have the time or skills to respond to victims who were traumatized, but knew that in order to proceed with their case, many victims would need more services than the prosecutor's office could provide. In response to this need, the federal Victims of Crime Act was passed in 1984 and funds became available through the Virginia Department of Criminal Justice to respond to the needs of victims. The Charlottesville Victim/Witness Assistance Program was established in 1989 and has been meeting the needs of Charlottesville crime victims ever since. The Program is one of more than 60 such programs in the state that provides crisis intervention and advocacy, information and support during and after criminal justice proceedings, access to compensation and restitution, referrals to local community agencies and ensures victims are afforded their rights as outlined in Virginia's Crime Victim and Witness Rights Act. The Program also provides training on victim issues to law enforcement and allied agencies. It regularly serves more than 900 victims and 20 witnesses each year.

Alignment with City Council's Vision and Strategic Plan:

Approval of this agenda item aligns directly with Council's vision for Charlottesville to be America's Healthiest City, a Community of Mutual Respect and a Smart, Citizen-Focused Government. According to the Bureau of Justice Statistics, the total economic loss to crime victims was \$1.19 billion for violent offenses and \$16.2 billion for property crime in 2008. Statistics vary on the amount of intangible losses victims accumulate, such as the effects of the crime on their sense of security, mental health and relationships. The Charlottesville Victim Witness Assistance Program contributes to the health of the community by connecting crime victims with medical and mental health providers through the Criminal Injury Compensation Fund. The Program helps create a **Community of Mutual**

Respect by responding to the needs of crime victims and helps achieve a **Smart, Citizen-Focused Government** by ensuring their rights are recognized throughout the local criminal justice system, including police, prosecution, judges and probation.

Community Engagement:

The Victim Witness Assistance Program is engaged daily with victims of crime who access services through referrals from police, court services, social services and other allied agencies. Program staff contacts crime victims within 48 hours of their reported victimization. Program staff serves on several coordinating councils, such as the Multi-Disciplinary Team on Child Abuse, the Domestic Violence Coordinating Council, the Sexual Assault Response Team, the Monticello Area Domestic Violence Fatality Review Team, the Charlottesville/Albemarle Human Trafficking Task Force, and the Charlottesville/Albemarle Evidence Based Decision Making Policy Team. The program regularly provides outreach in the forms of government services day, training and speaking engagements at UVA, PVCC and other allied agencies as requested.

Budgetary Impact:

There is no impact to the General Fund. The City's match of \$41,000 was previously appropriated as part of the Commonwealth's Attorney's Office FY2021 Adopted Budget. The Victim Witness Assistance Program Grant is renewed annually and the funds will be received and expensed in the grants fund.

Recommendation:

Staff recommends approval and appropriation of grant funds.

Alternatives:

If grant funds are not appropriated, Charlottesville crime victims will have no access to compensation, advocacy or services afforded to them under Virginia's Crime Victim and Witness Rights Act.

Attachments:

Appropriation Memorandum

APPROPRIATION

Charlottesville Victim Witness Assistance Program Grant

\$265,024

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

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

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

Revenues

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

Expenditures

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

Transfer

\$ 41,000	Fund: 105	Cost Center: 1401001000	G/L Account: 561209
-----------	-----------	-------------------------	---------------------

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$224,024 from the Virginia Department of Criminal Justice Services.

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	October 19, 2020
Action Required:	Appropriation
Presenter:	Kaki Dimock, Director, Human Services
Staff Contacts:	Shayla Givens, Human Services Planner, Human Services Kaki Dimock, Director, Human Services
Title:	Annie E. Casey Foundation Grant Award Appropriation \$10,000

Background:

The Department of Human Services has been working in collaboration with the Honorable Judge David M. Barredo, the City of Charlottesville’s Commonwealth’s Attorney’s office, the Charlottesville Police Department, and the 16th District Court Service Unit on a capstone project with Annie E. Casey Foundation and Georgetown University to address probation transformation. During the time that this collaboration project has been in development, our community has working with kids and families in creative, new and challenging ways.

On behalf of this collaboration, The Department of Human Services sought and received funding from the Annie E. Casey to facilitate virtual communication to more efficiently and effectively meet the needs of our local youth and families involved in the juvenile justice system.

Discussion:

There have been some exciting developments in adjusting longstanding community programming and family engagement into virtual opportunities, and this project expands on those developments. These supported purchases will assist with communication between community youth, families, probation officers and service providers in a way that is intended to support them and reduce their time in the system and not as a reason to extend their stay in detention.

There is also considerable momentum to continue virtual services and contact as a way to alleviate transportation issues once our community is at a Phase Three COVID-19 designation. The 16th District Court Service Unit, the Department of Human Services and other local partners will look for ongoing opportunities to sustain this type of flexible support for families.

Funds are approved to purchase:

- (5) iPhones with cases for Probation Officers: \$500
- (8) Webcams for Probation Officers, youth/families, large conference room: \$800.00

- (2) Tablets for Detention/youth: \$1,000.00
- (1) Large Monitor/Screen and (1) whole room camera for Group Room: \$1,100.00
- (6) Wi-Fi Hotspots/Internet Connections and 6 months of service for youth/families: \$3,000
- (1) Tablet with 3 months of service for youth/families: \$680.00
- (1) Cell phones with 6 months of service for youth/families: \$460.00
- (2) Cell phones with 3 months of service for youth/families: \$560.00
- Gift Cards for Food, Clothing, and Incentives: \$1,900.00

Alignment with City Council’s Vision and Strategic Plan:

This project is aligned with City Council goal #2 – a healthy and safe city.

Community Engagement:

This project is a collaborative effort among many system representatives who have been working together for several months as a learning and planning cohort.

Budgetary Impact:

There is no impact on the general fund. The grant funds do not require a City match and will be expensed and reimbursed to a separate internal order in a Grants Fund.

Recommendation:

Staff recommend appropriating these funds as written

Alternatives:

Council may decide not to appropriate these funds which we result in this project not being completed as described.

Attachments:

Appropriation

APPROPRIATION
Annie E. Casey Foundation
\$10,000

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

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

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

Revenue – \$10,000

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

Expenditures - \$10,000

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

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

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	October 5, 2020
Action Required:	Appropriation
Presenter:	Shayla Givens, Human Services Department
Staff Contacts:	Shayla Givens, Human Services Department Kaki Dimock, Human Services Department
Title:	Virginia Juvenile Community Crime Control Act Grant (V.J.C.C.C.A.) - \$452,704

Background:

In July 2010, the City of Charlottesville became the fiscal agent for the Virginia Juvenile Community Crime Control Act (V.J.C.C.C.A.) funds for both Charlottesville and Albemarle County. This funding stream was established by the 1995 Virginia General Assembly to create balanced, community-based systems of sanctions, programs and services for juvenile offenders. These funds are used to support the Community Attention programs. In Fiscal Year 2021, \$292,058 in V.J.C.C.C.A. funds will be received from the Virginia Department of Juvenile Justice with a required local maintenance of effort of \$52,231 from Albemarle County, and \$108,415 from the City for a total of \$452,704. The grant period is from July 1, 2020 through June 30, 2021.

Discussion:

The V.J.C.C.C.A. grant funds the delinquency prevention and youth development services provided by Community Attention for Charlottesville/Albemarle youth involved in the juvenile justice system. These services include the following programs: the Teens GIVE service learning program that provides community service opportunities during both the school year and the summer; the Community Supervision Program that provides pro-social skills training like anger management, individual and group counseling services and case management services for youth on electronic monitoring; the Community Attention Youth Internship Program (CAYIP) which provides paid internship opportunities; the Family Based Intervention Program which provides evidence-based, family centered intervention programs and the Juvenile Court Case Manager position providing supervision and case management services for youth identified by the court as truant. Juvenile justice prevention programming has also been approved by the Virginia Department of Juvenile Justice for FY21, allowing staff to engage young people in services without having a formal juvenile justice matter or charges. This is an important evolution in this funding and aligns with local efforts to help young people avoid formal involvement in the juvenile justice system.

Alignment with City Council’s Vision and Strategic Plan:

The VJCCCA grant aligns with the City of Charlottesville's Strategic Plan - Goal 2: A Healthy

and Safe City Objective 2.3: Improve community health and safety outcomes by connecting residents with effective resources.

Community Attention's VJCCCA funded programs provide community based services that prevent delinquency and promote the healthy development of youth. Expected outcomes include decreased delinquent behavior during and after program participation.

Community Engagement:

The VJCCCA funded programs engage local youth involved in the juvenile justice system and their families by providing delinquency prevention and youth development programs. The programs also engage and coordinate with other local agencies and organizations in the provision of services to the youth.

Budgetary Impact:

The funds will be expensed and reimbursed to the V.J.C.C.C.A. account in the Grant Fund. The required General Fund City match was previously appropriated as part of the Fiscal Year 2021 Council Adopted Budget, no new City funds are required.

Recommendation:

Staff recommends approval and appropriation of funds.

Alternatives:

If the V.J.C.C.C.A. funds are not appropriated, Community Attention would have to serve fewer youth and eliminate programs and staff.

Attachments:

Appropriation

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

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

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

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

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

Revenue – \$452,704

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

Expenditures - \$452,704

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

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

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	November 2, 2020
Action Required:	Adoption of (2) Ordinances
Presenter:	Brenda Kelley, Redevelopment Manager Lisa Robertson, Acting City Attorney
Staff Contacts:	John C. Blair, II, Acting City Manager Lisa Robertson, Acting City Attorney Brenda Kelley, Redevelopment Manager
Title:	Ordinance Authorizing a Grant of Public Funding to Subsidize a Redevelopment of Public Housing owned by Charlottesville Redevelopment and Housing Authority (“CRHA”) (South First Street Phase One Redevelopment) Ordinance Authorizing a Grant of Public Funding to Subsidize a Rehabilitation of Public Housing owned by CRHA (Crescent Halls Redevelopment)

At its October 19, 2020 meeting, City Council requested a revision to the attached Ordinances regarding language requiring the Sustainability Plan. Please refer to a new Section 2(F) and revised Section 4(B)(i)(c) for the revised language (revised in each Ordinance).

Background:

Charlottesville Redevelopment and Housing Authority (“CRHA”) is proceeding with redevelopment plans for its public housing properties. Two projects have been planned, designed and are awaiting approval from the United States Department of Housing and Urban Development (“HUD”): the renovation of 105 existing units in Crescent Halls and the construction of 62 new rental housing units on the currently vacant land at South First Street. These redevelopment of public housing efforts have been in discussion for over the past ten years and recently planning and implementation has progressed through a public-private partnership among CRHA, a new Community Development Corporation (“CCDC”), a local developer, and private entities taking advantage of the benefits of Low Income Tax Credit (LIHTC) Financing. Following the issuance of a competitive procurement CRHA/CCDC contracted with a development partner, and together, these entities designed the renovation of the existing units at Crescent Halls and new units at South 1st Street, secured various funding commitments, and a general contractor for construction has been selected. In June 2019, the Projects were awarded a commitment of Low Income Housing Tax Credits (LIHTC) in the amount of approximately \$16,250,000 for the redevelopment of Crescent Halls and South 1st Street Phase 1. (LIHTC is a program that is sponsored by the U.S. Treasury Department and administered by

Virginia Housing). This program provides owners a federal income tax credit through an incentive for private investors to participate in the construction and rehabilitation of housing for low-income families. One of the key elements of the redevelopment of public housing has been the focus on resident-led efforts – public housing residents have been actively engaged and involved in the entire redevelopment process. The goal is for construction of the Projects to begin in the fall/winter of 2020, following receipt of HUD approvals.

Currently, CRHA owns and operates 376 public housing units and issues approximately 427 HUD Section 8 vouchers. Redevelopment will focus on a one-for-one replacement of existing public housing units (the U.S. Department of Housing and Urban Development (HUD) does not currently allow for the construction or acquisition of any additional public housing units). As part of the redevelopment process, CRHA will also add additional subsidized affordable housing units that will be owned by an entity receiving the LIHTC credits, but will be operated and managed by CRHA. Upon completion of redevelopment efforts, Crescent Halls will maintain 53 public housing units and provide 52 subsidized units; and South 1st Street Phase 1 will provide 13 public housing units, 24 subsidized units and 25 units with no operating subsidy attached (but still at or below 60% AMI). During the overall redevelopment process some public housing units may be demolished but eventually all public housing units will be replaced, and additional affordable housing units added to the CRHA inventory. CRHA will continue to own the land and will provide property management services for all of the rental units.

As part of the FY19/20 Budget, City Council approved a total of \$3,000,000 in City Capital Improvements Program funding for Public Housing Redevelopment for Crescent Halls renovation and South 1st Street Phase 1 construction. To facilitate the allocation of the approved FY19/20 CIP funding for CRHA’s Phase 1 redevelopment, City staff has been working closely with CRHA staff and their development team to develop the attached Ordinance that spells out the specifics of how and when the funding will be disbursed, and for what the funding may be expended.

Discussion:

South 1st Street – Phase 1

South 1st Street Phase 1 includes the construction of 62 new affordable rental units (12 1-bedroom units, 32 2-bedroom units and 18 3-bedroom units). 13 of the units will be public housing units, 24 of the units will be Section 8 units, and 25 of the units will have no operating subsidy attached. 31 of the units will be at or below 50% AMI and the remaining 31 units will be at or below 60% AMI. The project will also include construction of a community resource space, resident storage, and outdoor recreation space.

\$1,125,000 of the total amount of FY19/20 funding City Council allocated toward public housing redevelopment will be used for South First Street Phase 1 construction. While this funding will be in the form of a grant for the construction of affordable units and infrastructure, CRHA has informed staff that the funds will be lent to the CCDC/project by CRHA as a soft construction/permanent loan for a 30-year term at 0% interest. Because of this requirement, the city was required to issue a taxable bond instead of a tax-exempt bond, as previously anticipated.

A substantial portion of the funding for this project comes from Low Income Housing Tax Credits (LIHTC). Due to the complex nature of the LIHTC funding, several entities need to be created to own, manage and distribute funding for the project. Following is a brief description of the entities involved in this redevelopment, in one capacity or another:

- CRHA: Landowner; Landlord under long term lease; Property Manager; a tax-exempt entity
- AHG, LLC: the development partner; a private entity and guarantor of construction costs made up of Riverbend Development (RBD), and Castle Development Group (CDG); technical assistance to the development; pre-development lender
- CCDC: Charlottesville Community Development Corporation - a separate entity created by CRHA; the Board is the same membership as the governing Board of CRHA; not exempt from local real estate taxes; City Council approved the creation of the CCDC in May 2019 as required by Section 36-19(12) of the Virginia Code; Developer of record; recipient of grants
- South First Phase One, LLC: Project Owner and Tenant; a separate entity created by the CCDC; CCDC is the sole member; not exempt from local real estate taxes; subject to lease and mortgages for LIHTC
- South First Phase One Management, LLC: Managing Member and Owner; a separate entity created by the CCDC; CCDC is the sole Managing Member
- VAHM, LLC: Special Investor Member; created by AHG, LLC
- VCDC: Virginia Community Development Corporation – a private entity that manages tax credit equity funds
- Housing Equity Fund of Virginia XXIII, LLC - a separate entity organized by VCDC to be the Investor Member in the LIHTC tax credit/redevelopment; they are the investment member in South First Phase One, LLC
- Virginia Housing: the State agency that administers the Low Income Housing Tax Credits (formerly known as VHDA, Virginia Housing Development Authority)
- VaDHCD: Virginia Department of Housing and Community Development – the State agency that manages the National Housing Trust Fund
- Affordable Housing Opportunity Fund (AHOF): Charlottesville Area Community Foundation Fund; a 501(c)(3) formed by AHG, LLC to receive charitable contributions from the community; grantor to CCDC

The overall project cost is approximately \$17 million. The following funding/investment sources will be used towards funding the project:

LIHTC (tax credit equity):	\$ 6,600,000
VHDA 30-year loan at 0.5% (First Mortgage):	\$ 4,500,000
City of Charlottesville (grant to CRHA; CCDC will loan to the project):	\$ 1,125,000
CRHA (value of leasehold interest)	\$ 1,100,000
VaDHCD NHT Fund Loan 20-year term at simple interest:	\$ 800,000
Affordable Housing Opportunity Fund #1:	\$ 1,200,000
Affordable Housing Opportunity Fund #2:	\$ 600,000
Federal Home Loan Bank:	\$ 500,000
Deferred Developer Fee:	\$ 500,000

Affordability Commitments tied to the redevelopment:

- The Annual Contributions Contract (ACC) between CRHA and HUD remains in place but will be revised to reflect the additional “mixed-finance” units in the redevelopment. This contract addresses the commitment by HUD to funding for operating and capital improvements. It ensures that the Applicable Public Housing Requirements are binding upon the Owner Entity and any partner of CRHA, and to the extent determined necessary by HUD.
- Virginia Housing requires a Deed of Trust to ensure an affordability term due to the LIHTC award for 30 years. However, the Operating Agreement for South First Phase One, LLC says that the Investor Member has a right to sell to a party who will not be subject to these

use restrictions prior to the end of the 30-year LIHTC term (in Year 15). This could result in the termination of an Extended Use Agreement after Year 15.

- A Declaration of Trust/Restrictive Covenants required by HUD will establish 10-, 20, or 40-year affordability period restrictions requiring units to be operated in accordance with public housing requirements.
- CRHA is providing a long-term ground lease (99 years) to South First Phase One, LLC (the sole member of this LLC is the CCDC) that requires the premises to be used only for provision of affordable housing and related facilities for the first 40 years of the lease.

The development project team shared substantial draft documents with city staff which were reviewed and comments/questions returned back to the Project Development Team on those drafts. City staff has provided a significant overview in this agenda memo as to the information contained in those draft documents.

Here are some key elements of the attached proposed Ordinance for the South First Street Phase 1 redevelopment:

- The City funding will be disbursed as a grant to the CRHA. CRHA will provide the funds to the CCDC, whereby the CCDC will lend to the project as an interest free, 30-year loan. The intent of the City funding is to fund the construction of rental units and the related infrastructure improvements associated with the project. The source of funding is from previously approved taxable bond funds (FY19/20 CIP).
- 100% of the units constructed will be provided for rental by low and moderate income persons: no fewer than 13 units will be public housing units; no fewer than 24 units will participate in the project-based, Section 8 program; the remaining 25 units will be reserved for occupancy by persons having a household income at or below 60% AMI
- City funding in the amount of \$1,125,000 will support this redevelopment project; a maximum of \$144,000 of the total amount will be allowed to go towards “soft costs”. This was approximately the amount of predevelopment costs included in the application CRHA submitted to HUD. CRHA will be allowed to make 3 drawdown requests:
 - o Request 1 (not to exceed \$500,000): with submittal of HUD approvals; and executed project related documents of record; and executed construction contract, schedule and budget; and evidence a building permit has been issued
 - o Request 2 (not to exceed \$343,750): with evidence that construction has started; and following the first payment application from the construction contractor has been submitted for the project; and documentation that funds received from Request 1 were used to pay project related costs
 - o Request 3 (not to exceed \$281,250): with documentation that funds received from Request 2 were used to pay project related costs; and evidence that no grant funds previously allocated remain unspent; and a budget-to-actual expenditure report and a construction schedule for the project; and a Sustainability Plan (40 years) for CRHA properties – this Sustainability Plan must be presented to the City Council and the City Council must be satisfied with the Plan prior to this funding being released.
- if construction of the buildings is not commenced on or before June 30, 2021, this Grant shall expire
- CRHA is requesting that City Council approve an annual recurring subsidy equal to the dollar amount of the real estate taxes assessed and billed to the new Project Owner, who is a taxable entity. (Currently, CRHA is required to make annual payments in lieu of taxes (PILOT) to the City in accordance with the Cooperation Agreement entered into between the City and CRHA in 1958). The proposed Ordinance provides for a subsidy 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.

- Approval of this Ordinance fulfills the requirement of Virginia Code § 36-19.2 that requires cities to instruct Housing Authorities to redevelop properties prior to proceeding with redevelopment.

Here are some key considerations regarding the redevelopment and the attached proposed Ordinance:

- CRHA is not a member of South First Phase One, LLC which will be the Project Owner. CRHA will continue to hold title to the land on which the Project is constructed, and will provide property management services relative to housing units.
- CCDC is officially the “developer” of the Project, and will receive a \$1,000,000 developer fee. CCDC is an entity formed by CRHA with permission of the City Council, and the board of directors of CCDC is the same as the board of commissioners of CRHA.
- The private-sector Project Owner has an Investor Member, and the Investor Member has a right to sell its interests in the Project in Year 15. If the Investor Member’s interest cannot be bought out by CRHA or another investor who desires to operate public/subsidized housing, this could potentially result in termination of an Extended Use Agreement after Year 15.
- CRHA is requesting that City Council approve an annual recurring subsidy equal to the dollar amount of the real estate taxes assessed and billed to the new Project Owner, who is a taxable entity. The proposed Ordinance provides for a subsidy 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. However, the CRHA Project Development Team is concerned that 15 years is not long enough. Staff concerns: (1) CRHA is building additional housing units while requesting that they receive full reimbursement of any real estate taxes paid for the Project (annually); and (2) this City Council cannot make any binding commitment beyond the current fiscal year of the City; and (3) the Investor Member has a right to sell to a party who will not be subject to use restrictions in Year 15.
- John Sales, on behalf of the Project Development Team, has concerns with the requirement to provide, and present to City Council for acceptance, a Sustainability Plan prior to submitting for payment Request 3.
- Year 15 may be a significant milestone whereby CRHA has an option to purchase the LIHTC redevelopment project. This raises unknowns, one of them being how much this purchase price may be and where will CRHA obtain the funding?

Crescent Halls

Redevelopment of Crescent Halls includes the renovation of the existing 105 public housing rental units (98 1-bedroom units and 7 2-bedroom units). 53 of the units will be public housing units and 52 of the units will be Section 8 units. 53 of the units will be at or below 50% AMI and the remaining 52 units will be at or below 60% AMI. The project will also include renovation of the existing common areas, community room and common kitchen, as well as incorporating an area for resident meetings, a library, and a health clinic. CRHA staff offices and maintenance areas will also receive extensive renovation. The overall project cost is approximately \$15.4 million.

\$1,875,000 of the total amount of FY19/20 funding City Council allocated toward public housing redevelopment will be used for Crescent Halls renovation. This funding will be in the form of a grant for the construction of affordable units and infrastructure. While this funding will be in the form of a grant for the construction of affordable units and infrastructure, CRHA has informed staff that it will make a loan of the funds to the CCDC as a soft construction/permanent loan for a 30-year

term at 0% interest. Tax exempt bond proceeds could not be used for this type of loan transaction, so City funding will be provided using funds raised by taxable bond proceeds. Fortunately, interest rates at this time are favorable, despite the taxable bond status.

The financing structure is similar to South First Street Phase One, and the terms and conditions of the various agreements/paperwork for Crescent Halls is virtually identical to those described above for South First Phase One. Separate new entities for the Crescent Halls redevelopment project have also been created to own, manage and distribute funding for this project.

Here are some key elements of the attached proposed Ordinance for the Crescent Halls redevelopment:

- The City funding will be disbursed as a grant to the CRHA. CRHA will provide the funds to the CCDC, whereby the CCDC will lend to the project as an interest free, 30-year loan. The intent of the City funding is to fund the renovation of the existing rental units, community spaces, staff and maintenance offices/areas and some exterior improvements. The source of funding is from previously approved taxable bond funds (FY19/20 CIP).
- 100% of the units constructed will be provided for rental by low and moderate income persons: no fewer than 53 units will remain public housing units; no fewer than 52 units will participate in the project-based, Section 8 program. All units will be reserved for occupancy by persons having a household income at or below 60% AMI
- City funding in the amount of \$1,875,000 will support this redevelopment project; a maximum of \$85,000 of the total amount will be allowed to go towards “soft costs”. This was approximately the amount of predevelopment costs included in the application CRHA submitted to HUD. CRHA will be allowed to make 3 drawdown requests:
 - o Request 1 (not to exceed \$500,000): with submittal of HUD approvals; and executed project related documents of record; and executed construction contract, schedule and budget; and evidence a building permit has been issued
 - o Request 2 (not to exceed \$906,250): with evidence that construction has started; and following the first payment application from the construction contractor has been submitted for the project; and documentation that funds received from Request 1 were used to pay project related costs
 - o Request 3 (not to exceed \$468,750): with documentation that funds received from Request 2 were used to pay project related costs; and evidence that no grant funds previously allocated remain unspent; and a budget-to-actual expenditure report and a construction schedule for the project; and a Sustainability Plan (40 years) for CRHA properties – this Sustainability Plan must be presented to the City Council and the City Council must be satisfied with the Plan prior to this funding being released.
- if construction of the buildings is not commenced on or before June 30, 2021, this Grant shall expire
- CRHA is requesting that City Council approve an annual recurring subsidy equal to the dollar amount of the real estate taxes assessed and billed to the new Project Owner, who is a taxable entity. (Currently, CRHA is required to make annual payments in lieu of taxes (PILOT) to the City in accordance with the Cooperation Agreement entered into between the City and CRHA in 1958). The proposed Ordinance provides for a subsidy 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.
- Approval of this Ordinance fulfills the requirement of Virginia Code § 36-19.2 that requires cities to instruct Housing Authorities to redevelop properties prior to proceeding with redevelopment.

Here are some key considerations regarding the redevelopment and the attached proposed

Ordinance:

- CRHA is not a member of Crescent Halls Reno, LLC, which will be the Project Owner. CRHA will continue to hold title to the land on which the Project is constructed, and will provide property management services relative to housing units.
- CCDC is officially the “developer” of the Project, and will receive a \$1,000,000 developer fee. CCDC is an entity formed by CRHA with permission of the City Council, and the board of directors of CCDC is the same as the board of commissioners of CRHA.
- The private-sector Project Owner has an Investor Member, and the Investor Member has a right to sell its interests in the Project in Year 15. If the Investor Member’s interest cannot be bought out by CRHA or another investor who desires to operate public/subsidized housing, this could potentially result in termination of an Extended Use Agreement after Year 15.
- CRHA is requesting that City Council approve an annual recurring subsidy equal to the dollar amount of the real estate taxes assessed and billed to the new Project Owner, who is a taxable entity. The proposed Ordinance provides for a subsidy 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. However, the CRHA Project Development Team is concerned that 15 years is not long enough. Staff concerns: (1) CRHA is requesting that they receive full reimbursement of any real estate taxes paid for the Project (annually); and (2) this City Council cannot make any binding commitment beyond the current fiscal year of the City; and (3) the Investor Member has a right to sell to a party who will not be subject to use restrictions in Year 15.
- John Sales, on behalf of the Project Development Team, has concerns with the requirement to provide, and present to City Council for acceptance, a Sustainability Plan prior to submitting for payment Request 3.
- Year 15 may be a significant milestone whereby CRHA has an option to purchase the LIHTC redevelopment project. This raises unknowns, one of them being how much this purchase price may be and where will CRHA obtain the funding?

Alignment with Council Vision Areas and Strategic Plan:

This action aligns with the Council’s Vision for quality housing opportunities that offers affordable housing for people of all income levels, racial backgrounds, life stages and abilities. This action aligns with the City Council’s Strategic Plan Goal Four: A Strong Diversified Economy and Goal One: An Inclusive Community of Self-Sufficient Residents.

Budgetary Impact:

Approval of the attached Ordinance will establish the terms and conditions under which the CIP Funding previously approved for FY19/20 can be expended.

Alternatives:

City Council can decline to adopt the attached Ordinance, which may significantly affect the redevelopment of these CRHA properties.

Attachments:

- Proposed Ordinance for South 1st Street Phase 1
- Proposed Ordinance for Crescent Halls

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

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

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

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

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

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

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

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

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

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

Section 1. Public purpose of the City Grant

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

Section 2. Representations and warranties; remedies for breach

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) Miscellaneous

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

Section 3. Authorized Expenditures; Budget

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

Notwithstanding the foregoing:

- i. not more than **\$144,000.00** of the Grant Funds shall be used to pay “soft costs”, including, without limitation, the cost of plans and specifications, surveys and estimates of cost and of revenues, the cost of engineering, legal and other professional services, expenses incident to determining the feasibility or practicability of the project, the Developer’s administrative expenses, amounts to be deposited to reserve or replacement funds, and other similar expenses associated with Project feasibility, planning or design;

- ii. if construction of the buildings within the Project is not commenced on or before **June 30, 2021**, this Grant shall expire and the City shall have no obligation to the Recipient hereunder; and
- iii. the CCDC shall establish a Budget for construction of the Project, and will submit the Budget to the City for its review. The City will communicate in writing to the CCDC within ten (10) business after receipt of the Budget whether or not the City has any concerns. After the Budget is reviewed and the City has responded to Recipient, all subsequent changes to the Budget shall likewise be subject to review and comment by the City.

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

- i. While recognizing that it is not empowered under Virginia law to make any binding commitment beyond the current fiscal year of the City, it is the current intention of the Council to make sufficient annual appropriations to fund the annual subsidy for which Grant Funds are approved under this Section 3 (B). To that end, the City Manager or other officer charged with the responsibility of preparing the City's budget shall include in the proposed budget for each fiscal year of the City a request that the Council appropriate sufficient amounts to cover the annual subsidy referenced within this Section 3 (B).
- ii. If at any time during any fiscal year of the City, the amount appropriated in the City's annual budget is insufficient to pay the annual subsidy referenced within this Section 3 (B), then the City Manager or other officer charged with the responsibility of preparing the City's budget shall submit to the Council, as promptly as practicable, a request for a supplemental appropriation sufficient to cover the deficit.

Section 4. Disbursement of Grant Proceeds

(A) Preconditions, General

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

- i. Evidence of HUD Approval: copies of all written approvals required from the Department of Housing and Urban Development for the Project, specifically including, without limitation: HUD's approval of Recipient's applications seeking approval of a Mixed Finance Development and for approval of a Demolition/Disposition of Recipient's property.
- ii. Documents of Record: copies of each of the following fully-executed documents, or written notice given to the City identifying the deed book and page number at which the documents are recorded in the land records of the Charlottesville Circuit Court (if the documents are required to be recorded):
 - a. Memorandum of the Ground Lease for the Project (fully-executed) along with a fully-executed copy of the Ground Lease for the Project;
 - b. HUD Declaration of Trust/ Restrictive Covenants for the Project;
 - c. The Regulatory and Operating Agreement executed for the Project by and among the members of the entity that is the Project Owner;
 - d. A copy of the Consolidated Annual Contributions Contract ("ACC"), number P-5513, dated August 30, 1996, and all amendments thereto
 - e. Fully-executed Mixed-Finance Development Certifications and Assurances (HUD) for the Project
 - f. Fully-executed Extended Use Agreement executed by the Project Owner for and in connection with the LIHTC Tax Credit Program.
- iii. Construction Contract and Schedule: a copy of the contract for construction executed between the Project Owner and the General Contractor for Construction, and a copy of the approved Construction Schedule that will be implemented by the Construction Contractor.
- iv. Building Permit: evidence that a building permit for the Project has been approved and issued.
- v. The Budget for the Project (see Section 3, above).

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

- i. CRHA or the CCDC may, in writing, request disbursements of the Grant Funds authorized by Section 3 (A) of this Ordinance, and disbursements may be made by the City from time to time, as construction of the Project progresses. Disbursement requests may be submitted to the City, no more frequently than the following Milestone Dates, and only in the amounts indicated:
 - a. **Request 1 (not to exceed \$500,000)**: may be submitted on or after the date on which the City verifies that it is in possession of all of the documents referenced in 4(A), above. Disbursement Request 1 shall not be deemed complete until the City verifies that it has received all of the required documents. The City's receipt of all of the required documents is a condition precedent to any obligation on the City's part to disburse the Grant Funds.
 - b. **Request 2 (not to exceed \$343,750)**: may be submitted to the City on or after the date on which the City verifies that it has received all of the following: **(i)** a document verifying the date on which construction was commenced; **(ii)** a copy of the first payment application submitted by the General Construction Contractor to the Project Owner, **and** **(iii)** copies of financial and accounting records kept in the normal course of business, demonstrating to the satisfaction of the City that all Grant Funds disbursed in response to Request 1 were used only to pay costs authorized pursuant to Section 3(A), above. Financial and accounting records shall include, without limitation: copies of invoices for specific amounts, written descriptions of the materials or services described in the invoices in sufficient detail to demonstrate eligibility for Grant Funding pursuant to Section 3(A), above, and corresponding evidence of payment of said invoices by check, wire transfer, etc. Purchase Orders or other encumbrances shall not be acceptable as evidence of payment. Disbursement Request 2 shall not be deemed complete until the City verifies that it has received all of the required documents and records. The City's receipt of all the required documents and records is a condition precedent to any obligation on the City's part to disburse the Grant Funds to the Recipient.
 - c. **Request 3 (not to exceed \$281,250)** may be submitted to the City on or after the date on which the City verifies that it has received all of the following: **(i)** copies of financial and accounting records kept in the normal course of business, demonstrating to the satisfaction of the City that all Grant Funds disbursed in response to Request 2 were used only to pay costs authorized pursuant to Section 3(A), above. The words "financial and accounting records" shall mean and include, without limitation: copies of invoices for specific amounts, written descriptions of the materials or services described in the invoices in sufficient detail to demonstrate eligibility for Grant Funding pursuant to Section 3(A), above, and corresponding evidence of payment of

said invoices by check, wire transfer, etc. Purchase Orders or other encumbrances shall not be acceptable as evidence of payment.; **(ii)** evidence, satisfactory to the City, that no Grant Funds previously disbursed to Recipient remain unspent (i.e., financial and accounting records demonstrate that all previously-disbursed Grant Funds have been used to pay costs authorized pursuant to Section 3 (A) of this Ordinance); **(iii)** a budget-to-actual expenditure report for the Project, current through the date of the disbursement request; and **(iv)** a Construction Schedule report, documenting the actual progress of construction (inclusive of public infrastructure and housing units) compared with the approved Construction Schedule for the Project. Disbursement Request 3 shall not be complete, until the City verifies that it has received all of the required documents. The City’s receipt of all the requested documents is a condition precedent to any obligation on the City’s part to disburse the Grant Funds to the Recipient.

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

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

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

Section 5. General Grant Conditions

- (A) Compliance with Government Requirements. In all of its actions and activities undertaken to provide for the construction, management and operation of the Project, the Recipient shall comply with:
- i. Any Recovery Agreement entered into between Recipient and the Department of Housing and Urban Development on or after July 1, 2020,
 - ii. The 1958 Cooperation Ordinance between CRHA and the City, as amended,
 - iii. The Consolidated Annual Contributions Contract (“ACC”), number P-5513, dated August 30, 1996, and all amendments thereto,
 - iv. The Ground Lease between CRHA and the Project Owner,
 - v. The Declaration of Trust/ Restrictive Covenants for the Project,
 - vi. The Regulatory and Operating Agreement between CRHA and the Project Owner,
 - vii. HUD’s Mixed-Finance Development Certifications and Assurances for the Project, and

- viii. Any other legal obligations and requirements imposed on the Project, or any aspect of the Project, as a result of any federal or state law, regulation or grant Ordinance, or by any City ordinance.

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

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

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

(E) Severability: In the event that any term, provision, or condition of this Ordinance, or the application thereof to any person or circumstance, shall be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this Ordinance, and the application of any term, provision or condition contained herein, to any person or circumstance other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

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

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

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

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

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

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

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

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

WHEREAS, Charlottesville Redevelopment and Housing Authority (“CRHA”) is a political subdivision of the Commonwealth of Virginia, organized and operating under the laws of the Commonwealth of Virginia and having the purposes and authority set forth within

Virginia Code Title 36, Chapter 1 (Housing Authorities Law), and the City of Charlottesville, acting by and through its City Council, is authorized to make grants or loans to CRHA to enable or assist CRHA to carry out its purposes; and

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

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

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

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

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

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

Section 1. Public purpose of the City Grant

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

Section 2. Representations and warranties; remedies for breach

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) Miscellaneous

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

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

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

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

Section 3. Authorized Expenditures; Budget

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

Notwithstanding the foregoing:

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

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

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

- i. While recognizing that it is not empowered under Virginia law to make any binding commitment beyond the current fiscal year of the City, it is the current intention of the Council to make sufficient annual appropriations to fund the annual subsidy for which Grant Funds are approved under this Section 3 (B). To that end, the City Manager or other officer charged with the responsibility of preparing the City's budget shall include in the proposed budget for each fiscal year of the City a request that the Council appropriate sufficient amounts to cover the annual subsidy referenced within this Section 3 (B).
- ii. If at any time during any fiscal year of the City, the amount appropriated in the City's annual budget is insufficient to pay the annual subsidy referenced within this Section 3 (B), then the City Manager or other officer charged with the responsibility of preparing the City's budget shall submit to the Council, as promptly as practicable, a request for a supplemental appropriation sufficient to cover the deficit.

Section 4. Disbursement of Grant Proceeds

(A) Preconditions, General

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

- i. Evidence of HUD Approval: copies of all written approvals required from the Department of Housing and Urban Development for the Project, specifically including, without limitation: HUD's approval of Recipient's applications seeking approval of a Mixed Finance Development and for approval of a Demolition/Disposition of Recipient's property.
- ii. Documents of Record: copies of each of the following fully-executed documents, or written notice given to the City identifying the deed book and page number at which the documents are recorded in the land records of the Charlottesville Circuit Court (if the documents are required to be recorded):

- a. Memorandum of the Ground Lease for the Project (fully-executed) along with a fully-executed copy of the Ground Lease for the Project;
 - b. HUD Declaration of Trust/ Restrictive Covenants for the Project;
 - c. The Regulatory and Operating Agreement executed for the Project by and among the members of the entity that is the Project Owner;
 - d. A copy of the Consolidated Annual Contributions Contract (“ACC”), number P-5513, dated August 30, 1996, and all amendments thereto
 - e. Fully-executed Mixed-Finance Development Certifications and Assurances (HUD) for the Project
 - f. Fully-executed Extended Use Agreement executed by the Project Owner for and in connection with the LIHTC Tax Credit Program.
- iii. Construction Contract and Schedule: a copy of the contract for construction executed between the Project Owner and the General Contractor for Construction, and a copy of the approved Construction Schedule that will be implemented by the Construction Contractor.
 - iv. Building Permit: evidence that a building permit for the Project has been approved and issued.
 - v. The Budget for the Project (see Section 3, above).

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

- i. CRHA or the CCDC may, in writing, request disbursements of the Grant Funds authorized by Section 3 (A) of this Ordinance, and disbursements may be made by the City from time to time, as construction of the Project progresses. Disbursement requests may be submitted to the City, no more frequently than the following Milestone Dates, and only in the amounts indicated:
 - a. **Request 1 (not to exceed \$500,000)**: may be submitted on or after the date on which the City verifies that it is in possession of all of the documents referenced in 4(A), above. Disbursement Request 1 shall not be deemed complete until the City verifies that it has received all of the required documents. The City’s receipt of all of the required documents is a condition precedent to any obligation on the City’s part to disburse the Grant Funds.
 - b. **Request 2 (not to exceed \$906,250)**: may be submitted to the City on or after the date on which the City verifies that it has received all of the following: **(i)** a document verifying the date on which construction was commenced; **(ii)** a copy of the first payment application submitted by the General Construction Contractor to the Project Owner, **and** **(iii)** copies of financial and accounting records kept in the normal course of business, demonstrating to the satisfaction of the City that all

Grant Funds disbursed in response to Request 1 were used only to pay costs authorized pursuant to Section 3(A), above. Financial and accounting records shall include, without limitation: copies of invoices for specific amounts, written descriptions of the materials or services described in the invoices in sufficient detail to demonstrate eligibility for Grant Funding pursuant to Section 3(A), above, and corresponding evidence of payment of said invoices by check, wire transfer, etc. Purchase Orders or other encumbrances shall not be acceptable as evidence of payment. Disbursement Request 2 shall not be deemed complete until the City verifies that it has received all of the required documents and records. The City's receipt of all the required documents and records is a condition precedent to any obligation on the City's part to disburse the Grant Funds to the Recipient.

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

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

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

Section 5. General Grant Conditions

- (A) Compliance with Government Requirements. In all of its actions and activities undertaken to provide for the construction, management and operation of the Project, the Recipient shall comply with:
- i. Any Recovery Agreement entered into between Recipient and the Department of Housing and Urban Development on or after July 1, 2020,
 - ii. The 1958 Cooperation Ordinance between CRHA and the City, as amended,
 - iii. The Consolidated Annual Contributions Contract (“ACC”), number P-5513, dated August 30, 1996, and all amendments thereto,
 - iv. The Ground Lease between CRHA and the Project Owner,
 - v. The Declaration of Trust/ Restrictive Covenants for the Project,
 - vi. The Regulatory and Operating Agreement between CRHA and the Project Owner,
 - vii. HUD’s Mixed-Finance Development Certifications and Assurances for the Project, and
 - viii. Any other legal obligations and requirements imposed on the Project, or any aspect of the Project, as a result of any federal or state law, regulation or grant Ordinance, or by any City ordinance.
- (B) Project Approval. By its adoption of this Ordinance, the City Council approves the Project for which the Grant Funds are awarded and requests the Recipient to construct and operate the Project. (Va. Code §36-19(2)). Before the Recipient gives final approval to the Budget for the Project, Recipient shall hold at least one public hearing to receive the views of residents of the City of Charlottesville. The Recipient shall cause public notice to be given at least 10 days prior to the public hearing, by publication in a newspaper having a general circulation within the City of Charlottesville, as required by Va. Code §36-19.2.
- (C) Public Disclosure of Ordinance Documents: The Recipient acknowledges and understands that this Ordinance, and all related public proceedings and records, shall be open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (Va. Code §2.2-3700 et seq.) and the Virginia Public Procurement Act (Va. Code §2.2-4300 et seq.) to the extent that either of those laws applies.
- (D) No Waivers: No failure on the part of the City to enforce any provision(s) of this Ordinance shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the City of any breach or failure to perform by the Recipient shall be construed as or deemed to be a waiver of any other and/or subsequent breach or failure to perform.

(E) Severability: In the event that any term, provision, or condition of this Ordinance, or the application thereof to any person or circumstance, shall be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this Ordinance, and the application of any term, provision or condition contained herein, to any person or circumstance other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

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

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

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

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

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

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	November 2, 2020
Action Required:	Adoption of Ordinance, including all related attachments and schedules
Presenter:	Brenda Kelley, Redevelopment Manager Lisa Robertson, Acting City Attorney
Staff Contacts:	John C. Blair, II, Acting City Manager Lisa Robertson, Acting City Attorney Brenda Kelley, Redevelopment Manager
Title:	Ordinance Authorizing a Forgivable Loan to Piedmont Housing Alliance to Support Redevelopment of Friendship Court for the Purpose of Producing New Housing for Low and Moderate Income Persons

At its October 19, 2020 meeting, City Council requested a revision to the attached Ordinance regarding amendments to the Agreement. Please refer to Section 5(J) for the revised language.

Background:

Piedmont Housing Alliance (PHA) intends to redevelop the 11.75-acre Friendship Court property in four phases over the next 8-9 years. This \$100+ million project includes the creation of approximately 450 affordable units with tiers of affordability. Additionally, the redevelopment will include commercial and community space, and associated infrastructure and parking. Phase 1 of the project includes the creation of 106 Affordable Units, including the 1:1 replacement of 46 of the existing Project-based Section 8 Rental Affordable Units.

As part of the FY 2020 Budget, City Council approved a total of \$5,545,159 in City Capital Improvements Program funding for Friendship Court Infrastructure Improvements and Friendship Court Redevelopment for Phase 1.

To facilitate the allocation of the approved FY19/20 CIP funding for Phase 1, City staff has been working closely with PHA staff and consultants to develop the attached Ordinance and Affordable Housing Covenant(s) that spell out the agreed-to specifics of how and when the funding will be disbursed, and for what the funding may be expended. These documents further provide protections and guarantees in place to insure that Affordable Units and infrastructure are built in accordance to the agreed upon performance requirements to disburse funding. (Please note: there is an additional [separate] request by PHA, through arrangements with the Charlottesville Economic Development Authority (CEDA), for reimbursement of real estate taxes paid if the Redevelopment achieves certain performance measures; that CEDA Agreement is a separate item on Council's Agenda).

PHA has received a commitment of Low Income Housing Tax Credits (LIHTC) from Virginia Housing (formerly known as VIRGINIA HOUSING) and they are in the process of finalizing the remaining necessary financing. PHA's goal had been to begin construction on Phase 1 in the spring of 2020, but COVID-related matters have temporarily slowed down the LIHTC closing process. PHA continues to try to begin construction as soon as is possible with a goal to start before the end of 2020.

Discussion:

Phase 1 includes 106 Affordable Units spanning the spectrum of affordability from below 30% AMI up to 80% AMI. The City would enter into a forgivable Loan to PHA for costs expended in the construction of Infrastructure, affordable rental units, and relocation assistance in Phase I, over a Loan Period of 40 years.

All Affordable Units will have a Required Affordability Period of 99 years. These affordability terms will also be enforced by the state through Virginia Housing due to the LIHTC (Low Income Housing Tax Credit) award, and also through (i) the terms of the 40-year deferred payment forgivable loan period, and (ii) a 99-year Affordable Housing Covenant.

Years 1-40: If PHA breaches the terms of the Loan (including the Required Affordability provisions) during the initial 40-year Loan Period, the entire amount of the Loan would become payable in full to the City and the City would have all other remedies available—including the ability to obtain injunctive relief in court for specific performance of the Affordability Covenant. If the 40-year Loan Period expires, and the Affordability Covenant has been complied with throughout that time, the entire amount of the Loan will be forgiven (principal and interest).

Years 41 through and 99: the Loan will have been forgiven in Year 40 if all Affordability Requirements were continuously implemented; however, in years 41 through 99 the City will have the ability to file an action in court to obtain an injunction requiring Affordable Units to be provided within the Project throughout the 99-Year Required Affordability Period.

Here are some key elements of the attached documents:

- 100% of the units constructed within the Project will be provided for rental or ownership by low and moderate income persons. All Affordable Units, whether Rental or For-Sale Units, will be and remain affordable for a period of 99 years.
- Within Phase 1 of the Project: (i) 46 Rental Affordable Units shall be provided as 1:1 replacements for 46 existing units with Project-based Section 8 operating subsidy; (ii) an additional 30 Rental Affordable Units will be provided for households with incomes of not more than 60% AMI; (iii) an additional 30 Rental Affordable Units will be provided for households with incomes of not more than 80% AMI.
- A Master Affordable Housing Covenant will be recorded to provide assurances of affordability for the entire site. As each phase (beyond Phase 1) of redevelopment proceeds, a new Affordable Housing Covenant for that phase of development will be approved by City Council and executed and recorded by the parties. In addition, if the City is providing funding to support the redevelopment of subsequent phases, an Ordinance will be approved by City Council to specify the terms of that funding.
- The Phase 1 Affordable Housing Covenant does not incorporate any other scope of the project beyond Phase 1.
- The Project, upon completion, shall be constructed in accordance with the Master Plan developed by PHA/Friendship Court with input from Friendship Court residents.

- Loan proceeds can only be used for: (a) for the installation, construction, or reconstruction of public streets (inclusive of sidewalk, curb and gutter, stormwater, landscaping), utilities, and parks, essential to the Project (Public Infrastructure); (b) to prevent the displacement of low and moderate income resident of the existing property to be redeveloped, and for construction of new Phase 1 housing units for rental by low and moderate income persons (ADU Construction); and (c) to cover “soft costs” associated with the planning and design for construction of infrastructure for the Project and /or construction of Rental Affordable Units within Phase 1 of the Project.
- Prior to the first disbursement of funding, the following documents are required to be provided to the City: (i) a public infrastructure plan; (ii) a Resident Relocation Plan; (iii) a Construction Schedule; (iv) the Budget for the Project; (v) the Affordable Housing Covenant to be executed and recorded in the public records; (vi) an Affordable Marketing Plan;
- Each disbursement of funding is required to provide documentation that such amount(s) have actually been paid to construction contractor(s), subcontractor(s) and/or independent contractors for work or services already completed (In other words: reimbursement for completed work or services).
- The disbursement of City funds shall constitute loan proceeds. The term of the Loan is forty (40) years, commencing on the date of the final disbursement of Loan proceeds by the City. As security for the Loan, the City will be granted as assignment of its subordinate interest in Phase 1. Interest shall accrue on outstanding amounts of the Loan at the annual rate of 3%. If the Project is completed and operated continuously in accordance with all terms, then the Loan and the accrued interest shall be forgiven.
- Beginning with the first occupancy of any Affordable Unit, PHA will be required to provide an annual report, which shall include at a minimum: (a) the number of affordable units that are occupied; (b) the number of affordable units that are vacant; (c) for each unit that is vacant, the manner in which the unit became vacant and the progress in re-leasing the unit; (d) for each occupied unit, current household information; (e) a sworn statement that occupants of the affordable units meeting the eligibility criteria; (f) a copy of each new or revised Certification of Income; (g) a copy of each new or revised Certification of Residency; (h) a copy of each inspection report and Certification of Inspection for each unit; and (i) a copy of all forms, policies, procedures, and other documents reasonably requested related to the affordable rental units.
- Once the Affordable Housing Covenant is recorded, then the Affordability Requirements become binding not only on the current landowner(s), but also upon any third parties to whom the Project may be sold in the future. (In other words: the Affordability Requirements will run with the Land).
- Following the expiration of the LIHTC extended use period, the City will have the exclusive right to lease up to 20% of the Rental Affordable Units, for forty (40) years, at a rental rate not to exceed that which would be payable by a household of four persons having an income of 80% AMI.
- The City shall have the right to purchase a For Sale Affordable Unit in the event of a foreclosure on the unit. The City may designate another agency or other third party to take title to the unit.
- **PHA has requested that the documents contain provisions that specify that (affordability) restrictions on the Project will terminate in the event the Project is foreclosed upon by Virginia Housing (provider of LIHTC). This request is pursuant to certain development policies established by Virginia Housing. We have drafted the documents in a manner that complies with the Virginia Housing policies.**

Here are some key considerations regarding the redevelopment:

- In the event that the Project is foreclosed upon, the affordability restrictions will terminate.
- At some point, in order to maintain affordability, the City may have the opportunity to control affordable units in the Project. However, if the City were to take advantage of this opportunity, there will be a cost to the City associated with this.

Alignment with Council Vision Areas and Strategic Plan:

This action aligns with the Council’s Vision for quality housing opportunities that offers affordable housing for people of all income levels, racial backgrounds, life stages and abilities. This action aligns with the City Council’s Strategic Plan Goal Four: A Strong Diversified Economy and Goal One: An Inclusive Community of Self-Sufficient Residents.

Budgetary Impact:

No additional funding is required at this time. Approval of the attached Ordinance will establish the terms and conditions under which the CIP Funding previously approved for FY19/20 can be expended.

Alternatives:

City Council can decline to adopt the attached Ordinance.

Attachments:

Proposed Ordinance (includes the Proposed Master Affordable Housing Covenant and related attachments/exhibits, and the Proposed Phase 1 Affordable Housing Covenant and related attachments/exhibits)

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

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

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

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

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

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

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

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

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

Section 1. Public purpose of the Loan

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

Section 2. Representations and Warranties by the Recipient

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

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

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

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

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

Illustration 1.



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

Section 3. Authorized Expenditures; Budget

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

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

Section 4. Disbursement of Loan Proceeds

(A) Preconditions, General

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

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

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

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

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

(B) Disbursements for Infrastructure

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

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

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

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

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

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

(D) Disbursements for Soft Costs

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

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

(E) Execution of Loan Instruments

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

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

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

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

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

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

Section 5. General Terms and Conditions

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

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

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

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

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

ATTACHMENT 1
MASTER AFFORDABLE HOUSING COVENANT
[see attached]

MASTER AFFORDABLE HOUSING COVENANT

THIS MASTER AFFORDABLE HOUSING COVENANT (this “Covenant”) is made as of the ____ day of _____, 2020 (“Effective Date”), by NHTE PIEDMONT GARRETT SQUARE LIMITED PARTNERSHIP (“Landowner”), having an address of 1101 30TH Street, N.W., Suite 400, Washington, District of Columbia, 20007, for the benefit of the City of Charlottesville, a municipal corporation, 605 East Main Street, City Hall, Charlottesville, Virginia, 22902 (the “City”).

RECITALS

R-1. Landowner is the fee simple owner of certain real property located in the City of Charlottesville as further described in Exhibit A (the “Property”) and such real property will be used for the Project, as defined below (the “Project”).

R-2. The Property includes an area of land (the “Parcel”) that will be used for construction of the first phase of the Project (“Phase 1”). With respect to the Parcel, Landowner entered into an option to lease dated March 12, 2019 (the “Option”) with FC Phase 1 LLC, a Virginia limited liability company (the “Phase 1 Project Owner”), whose managing member is controlled by Piedmont Housing Alliance, a Virginia nonprofit corporation (“PHA”), and NHT Communities, a District of Columbia nonprofit corporation (“NHT”), whereby the Phase 1 Project Owner can exercise the Option and enter into a long-term ground lease with the Landowner or its successors and assigns (the “Ground Lease”).

R-3. To further the public purpose of increasing the affordable housing stock within the City of Charlottesville and, in particular, on the Parcel, the City is willing to offer certain public funding to the Project Owner, in accordance with the provisions of Virginia Code §15.2-958, upon the acquisition of the leasehold interest from the Landowner.

R-4. By Ordinance adopted on _____, 2020, the City agreed to provide public funding pursuant to the provisions of Va. Code §15.2-958, to subsidize construction of streets, utilities and other site improvements essential to the Project and to support the production of new units of residential rental property within the Project, to be occupied following construction by persons of low and moderate income. The City’s adoption of the City Ordinance was induced by the Landowner’s, PHA’s and NHT’s representation that all of the residential units within the Project will, at Project buildout, be Affordable Units.

R-5. The City and the Landowner mutually acknowledge the value of assistance provided by the City and the value of the considerations rendered by the Landowner in maintaining the dwelling units at reduced rents for persons of low and moderate income.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the City and Landowner hereby declare, covenant and agree as follows:

ARTICLE I

DEFINITIONS

For the purposes of this Covenant, the capitalized terms used herein shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as, the singular.

Affordability Period: is ninety-nine (99) years, calculated as set forth within Article X.

Affordability Requirement: has the meaning given in Section 2.1

Affordable Unit: means housing for occupant(s) at or below 80% of Area Median Income who are paying no more than 30% of income for Gross Housing Costs, including utilities, which housing will be used to satisfy the Affordability Requirement, all of which shall be identified in the Affordable Unit Index. Where the term “Committed Affordable Unit” or “Committed Rental Affordable Unit” is used, said term refers to an Affordable Unit of Rental Affordable Unit committed by means of this Covenant to satisfy the Affordability Requirement throughout the Affordability Period.

Affordable Unit Marketing Plan: means Project Owners’ plan(s) for marketing the rental or sale of the Affordable Units, as approved by the Agency pursuant to Section 2.3.

Affordable Unit Occupant: means a Qualified Tenant who lease(s) a Rental Affordable Unit, or, when the term is used in a context that refers to or includes a For Sale Affordable Unit, it means the Qualified Purchaser who owns and occupies a For Sale Affordable Unit.

Affordable Unit Owner: means a Qualified Purchaser who own(s) a For Sale Affordable Unit.

Agency: means the Office of the Charlottesville City Manager, and any successor department whose mission includes administration of the City’s Affordable Housing Program.

Area Median Income (AMI): means Median family income limits as adjusted by the U.S. Department of Housing and Urban Development (HUD) annually by household size.

Annual Household Income: means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR § 5.609, as may be amended, or as otherwise set forth by the Agency.

Annual Report: has the meaning given in Section 4.10.

Business Day means Monday through Friday, inclusive, other than holidays recognized by the City of Charlottesville government.

CAO means the Office of the City Attorney for the City of Charlottesville, Virginia.

Certificate of Tenant Eligibility means a certification by a Household at its initial occupancy of an Affordable Unit, in a form approved by the Agency, that shall be given to the Agency, Landowner, and the Certifying Authority, representing and warranting the following:

(a) the Household is a Qualified Tenant and has disclosed all of its Annual Household Income to the Certifying Authority, (b) the Household's Annual Household Income is at or below the maximum Annual Household Income for the applicable Affordable Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Unit, and (f) any other reasonable and customary representations requested by the Agency.

Certification of Income: means a certification made by a Certifying Authority that verifies the Annual Household Income of a Qualified Tenant, as applicable, meets the Designated Affordability Level for an applicable Affordable Unit and meets the requirements of Section 4.5 or Section 5.2.1, as applicable, in such form as the Agency approves.

Certification of Inspection: means a certification by Landowner that it has performed or caused to be performed an inspection of a Rental Affordable Unit and that, to the best of Landowner's knowledge, such Rental Affordable Unit is in compliance with all applicable statutory and regulatory requirements, in such form as the Agency approves.

Certification of Residency: means a certification made by an Affordable Tenant that states that the Affordable Tenant or Affordable Unit Owner occupies the Affordable Unit as its principal residence, in such form as the Agency approves.

Certifying Authority: means PHA or any other entity or entities approved by the Agency pursuant to Section 2.4.

City Ordinance: means that certain ordinance adopted by the Charlottesville City Council on _____, 2020, pursuant to Virginia Code §15.2-958, and any amendments made thereto, to approve and establish guidelines for the production of new housing for persons of low and moderate income within the Project and to assure that such housing will be occupied following construction by low and moderate income persons throughout the Affordability Period.

Code: means the Internal Revenue Code of 1986, as amended.

Designated Affordability Level (DAL): means the percentage of AMI assigned to each Affordable Unit, at or below which a Qualified Purchaser's or Qualified Tenant's as applicable, Annual Household Income must fall.

For Sale Affordable Unit: means an Affordable Unit that is owned, or is to be owned, by a Qualified Purchaser.

Landowner: is identified in the preamble of this Covenant.

Foreclosure Notice: is defined in Section 8.4.

Household(s): means all individuals who will occupy the Affordable Unit, including all individuals over eighteen (18) years of age whose names will appear on the lease, the purchaser's or tenant's as applicable, spouse or domestic partner and children under eighteen (18) years of age. A Household may be a single family, one (1) individual living alone, two (2) or more families living together, or any other group of related or unrelated individuals who share living arrangements as allowable by this Covenant.

Household Size Adjustment Factor (HAF): means the factor related to the number of individuals in a Household for the purpose of establishing the Maximum Annual Household income of an Affordable Unit, as set forth in the following table:

Household Size	Household Adjustment Factor
1	0.7
2	0.8
3	0.9
4	1
5	1.1
6	1.2

Housing Cost: means (a) the total monthly payments for rent and Utilities for Rental Affordable Units and (b) the total monthly mortgage payments, property tax, hazard insurance, if applicable, and condominium or homeowner fees for For Sale Affordable Units.

HUD: means the United States Department of Housing and Urban Development.

Land Records: means the real property records for the City of Charlottesville located in the Recorder of Deeds.

Levels of Affordability refers to the Tiers of Affordable Housing defined in terms of AMI. Families earning: between 120 and 80% AMI are considered “moderate-income”; between 80 and 50% AMI, “low-income”; between 50 and 30% AMI, “very low-income” and below 30% AMI, “extremely low-income.”

Maximum Allowable Rent: as defined in Section 4.4.2.

Maximum Annual Household Income or **MAXI:** is the maximum Annual Household Income of a Household occupying an Affordable Unit as calculated pursuant to Section 4.5.1 for Rental Affordable Units or Section 5.2.1 for For Sale Affordable Units.

Maximum Resale Price: is the maximum resale price of a For-Sale Affordable Unit as determined pursuant to procedures established by the Agency.

Maximum Sales Price: as defined in Section 5.1.1. See also **Exhibit C**

Mortgage: means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the City of Charlottesville.

Mortgagee: means the holder of a Mortgage.

Occupancy Standard: means the minimum and maximum number of individuals permitted to occupy any given Affordable Unit, as identified in the following chart:

Affordable Unit Size (Number of Bedrooms)	Minimum Number of Individuals in Affordable Unit	Maximum Number of Individuals in Affordable Unit
Studio/Efficiency	1	1
1	1	2
2	2	4
3	4	6
4	6	8

5	8	10
6	10	12

Occupancy Standard Factor: means the factor related to the assumed number of occupants for the purpose of establishing the Maximum Allowable Rent or Maximum Allowable or Maximum Sales Price, as applicable, of an Affordable Unit as set forth in the following table:

Size of Affordable Unit	Occupancy Pricing Standard	Occupancy Standard Factor
Efficiency Studio	1	.7
1 Bedroom	2	.8
2 Bedroom	3	.9
3 Bedroom	5	1.1

Over-income Tenant: as defined in Section 4.6.5.

Owner: means any individual, nonprofit organization, limited partnership, limited liability company or other legal entity that holds title to any land or building within the Project.

Parcel: is defined in the Recitals.

Person: means any individual, corporation, limited liability company, trust, partnership, limited partnership, or other legal entity.

Phase 1: means the portion of the Project constructed on the Parcel.

Phase 1 Project Owner: means FC Phase 1 LLC, a Virginia limited liability company, and any successor(s) in interest.

Project: means the structures, landscaping, hardscape and/or site improvements to be constructed or placed on the Property developed and owned by the Landowner and/or the Project Owner, including without limitation the Rental Affordable Units and For Sale Affordable Units referred to within the definition of “**Affordability Requirement**”. The term “Project” includes all phases of the proposed redevelopment—including, without limitation, Phase 1 and all subsequent phases of the redevelopment of the real estate known as “Friendship Court” inclusive of the Parcel as well as other real estate identified, as of the date of this Covenant, by the City real estate parcel identification number 280112000 (currently assigned the street addresses of 400-426 Garret Street, Charlottesville, Virginia).

Project Owner(s): means the Phase 1 Project Owner and the owners of any subsequent phases.

Property: means the real estate described within Exhibit A, attached to this Covenant.

Qualified Tenant or Qualified Purchaser: each term means a Household that (i) has an Annual Household Income, as certified by the Certifying Authority, less than or equal to the Maximum Annual Household Income for the applicable Affordable Unit at the time of leasing and subsequent lease renewals, (ii) shall occupy the Affordable Unit as its principal residence, (iii) shall not permit exclusive occupancy of the Affordable Unit by any other individual(s), (iv) shall use and occupy the Affordable Unit as an Affordable Unit subject to the Affordability Requirement and this Covenant and (v) shall occupy the Affordable Unit within the Occupancy Standard Factor.

Rental Affordable Unit: means an Affordable Unit that shall be leased to a Qualified Tenant.

Rental Affordable Unit Lease Rider: is that certain lease rider, which is attached to this Covenant as **Exhibit B** and incorporated herein, as the same may be amended from time to time with the written approval of the Agency.

Rental Formula: is defined in Section 4.4.2.

Residential Unit: means a residential dwelling unit constructed as part of the Project.

Sale: is defined in Section 5.1.

Transferee: is defined in Section 5.8.

Utilities: means water, sewer, electricity, and natural gas.

ARTICLE II

USE RESTRICTIONS; AFFORDABILITY REQUIREMENT

2.1 **Residential Use of the Property; Affordability of Housing.** In order to assure the integrity of the Project, and to ensure that public funding is used for the public purposes authorized by Virginia Code §15.2-958 in accordance with the City Ordinance, the following land use restrictions are established for the mutual benefit and obligation of all owners of land within the Project:

2.1.1. Except for any lot(s) containing the use referred to within the City Ordinance as the “Phase 1 Early Childhood Center”, and except for land used as common open space, green space, public streets, public sidewalks, parking lots, recreation facilities, utilities, and other similar facilities or amenities, the Property shall be used exclusively for residential purposes consistent with the master development plan referenced within the City Ordinance. For purposes of this paragraph, a mixed-use building that contains any ground-floor retail, office or commercial use, but contains exclusively Residential Units on all other building floors, shall be considered as being used for residential purposes. The use of a portion of any Residential Unit as an office by the occupant thereof shall be considered a part of a residential use, if such office use complies with regulations applicable to “home occupations” prescribed by the zoning ordinance of the City of Charlottesville.

2.1.2. All Residential Units within the Project shall be Rental Affordable Units or For Sale Affordable Units.

2.1.3. All Rental Affordable Units and For Sale Affordable Units are subject to the Affordability Period.

2.1.4. All Rental Affordable Units and For Sale Affordable Units are subject to the income limitations under subsection (g)(1) and the rent restrictions under subsection (g)(2) of Section 42 of the Code.

2.1.5. Rental Affordable Units shall be subject to the following:

(a) At any given time within the area of the Property, no fewer than 150 of Residential Units within the Project (including both new and preexisting units) shall be Rental Affordable Units (“Required Rental Affordable Units”) participating in the federal Program-Based Section 8 Program, subject to subparagraph (i) below.

(i) The Required Rental Affordable Units shall participate in the federal Program-Based Section 8 Program throughout the Affordability Period, for so long as the federal Program is offered under federal law. In the event that the federal Program-Based Section 8 Program is discontinued by the federal government during the Affordability Period, then the Required Rental Affordable Units shall be maintained throughout the Affordability Period as Rental Affordable Units and shall not be converted to For Sale Affordable Units.

(b) 106 Rental Affordable Units shall be provided within Phase 1 of the Project, as follows:

(i) no fewer than 46 of the Required Rental Affordable Units will participate in the federal Program-Based Section 8 Program, subject to subparagraph 2.1.4(a)(i);

(ii) no fewer than 30 Required Rental Affordable Units shall be rented to Households that meet the Code requirements for the maximum percentage of 60% of Area Median Gross Income (as described in Section 142(d)(2)(B) of the Code); and

(iii) no fewer than 30 Required Rental Affordable Units shall be rented to Households that meet the Code requirements for the maximum percentage of 80% Area Median Gross Income (as described in Section 142(d)(2)(B) of the Code).

Rental Affordable Units, in addition to the 106 required above, may be provided within Phase 1.

(c) The provisions of 2.1.4(a) and (b), above, are, unless otherwise provided, subject to subsection (g)(1)(C) of Section 42 of the Code and the federal Average Income Test.

(d) The provisions of 2.1.1 and of 2.1.5(a) and (b), above may be modified in accordance with the provisions of Article X of this Covenant.

(e) Following the expiration of the LIHTC extended use period and outside of any subsequent LIHTC extended use period entered into with respect to the property pursuant to a recapitalization, the Office of the Charlottesville City Manager (the “Agency”) or its designee will have the exclusive right to lease up to twenty percent (20%) of the Rental Affordable Units, for forty (40) years, at a rental rate not to exceed that which would be payable by a household of four (4) persons having an income of eighty percent (80%)

AMI.

2.2 Affordable Unit Standards and Location.

2.2.1 *[Reserved]*

2.2.2 *[Reserved]*

2.2.3 *[Reserved]*

2.2.4 *Exterior Finishes.* Exterior finishes of Affordable Units will be consistent across tiers of affordability.

2.2.5 *Interior Finishes.* Landowner agrees that the interior base finishes, appliances and equipment in the Affordable Units shall be similar across tiers of affordability.

2.2.6 *Affordable Unit Location.* As allowed within the parameters of LIHTC compliance guidelines or other federal law, Affordable Units of various tiers shall be dispersed throughout the Project, and shall not be concentrated on any one floor within a building, or within a section of the Project.

2.3 Marketing Affordable Units.

2.3.1 *Marketing Plan.* Landowner shall create an Affordable Unit Marketing Plan that sets forth its plan for marketing the Affordable Units to Households who may be Qualified Tenants or Qualified Purchasers, as applicable. The Affordable Marketing Plan shall be subject to the Agency's prior written approval and shall be submitted to and approved by the Agency prior to marketing any Affordable Units for sale or rent. Project Owner may contract with the Certifying Authority to implement the Affordable Unit Marketing Plan.

2.4 **Certifying Authority.** Project Owner shall select a Certifying Authority, which shall be subject to the Agency's prior written approval, not to be unreasonably withheld, conditioned or delayed. Project Owner may contact the Agency with questions and information about the selection of a Certifying Authority. The Certifying Authority shall review documentation and verify a Household's Annual Household Income and Household's size in order to determine whether that Household is a Qualified Tenant or Qualified Purchaser, as applicable. If a Household is determined to be a Tenant or Qualified Purchaser, as applicable, the Certifying Authority shall issue a Certification of Income for the subject Household.

ARTICLE III

EQUAL USE; MAINTENANCE OF AFFORDABLE UNITS

3.1 **Use.** Except as provided herein, all Rental Affordable Unit Occupants shall have the same and equal use of all the amenities of the Project and services provided at the Project (except if unique services are required for certain tenants as approved by the Agency). No restrictions, requirements or rules shall be imposed on Rental Affordable Unit Occupants at any tier of affordability that are not imposed equally on the tenants of the Rental Affordable Units within other tiers of affordability. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option to Rental Affordable Unit Occupants at any tier of

affordability, such amenities, services, upgrades, or rental of parking and other facilities shall be offered to the Rental Affordable Unit Occupants of Rental Affordable Units at other tiers of affordability. If there is no cost or fee charged to the tenants of the Rental Affordable Units at one tier of affordability for such amenities, services, upgrades, or rental of parking and other facilities, there shall not be a cost or fee charged to tenants of Rental Affordable Units at other tiers of affordability. Except as provided herein, all For Sale Affordable Unit Owners shall have the same and equal use of all the amenities of the Project and services provided at the Project (except if unique services are required for certain tenants as approved by the Agency). No restrictions, requirements or rules shall be imposed on For Sale Affordable Unit Owners at any tier of affordability that are not imposed equally on the owners of the For Sale Affordable Units within other tiers of affordability. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option to Affordable Unit Owners at any tier of affordability, such amenities, services, upgrades, or rental of parking and other facilities shall be offered to the Affordable Unit Owners of For Sale Affordable Units at other tiers of affordability. If there is no cost or fee charged to Affordable Unit Owners of the For Sale Affordable Units at one tier of affordability for such amenities, services, upgrades, or rental of parking and other facilities, there shall not be a cost or fee charted to Affordable Unit Owners of For Sale Affordable Units at other tiers of affordability.

3.2 Demolition/Alteration. Subject to normal wear and tear, Owner shall maintain, upkeep, repair and replace interior components (including fixtures, appliances flooring and cabinetry) of each Rental Affordable Unit with interior components of equal or better quality than those interior components being replaced. Affordable Unit Owners shall maintain, upkeep, repair and replace interior components (including fixtures, appliances flooring and cabinetry). Neither Owner nor Qualified Purchaser shall demolish or otherwise structurally alter an Affordable Unit or remove fixtures or appliances installed in an Affordable Unit other than for maintenance, repair and replacement of equal or better quality without the prior written approval of the Agency, which approval shall be in the sole discretion of the Agency or as needed to rebuild after a casualty or condemnation.

ARTICLE IV

RENTAL OF AFFORDABLE UNITS

4.1 Lease of Rental Affordable Units. Landowner shall reserve, maintain and lease the Rental Affordable Units to Qualified Tenants (a) in accordance with this Covenant, and (b) at a rate paid by the Tenant at or below the Maximum Allowable Rent.

4.2 Rental Affordable Unit Lease Requirements.

4.2.1 Form of Lease. To lease a Rental Affordable Unit to a Qualified Tenant, Project Owner shall use a lease agreement to which is attached and incorporated a Rental Affordable Unit Lease Rider, as may be amended from time to time. The Rental Affordable Unit Lease Rider shall be executed by Project Owner and each Qualified Tenant prior to the Qualified Tenant's occupancy of the Rental Affordable Unit. Any occupant of the Rental Affordable Unit who is eighteen (18) years or older shall be a party to the lease agreement and shall execute the Rental Affordable Unit Lease Rider.

4.2.2 Effectiveness of Lease. The lease of a Rental Affordable Unit shall only be effective if a Rental Affordable Lease Rider, a Certification of Income and a Certificate of Tenant Eligibility are attached as exhibits to the lease agreement. Failure to attach the

foregoing shall render the lease null and void *ab initio*.

4.2.3 *Landowner to Maintain Copies.* Project Owner shall maintain or cause to be maintained copies of all initial and renewed leases executed with Qualified Tenants for a period of no less than five (5) years from the expiration or termination of such lease.

4.3 **Rental Affordable Unit Admissions Process.**

4.3.1 *Referrals.* Project Owner may obtain referrals of prospective tenants of Rental Affordable Units from federal and City of Charlottesville agencies, provided such referrals comply with the requirements of this Covenant, Fair Housing laws, and the requirement that units be generally available to the public. In all events, before a prospective tenant leases a Rental Affordable Unit, their Annual Household Income shall be verified by a Certifying Authority.

4.3.2 *Consideration of Applicants.* For the initial occupancy of the Rental Affordable Units, Project Owner shall select Qualified Tenants through a first-come, first-served system, or other system approved by the Agency, as shall be further provided in the Affordable Unit Marketing Plan. Following the initial occupancy of the Affordable Units, Landowner shall consider each applicant in the order in which received by Project Owner, whether received pursuant to the Affordable Unit Marketing Plan or referred pursuant to Section 4.3.1. Tenants of Rental Affordable Units participating in the Project-Based Section 8 Program shall be selected in accordance with requirements of that federal program. Any and all of the provisions contained in this Section 4 shall be consistent with federal Fair Housing laws and regulations and any units financed under the Code (tax credit or tax exempt bond financed projects) must be generally available to the public.

4.3.3 *Rejection of Applicants.* In connection with the leasing of a Rental Affordable Unit, Landowner may reject any applicant if, after diligent review of such applicant's application, Landowner determines in good faith that such applicant does not meet Project Owner's criteria to lease or occupy a Rental Affordable Unit, provided such criteria do not violate applicable City of Charlottesville and federal laws. In the event any rejected applicant raises an objection or challenges Landowner's rejection of such applicant, Landowner shall be solely responsible for ensuring that its rejection of such applicant is not in violation of federal or local law. Landowner shall provide the Agency with all documents evidencing Landowner's review and rejection of an applicant, upon the request of the Agency.

4.3.4 *Determination of Eligibility.* Each tenant seeking to occupy a Rental Affordable Unit shall have its Annual Household Income verified by and obtain a Certification of Income from the Certifying Authority prior to leasing such unit. Housing Choice Vouchers (or vouchers from similar programs) shall be an acceptable source of verifiable household income, for the Rental Affordable Units other than those which are part of the Program-Based Section 8 Program.

4.4 **Initial Rental Affordable Unit Lease Terms.**

4.4.1 *Term.* The term of any new Rental Affordable Unit lease agreement shall be for a period of one (1) year.

4.4.2 *Establishment of Maximum Rent—Rental Formula.* Rents on Rental Affordable Units shall be rent restricted. Maximum Allowable Rent paid by the Tenant shall for the first lease year shall be based on the number of bedrooms and AMI as established annually by HUD. If a household pays for utilities, the maximum rent must be adjusted by the applicable utility allowance.

4.5 **Income Determinations.** The Annual Household Income for a prospective tenant of a Rental Affordable Unit shall be determined as of the date of the lease renewals for such Rental Affordable Unit either annually or every two years, at the City's option and as may be permitted by the Code. A Household's income eligibility to rent a Rental Affordable Unit is determined by calculating the Maximum Annual Household Income for a Household occupying the Rental Affordable Unit. The Certifying Authority shall verify that the Household's Annual Household Income is not more than the MAXI.

4.5.1 *Maximum Annual Household Income.* The Maximum Annual Household Income is determined through AMI as established annually by HUD.

4.6 **Subsequent Lease Years**

4.6.1 *Use of Rental Formula.* For each lease year after the first lease year, Maximum Allowable Rent shall be determined in the same manner specified within 4.4.2, above.

4.6.2 *Renewal by Affordable Unit Occupant.* For each Affordable Unit Occupant who intends to renew its residential lease, no earlier than ninety (90) days and no later than thirty (30) days before each anniversary of the first day of a residential lease, Project Owner shall obtain the following: (i) a Certification of Residency from each such Affordable Unit Occupant; and (ii) a Certification of Income completed by the Certifying Authority. Project Owner shall not permit a renewal of an Affordable Unit Occupant's lease unless the Affordable Unit Occupant has provided Project Owner with these documents as required herein and the tenant is determined to be a Qualified Tenant or is otherwise protected under applicable State or Federal law. The foregoing Certifications and requirements to be a continuing Qualified Tenant shall be as provided in Section 42 of the Code for any period when the requirements of the Low Income Housing Tax Credits and the Extended Use Agreement are binding on the Parcel.

4.6.3 *Annual Recertification of Tenants.* Upon receipt of an Affordable Unit Occupant's renewal documents at the time of recertification, Certifying Authority shall determine the Affordable Unit Occupant's income eligibility pursuant to Section 4.5 for the subject Rental Affordable Unit and notify Affordable Unit Occupant of the same within fifteen (15) days prior to the expiration of the then-current lease term. Any Affordable Unit Occupant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit will be eligible to remain in the Rental Affordable Unit and to renew his/her lease at the then-current lease rate for the particular Rental Affordable Unit. The foregoing Certifications and requirements to be a continuing Qualified Tenant shall be as provided in Section 42 of the Code for any period when the requirements of the Low Income Housing Tax Credits and the Extended Use Agreement are binding on the Parcel.

4.6.4 *Annual Recertification of Under Income Tenants.* Upon annual recertification, any Affordable Unit Occupant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit, but whose

Annual Household Income is less than the Minimum Annual Household Income for the subject Rental Affordable Unit, may elect either to (i) remain in the Rental Affordable Unit up to the then-current Maximum Allowable Rent for the subject Rental Affordable Unit or (ii) vacate the Rental Affordable Unit at the end of the tenant's lease term.

4.6.5 *Annual Recertification of Over-Income Tenants.* Upon annual recertification, if an Affordable Unit Occupant's Annual Household Income is determined to exceed the Maximum Annual Household Income for the subject Rental Affordable Unit (such tenant, an "**Over-Income Tenant**"), then the Over-Income Tenant may elect to remain in the Rental Affordable Unit and pay the rent applicable to (a) a higher Designated Affordability Level, if a higher Designated Affordability Level exists for the Parcel, for which the Over-Income Tenant's Annual Household Income qualifies, whereupon Project Owner shall change the Designated Affordability Level of the Rental Affordable Unit to the higher Designated Affordability Level pursuant to Section 4.6.6, or (b) may remain at the allowable rent level if protected by applicable State or Federal law.

4.6.6 *Changes to Unit Location.* If applicable, Project Owner may change the designation of a Rental Affordable Unit to a new Designated Affordability Level as necessary to allow an Over-Income Tenant to remain in the unit (i.e., to accommodate an existing tenant). Following any change in designation of a Rental Affordable Unit to a higher Designated Affordability Level of similar size and location in the property to the lower Designated Affordability Level from which the original Rental Affordable Unit had been changed in order to bring the Parcel in conformity with the Affordability Requirement.

4.6.7 *Rent from Subsidies.* Nothing herein shall be construed to prevent Project Owner from collecting rental subsidy or rental-related payments from any federal, state, or City of Charlottesville agency paid to Project Owner and/or the Affordable Unit Tenant, or on behalf of an Affordable Unit Tenant, to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant. Such rental subsidy or rental-related payment shall not be included in determining Maximum Chargeable Rent or the income of an otherwise Qualified Tenant, all as provided in the Code.

4.7 **No Subleasing of Rental Affordable Units.** An Affordable Unit Occupant may not sublease any portion of its Rental Affordable Unit or assign its lease to any other Household and Project Owner shall not knowingly allow such Rental Affordable unit to be subleased, except with the Agency's prior written consent, in the Agency's sole and absolute discretion. No Rental Affordable Unit may be offered or used for any short term rental/ transient occupancy.

4.8 **Representations of Affordable Unit Tenant.** By execution of a lease for a Rental Affordable Unit, each Affordable Unit Occupant shall be deemed to represent and warrant to the Agency and Project Owner, each of whom may rely thereon, that the Affordable Unit Occupant meets, and will continue to meet, all eligibility requirements contained in this Covenant for the rental of a Rental Affordable Unit.

4.9 **Representations of Project Owner.** By execution of a lease for a Rental Affordable Unit, Project Owner shall be deemed to represent and warrant to the Agency, which may rely on the following, that: (i) the Household is determined to be a Qualified Tenant by the Certifying Authority, and (ii) Project Owner is not collecting more than the Maximum Allowable Rent from the Tenant.

4.10 Annual Reporting Requirements. Beginning in the first year that any Affordable Unit is occupied, Project Owner shall provide an annual report (“**Annual Report**”) to the Agency regarding the Rental Affordable Units, which shall be submitted on each anniversary date of the Effective Date of this Covenant. The Annual Report shall include the following:

(a) the number and identification of the Rental Affordable Units, by bedroom count, that are occupied;

(b) the number and identification of the Rental Affordable Units, by bedroom count, that are vacant;

(c) for each Rental Affordable Unit that is vacant or that was vacant for a portion of the reporting period, the manner in which the Rental Affordable Unit became vacant (e.g. eviction or voluntary departure), the length of vacancy, and the progress in re-leasing that unit;

(d) for each occupied Rental Affordable Unit, the names, ages and ethnicity of all persons in the Household, the Household size, date of initial occupancy, and total Annual Household Income as of the date of the most recent Certification of Income;

(e) a sworn statement that, to the best of Project Owner’s information and knowledge, the Household occupying each Affordable Rental Unit meets the eligibility criteria of this Covenant;

(f) a copy of each new or revised Certification of Income for each Household renting a Rental Affordable Unit;

(g) a copy of each new or revised Certification of Residency for each Household renting a Rental Affordable Unit;

(h) a copy of each inspection report and Certification of Inspection for each Rental Affordable Unit; and

(i) a copy of all forms, policies, procedures, and other documents reasonably requested by the Agency related to the Rental Affordable Units.

The Annual reports shall be retained by Project Owner for a minimum of five (5) years after submission and shall be available, upon reasonable notice, for inspection by the Agency or its designee. Notwithstanding anything contained herein to the contrary, in the event that Project Owner provides a report to an agency within the City government with content substantially similar to the content of the Annual Reports described in this section, subject to the Agency’s prior written approval, then the reporting requirements under this section shall be satisfied upon Project Owner’s delivery of such report to the Agency. The Agency may request Project Owner to provide additional information in support of its Annual Report.

4.11 Confidentiality. Except as may be required by applicable law, including, without limitation to, the Virginia Freedom of Information Act. Project Owner: the Certifying Authority and the Agency shall not disclose to third parties, other than Project Owner’s investor members, the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report.

4.12 Inspection Rights. The Agency or its designee shall have the right to inspect the Rental Affordable Units, upon reasonable advance notice to the Project Owner and during normal

business hours as provided in the Leases. If Project Owner receives such notice, Project Owner shall, in turn, give reasonable advance notice of the inspection to the tenant(s) occupying the specific Rental Affordable Unit(s). The Agency or its designee shall have the right to inspect a random sampling of the Rental Affordable Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and as otherwise permitted under this Covenant. The Agency or its designee shall have the right to conduct audits of a random sampling of the Rental Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

ARTICLE V

SALE OF AFFORDABLE UNITS

5.1. Sale of For Sale Affordable Units. In the event the Project contains For Sale Affordable Units, the Owner shall comply with the provisions of this Article V for the sale of such Affordable Units. Owner shall not convey all or any part of its fee interest (“Sale”), whether or not for consideration, in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income and who is a Qualified Purchaser.

5.1.1. Maximum Sales Price. The sale price of each For Sale Affordable Unit upon an initial Sale shall not exceed an amount (the “Maximum Sales Price”) that is affordable to a Household with an Annual Household Income at the Designated Affordability Level, adjusted by the Occupancy Standard Factor, spending not more than thirty percent (30%) of their Annual Household Income on Housing Cost. The Agency shall determine the Maximum Sales Price in accordance with **Exhibit C**, attached and incorporated herein by reference, or by another formula consistent with applicable state or federal laws and acceptable to the Agency in its sole discretion. The Housing Cost includes mortgage payments, property taxes, condominium and homeowner fees, and hazard insurance, if applicable. The Agency shall approve the Maximum Sales Price for each For Sale Affordable Unit prior to the marketing and sale of such For Sale Affordable Unit.

5.1.2. Maximum Resale Price. The Maximum Resale Price for each Sale subsequent to the initial Sale shall be calculated in accordance with **Exhibit D** attached hereto and incorporated herein, or by another formula consistent with applicable state or federal laws and acceptable to the Agency in its sole discretion. The Agency shall approve the Maximum Resale Prices for each For Sale Affordable Unit prior to the marketing and resale of such For Sale Affordable Unit.

5.1.3. Housing Purchase Assistance Program and other Subsidized Funding. The Maximum Sales Price and Maximum Resale Price of a For Sale Affordable Unit shall be determined by the Agency as described in Sections 5.1.1 and 5.1.2, regardless of the prospective buyer’s use of Housing Purchase Assistance Program and/or other subsidized funding for the purchase of the For Sale Affordable Unit.

5.1.4. Sale to a Community Land Trust. Notwithstanding any other provision of this Covenant, for the purposes of this Section 5.1, the sale of a lot and a Residential Unit constructed on such lot to a community land trust will be deemed a sale to a Qualified Purchaser, if the following criteria are met: (i) the community land trust is reasonably expected to be and remain the fee owner of the lot, and (ii) ownership of the Residential Unit shall be held either by the community land trust that owns the lot, or by an

individual(s) who has/have a long term lease for the lot and who is/are a Qualified Purchaser.

5.2. Procedure for Sales. The following procedures shall apply with respect to the initial Sale of a For Sale Affordable Unit, and also to each subsequent Sale of a For Sale Affordable Unit.

5.2.1. Income Eligibility. For any Qualified Purchaser, the Annual Household Income shall be determined as of the date of the sales contract for such For Sale Affordable Unit. To the extent settlement for a For Sale Affordable Unit will not occur within 90 days after the sales contract, the Annual Household Income of the prospective Qualified Purchaser shall be determined again within 90 days prior to settlement. A Household's eligibility to purchase a For Sale Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and the Minimum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and verifying that the prospective Household's Annual Household Income is between the MAXI and MINI. The Maximum Annual Household Income is determined through the use of the formula: $MAXI = (AMI * DAL * HAF)$. The Minimum Annual Household Income is determined by multiplying the total Housing Cost by twelve (12) and dividing this number by forty-one percent (41%). The Housing Cost is determined by calculating the monthly mortgage payments using the actual terms of the Household's approved mortgage, and adding all applicable property taxes, homeownership or condominium fees, and hazard insurance. Each Qualified Purchaser shall have its Annual Household Income verified by and obtain a Certification of Income from the Certifying Authority prior to entering into the contract.

5.2.2. Sale. A Sale of a For Sale Affordable Unit shall only be effective if **(i)** a certificate of purchaser eligibility submitted by a Household to Owner and dated within ninety (90) days of the closing of such Sale is recorded prior to or contemporaneously with the deed conveying the Affordable Unit and **(ii)** a Certification of Income is completed by a Certifying Authority within ninety (90) days before closing of such Sale. Owner, Mortgagee(s), District and any title insurer shall each be a third party beneficiary of each such Certificate of Purchaser Eligibility.

5.2.3. Resale. Prior to selling or otherwise transferring a fee interest in a For Sale Affordable Unit, the Affordable Unit Owner intending to re-sell such unit shall (i) contact the Agency to obtain the Maximum Resale Price and (ii) shall refer the prospective purchaser to the Agency to determine their eligibility to purchase the For Sale Affordable Unit. The Maximum Resale Price shall be determined by the Agency in accordance with **Exhibit D** attached hereto and incorporated by reference, or by such other formula acceptable to the Agency, in its sole discretion.

5.2.4. Sale to Community Land Trust. Notwithstanding any other provision of this Covenant, a sale of a For Sale Affordable Unit to a community land trust shall be effective if a Certificate of Purchaser Eligibility is provided by the Agency certifying that the requirements of paragraph 5.1.4 will be satisfied, such certificate is signed and dated within ninety (90) days of the closing of such Sale, and the certificate is recorded prior to or contemporaneously with the deed conveying the Affordable Unit.

5.3. Closing Procedures and Form of Deed.

5.3.1. Owner to Provide Copy of Covenant. Owner shall provide the Qualified

Purchaser with a copy of this Covenant prior to or at the closing on the Sale of the For Sale Affordable Unit.

5.3.2. Form of Deed. All deeds used to convey a For Sale Affordable Unit must have a fully executed Certificate of Purchaser Eligibility attached, and shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING COVENANT, DATED AS OF _____, 20_ RECORDED AMONG THE LAND RECORDS OF THE CITY OF CHARLOTTESVILLE, VIRGINIA AS INSTRUMENT NUMBER _____, ON _____ 20___, WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

5.3.3. Deed for a For Sale Affordable Unit. A deed for a For Sale Affordable Unit shall not be combined with any other property, including parking spaces or storage facilities, unless the price of such property is included in the Maximum Sales Price (for initial Sales) or Maximum Resale Price (for subsequent Sales).

5.3.4. Post Closing Obligations. The purchaser of a For Sale Affordable Unit shall submit to the Agency within thirty (30) days after the closing a copy of the final executed HUD settlement statement, a copy of the deed recorded in the Land Records, the Certificate of Purchaser Eligibility, and the Certification of Income.

5.4. Rejection of Applicants. In connection with the Sale of a For Sale Affordable Unit, the owner of that unit (“Owner”) may reject any applicant seeking to acquire a For Sale Affordable Unit who has not obtained a Certification of Income or other evidence of eligibility adopted by the Agency, if, based on such applicant’s application, background and/or creditworthiness (including, without limitation, the applicant’s inability to provide credible evidence that such applicant will qualify for sufficient financing to purchase the For Sale Affordable Unit), such Owner determines in good faith that such applicant does not meet the criteria to purchase or occupy a For Sale Affordable Unit, provided that such criteria does not violate applicable Virginia or federal laws and is the same criteria applicable to Market-Rate Units, except as required by this Covenant. In the event any rejected applicant raises an objection or challenges Owner’s rejection of such applicant, Owner shall be solely responsible for ensuring that its rejection of any applicant is not in violation of state or federal law. Owner shall provide the Agency with all documents evidencing Owner’s review and rejection of an applicant, upon the request of the Agency.

5.5. Representations of Owner. By execution of a deed for a For Sale Affordable Unit, the owner of the For Sale Affordable Unit Owner shall be deemed to represent and warrant to, and agree with, the Agency and, if applicable, the title company, each of whom may rely on the following: that (i) the Household is determined to be a Qualified Purchaser by the Certifying Authority at the Designated Affordability Level, and (ii) the sale price satisfies the terms of this Covenant.

5.6. Annual Certification of Residency. During the Affordability Period, the Affordable Unit Owner shall submit to the Agency annually on the anniversary of the closing date for a For Sale Affordable Unit, a Certification of Residency. The Certification of Residency shall be submitted

on or with such form as may be prescribed by Agency.

5.7. Leasing For Sale Affordable Units. An Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit without the Agency's prior written approval, in the Agency's sole and absolute discretion. If the Agency approves the lease of a For Sale Affordable Unit, then that Unit shall be leased in compliance with the Rental Affordable Unit provisions of this Covenant.

5.8. Transfers. Except as provided in Article VIII, in the event an Affordable Unit Owner voluntarily or involuntarily transfers all or part of the For Sale Affordable Unit pursuant to operation of law, court order, divorce, death to a transferee, heir, devisee or other personal representative of such owner of a For Sale Affordable Unit (each a "Transferee"), such Transferee, shall be automatically be bound by all of the terms, obligations and provisions of this Covenant and shall either: (i) occupy the For Sale Affordable Unit if he or she is a Qualified Purchaser, or (ii) if the Transferee does not wish to or is unable to occupy the For Sale Affordable Unit, he or she shall promptly sell it in accordance with this Covenant.

5.9. Prohibition on Occupancy. In no event shall a Transferee who is not a Qualified Purchaser reside in a For Sale Affordable Unit for longer than ninety (90) days.

5.10. Progress Reports. Until all initial Sales of For Sale Affordable Units are completed, Landowner shall provide Agency with annual progress reports, or more frequently upon request, on the status of its sale or rental of Affordable Units.

ARTICLE VI

ENFORCEMENT AND REMEDIES

6.1 Enforcement. The City, the Landowner, PHA, and NHT and each of their respective successors and assigns (each, an "Interested Party") shall each have the right to enforce this Covenant against the Landowner, after first giving sixty (60) days' written notice to the Landowner of its noncompliance. If the Landowner fails to cure the noncompliance within the 60-day period, then any Interested Party shall have the right to seek specific performance, injunctive relief and/or other equitable remedies, including compelling the re-sale or leasing of an Affordable Unit and the disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted hereunder. In the event such cure cannot reasonably be affected within the above 60-day period, the Landowner may have such additional time as is necessary to cure such default provided the Landowner promptly initiated and diligently pursued such cure.

6.2 No Waiver. Any delay by the Agency in instituting or prosecuting any actions or proceedings with respect to a default hereunder, in asserting its rights or pursuing its remedies hereunder shall not operate as a waiver of such rights.

6.3 Right to Attorney's Fees. In any legal action brought by the City or any other Interested Party to enforce any provision(s) of this Covenant, if the Interested Party prevails in such action then the Interested Party shall be entitled to recover its litigation costs and expenses, including reasonable attorney fees. If the CAO is counsel for the City in such legal action, the reasonable attorney fees for the City shall be calculated based on the then applicable hourly rates prevailing within private practice within the City of Charlottesville, Virginia, and the number of hours that employees of the CAO prepared for or participated in any such action.

ARTICLE VII

COVENANT BINDING ON LANDOWNER'S SUCCESSORS AND ASSIGNS

The provisions of this Covenant shall run with the land and shall bind the Landowner and all successor(s) in interest as of the Effective Date and throughout the Affordability Period. No sale, transfer or foreclosure shall affect the validity of this Covenant, except as provided in Article X, §10.3.

ARTICLE VIII

MORTGAGES

8.1 **Subordination of Mortgages.** The provisions of this Article VIII shall only apply to For Sale Affordable Units, if applicable. All Mortgages placed against the Parcel, or any portion thereof, shall be subject and subordinate to this Covenant, except as provided in Section 8.3.3.

8.2 **Amount of Mortgage.** In no event shall the aggregate amount of all Mortgages placed against an Affordable Unit exceed an amount equal to one hundred five percent (105%) of the Maximum Resale Price for such unit. Prior to obtaining any Mortgage or refinancing thereof, the Affordable Unit Owner shall request from the Agency the then-current Maximum Resale Price for its For Sale Affordable Unit.

8.3 **Default of Mortgage and Foreclosure.**

8.3.1 **Notice of Default.** The Mortgagee shall provide the Agency written notice of any default and notice of intent to foreclose under the Mortgage on any For Sale Affordable Unit. Notwithstanding the foregoing, in no event shall failure to provide such notices preclude the Mortgagee's right to proceed with its remedies for default under the Mortgage.

8.3.2 **Right of Purchase by the City.** The Agency shall have the right to purchase a For Sale Affordable Unit in the event a notice of default or notice of intent to foreclose for a Mortgage in first position was recorded in the Land Records. The purchase price shall be an amount that is the greater of (i) the amount of the debt secured by all Mortgages recorded against the subject Affordable Unit, including commercially reasonable costs and expenses, if any, incurred by Mortgagee as a result of a default and due and payable under the terms of the Mortgage or (ii) the Maximum Resale Price. The Agency shall have thirty (30) days from the date a notice of default or a notice of foreclosure sale was recorded in the Land Records to exercise its option and to purchase the Affordable Unit. The Agency's right to purchase shall automatically expire upon the transfer of the Affordable Unit by foreclosure or deed in lieu thereof. The Agency may designate another agency or other third party to take title to the For Sale Affordable Unit.

8.3.3 **Termination Upon Foreclosure and Assignment.** In the event title to an For Sale Affordable Unit is transferred following foreclosure by, or deed in lieu of foreclosure to a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 8.3.4 and 8.4.

8.3.4 **Apportionment of Proceeds.** In the event title to a For Sale Affordable Unit is transferred according to the provisions of Section 8.3.3, the proceeds from such foreclosure or transfer shall be apportioned and paid as follows: first, to the Mortgagee, in the amount of debt secured under the Mortgage, including commercially reasonable costs and expenses, if any, incurred by Mortgagee and due and payable under the terms of the Mortgage; second, to any junior Mortgagees, in the amount of the debt secured under such Mortgages; third, to the For Sale Unit Owner, up to the amount of the Maximum Resale Price as of the date of such sale or transfer; and fourth, to the City.

8.3.5 [*Reserved*]

8.4 **Assignment of Mortgage to the Secretary of HUD.** In the event a Mortgage recorded in the first position against a For Sale Affordable Unit is assigned to the Secretary of HUD, the following shall occur upon the date of assignment: (i) the Agency's right to purchase, whether or not such right has been triggered, shall automatically expire and (b) the terms of this Covenant applicable to such unit shall automatically terminate pursuant to Section 8.3.3, except that upon sale of such unit or foreclosure or deed in lieu thereof, the proceeds of such sale shall be apportioned as provided in Section 8.3.4.

ARTICLE IX

AMENDMENT OF COVENANT

Except as otherwise provided herein, this Covenant, or any part hereof, may be amended, modified or released by an instrument in writing executed by a duly authorized official of the Agency on behalf of the City, and by a duly authorized representative of the Landowner. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective. No amendment shall include any term(s) or condition(s) inconsistent with the Project site requirements set forth in Exhibit E, attached. Prior to or at any point during the development of each phase of the Project, the Project Owner of such phase may elect to enter into an affordable housing covenant that provides use restrictions or minimum Affordable Unit counts specific to that phase and consistent with the provisions of Exhibit E attached to this Covenant. Any such phase-specific covenant shall be in the same format, and shall include the same content, of this Master Covenant, amended only as to use restrictions or minimum Affordable Unit counts for that phase, and the land within that phase of development shall be released from the obligations of this Covenant upon: (i) execution by the Project Owner(s) of the phase-specific covenant, (ii) execution by the City of the phase-specific covenant, confirming compliance with the requirements of this Article IX and Exhibit D, and (iii) recordation of the fully-executed phase-specific covenant within the land records of the Circuit Court for the City of Charlottesville. Once recorded, any such phase-specific covenant shall be deemed an amendment of this Covenant as to the area of land described therein. In connection with the closing of any sale or other conveyance of all of the Affordable Units within a specific phase by the Project Owner of that phase, the Project Owner may request the City to review the compliance of that phase with the requirements of this Covenant or its replacement phase-specific covenant. If the City provides written verification of the phase's compliance with the covenant, endorsed by the City Attorney, then following the date of such written verification, the City's sole recourse for enforcement of the covenant shall be against the Project Owner's successor(s) in interest.

ARTICLE X

AFFORDABILITY PERIOD

10.1. All Affordable Units in the Parcel shall be leased in accordance with the terms of this Covenant for **a period of ninety-nine (99) years (the “Affordability Period”)** which shall commence when the Project construction is complete, the residential buildings are placed in service and ready for occupancy pursuant to certificates of occupancy and shall continue for a period of ninety-nine (99) years thereafter. The Affordability Period for each For-Sale Affordable Unit shall commence on the date of recordation of the deed transferring the initial ownership of the For-Sale Affordable Unit to a Qualified Purchaser and shall continue for a period of 99 years thereafter. Notwithstanding the foregoing, this Covenant may be released and extinguished upon the approval of the Agency, in its sole and absolute discretion.

10.2. Notwithstanding the foregoing, in the event the Project or the interest in the Parcel are foreclosed upon by an institutional or governmental lender following foreclosure by, or deed in lieu of foreclosure to a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 10.3.

10.3. Notwithstanding the foregoing Section 10.2, if Virginia Housing (formerly known as Virginia Housing Development Authority) is first lienholder and senior lender, and Virginia Housing is the successful bidder at foreclosure and becomes the successor in interest, then the income, rent or use restrictions required by this Covenant shall terminate, except: (i) twenty percent (20%) of the units within the Project may remain at sixty percent (60%) of area median income following such a foreclosure, and (ii) Virginia Housing may permit additional units at 60% AMI to survive such a foreclosure, provided that Virginia Housing determines, in its sole discretion, that the development will achieve a targeted debt service coverage rate (DCSR) of at least 1.25 while subject to such additional set-aside. If such affordability survival materially and adversely affects the debt financing for any such phase, the City shall consider reducing such thresholds, but in all events each Phase will be subject to the tax credit Extended Use Agreement required by Virginia Housing. The City Manager, after consultation with the City Attorney’s Office, is the City official designated within the City Ordinance as having authority to approve an amendment of this Covenant to the extent necessary to facilitate PHA’s receipt of financing from Virginia Housing, provided that the renegotiated terms are no less than those Virginia Housing itself requires in its own Lending Policy and are not otherwise prohibited by the City Ordinance or any provision of this Covenant.

10.4. Notwithstanding any other provisions of this Article X, in accordance with the requirements of Virginia Code §15.2-958 in effect on the date this Covenant is recorded, the Landowner and its successors in interest shall provide a minimum of twenty percent (20%) of the residential units within Phase 1 as Rental Affordable Units, for a period of not less than ten (10) years, and no City official shall have authority to amend this Covenant in a manner that defeats these statutory required minimums.

ARTICLE XI

NOTICES

11.1 Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight

commercial courier service to the applicable Person at the addresses specified in this Article, or to such other persons or locations as may be designated by the City or the Project Owner from time to time. All notices to be sent to the City shall be sent to the following address:

CITY: Charlottesville City Manager
P.O. Box 911, Charlottesville, Virginia 22902

With a copy to: Charlottesville City Attorney
P.O. Box 911, Charlottesville, Virginia 22902

11.2 All notices to be sent to Project Owner shall be sent to the address given in the preamble with copies to counsel and to the Landowner and to the investor member of the Project Owner, which may be provided and included in an amendment hereto. All notices to be sent to any Affordable Unit Occupant shall be sent to the unit number referenced in its lease. It shall be the responsibility of the applicable Person and any successor to the applicable Person to provide the City with a current address. The failure of the applicable Person to provide a current address shall be a default under this Covenant.

11.3 Notices shall be deemed delivered as follows: (i) if hand-delivered, then on the date of delivery or refusal thereof; (ii) if by overnight courier service, then on the next business day after deposit with the overnight courier service; and (ii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

ARTICLE XII

MISCELLANEOUS

12.1 **Applicable Law: Forum for Disputes.** This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the Commonwealth of Virginia, without reference to the conflicts of laws provisions thereof. Project Owner, Affordable Unit Occupants and the City irrevocably submit to the jurisdiction of the Circuit Court for the City of Charlottesville, Virginia for the purposes of any suit, action or other proceeding arising out of this Covenant or any transaction contemplated hereby. Project Owner, Affordable Unit Occupants and the City irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant or the transactions contemplated hereby in the Circuit Court of the City of Charlottesville and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12.2 **Counterparts.** This Covenant may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

12.3 **Time of performance.** All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a Saturday, Sunday or City holiday is automatically extended to the next Business Day.

12.4 **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS COVENANT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.5 **Further Assurances.** Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Covenant; provided that such additional documents and instruments do not materially increase the obligations or burdens upon the second party.

12.6 **Severability.** If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions. Said other provisions shall remain in effect without reference to the unenforceable or illegal provision.

12.7 **Limitation on Liability.** Provided that Project Owner has exercised reasonable due diligence in the performance of its obligations and duties herein, Project Owner shall not be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Project Owner shall be liable if Project Owner has knowledge or should have knowledge, that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

12.8 **Agency Limitation on Liability.** Any review or approval by the City or the Agency shall not be deemed to be an approval, warranty, or other certification by the City or the Agency as to compliance of such submissions, the Project, any Affordable Unit or Parcel with any building codes, regulations, standards, laws, or any other requirements contained in this Covenant, or any other covenant granted in favor of the city that is filed among the Land Records; or otherwise contractually required. The City shall incur no liability in connection with the Agency's review of any submissions required under this Covenant as its review is solely for the purpose of protecting the City's interest under this Covenant.

12.9 **No Third Party Beneficiary.** Except as expressly set forth in this Covenant, there are no intended third party beneficiaries of this Covenant, and no Person other than City shall have standing to bring an action for breach of or to enforce the provisions of this Covenant.

12.10 **Representations of Project Owner.** As of the date hereof, Project Owner hereby represents and warrants to City as follows:

(a) This Covenant has been duly executed and delivered by Project Owner, and constitutes the legal, valid and binding obligation of Project Owner and Landowner and its successors and assigns, enforceable against Project Owner, and its successors and assigns, in accordance with its terms;

(b) Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by Project Owner of any agreement or order which is binding on Project Owner; and

(c) Project Owner (i) is duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the laws of the City of Charlottesville. (ii) is authorized to perform under this Covenant; and (iii) has all necessary power to execute and deliver this Covenant.

12.11 **Federal Affordability Restrictions.** In the event the Parcel is encumbered by other affordability restrictions ("Federal Affordability Restrictions") as a result of federal funding or the issuance of Low-Income Housing Tax Credits for the Project, it is expressly understood such Federal Affordability restrictions, requirements, and provisions shall apply and it is agreed that

in the event the requirements in this Covenant would cause a default of or finding of non-compliance (“Conflict”) with the Federal Affordability Restrictions during the compliance period for the Federal Affordability Restrictions, then the requirements of the Federal Affordability Restrictions shall control to the extent of the Conflict. In all other instances, the requirements of this Covenant shall control.

[Signatures on Following Pages]

EXHIBIT A to MASTER AFFORDABLE HOUSING COVENANT

Legal Description of Property

[PHA to provide legal description of full property]

EXHIBIT B TO MASTER AFFORDABLE HOUSING COVENANT

Rental Affordable Unit Lease Rider

This Affordable Unit Lease Rider (“Rider”) is attached to and incorporated into the lease dated (“Lease”) between (“Resident” or “You”) and , as Management Agent (“Manager”) for (“Owner”) for Apartment (“Premises”). All capitalized terms not defined in this Rider shall have the meaning provided in the Affordable Housing Covenant (as defined below).

In consideration of the mutual covenants set forth in the Lease and below, you agree that your use and possession of the Premises is subject to the terms and conditions set forth in the Lease and the following terms and conditions, which are in addition to and supplement the Lease:

AFFORDABLE UNIT: Resident acknowledges that the Premises is subject to that certain Affordable Housing Covenant between Owner and the City of Charlottesville dated _____, 20____, as may be subsequently amended, (the “Affordable Housing Covenant”). The Premises is currently designated as an Affordable Unit, which requires the Resident’s household income to be less than or equal to [_____] of the area median income (AMI).

DEFINED TERMS: Those terms not specifically defined herein shall be assigned the definition provided in the Affordable Housing Covenant.

ELIGIBILITY: In order for you, as resident, to be eligible to rent an Affordable Unit, you must be and remain an “Affordable Unit Tenant” as defined in the Affordable Housing Covenant.

INCOME CERTIFICATION/INCOME RECERTIFICATION: No more than ninety (90) days and no less than forty-five (45) days before each anniversary of the first day of the lease (or at the City’s option, every two years after the first day of the Lease) the Manager shall request that the Resident provide the Certifying Authority with the following:

- (i) an executed Certification of residency that states that Resident occupies the Premises as his/her/their principal residence,
- (ii) all information pertaining to the Resident’s household composition and income for all household members,
- (iii) a release authorizing third party sources to provide relevant information regarding the Resident’s eligibility for the Affordable Unit, as well as how to contact such sources, and
- (iv) any other reasonable and customary representations, information or documents requested by the Certifying Authority.

Resident shall submit the foregoing listed documentation to the Certifying Authority within fifteen (15) days of Manager’s request. Within ten (10) days of Certifying Authority’s receipt of the foregoing documentation and based on the results of the annual income recertification review, Certifying Authority will determine whether the Resident remains income eligible for the Premises and notify the Resident of his or her household’s AMI percentage, and (a) if the Resident is no longer income eligible for the Premise, the income category for which the Resident is income eligible to lease a unit in the apartment community, or (b) if the Resident is income eligible for the Premises, provide a Certification of Income completed by the Certifying

Authority, verifying that the income of the Resident meets income eligibility for the Premises.

Upon annual recertification, if the Resident remains income eligible for the Premises, the Resident will be eligible to remain in the Premises and to renew his/her lease at the then-current lease rate for the Premises. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Household Income applicable to the Premises, then the Resident may remain in the Premises and pay the rent applicable to an Affordable Unit at a higher affordability level for which the Resident's Annual Household Income qualifies. If the Resident's Annual Household is determined to exceed the Maximum Annual Income for the Affordable Unit with the highest AMI level in the Parcel, then the Owner may allow the Resident to remain in the Premises and to pay the applicable market-rate rent for the Premises.

Manager will notify Resident of all options (i.e., an Affordable Unit at a different AMI category or a market rate unit) for which Resident is income eligible prior to the expiration of the Resident's lease term. Prior to the expiration of the Resident's lease term, the Resident shall notify Manager in writing of the Resident's election to either (i) remain in the Premises and pay the rental rate applicable to the Resident's then current AMI category if the Resident's Annual Household Income is at or below the established AMI categories of [] AMI or [] AMI, (ii) remain in the Premises paying the market rate rent for that unit if the Resident's then current income is above the highest AMI level, or (iii) vacate the Premises at the end of the Resident's Lease term. Resident's failure to notify Manager of Resident's election prior to the expiration of the lease term will be deemed by Manager as Resident's election to vacate the Premises.

In the event that Resident fails to pay the applicable rental rate or vacate the Premises upon expiration of the lease term, Manager shall pursue an action for eviction of Resident. Resident's agreement to pay the applicable rental rate or vacate was a condition precedent to Manager's initial acceptance of Resident's eligibility and Manager has relied on Resident's agreement. Resident acknowledges and agrees that the criteria to be income eligible to occupy the Premises is and serves as a City policy and objective, and that failure to vacate the Premises or pay the applicable rental rate is both a default under the Lease and in violation of the Affordable Housing Covenant.

PROHIBITION ON SUBLETS AND ASSIGNMENTS: Resident may not sublease any portion of the Premises or assign its lease to any other person, except with the prior written consent of the City of Charlottesville City Manager's Office, in its sole and absolute discretion.

LEASE EFFECTIVE: The Lease of the Premises shall only be effective if this executed Rider, a Certification of Income, a Certificate of Tenant Eligibility (for initial lease term), and a Certificate of Residency (for lease renewals) are attached as exhibits to the lease agreement.

Resident Signature

Date

Resident Signature

Date

Resident Signature

Date

EXHIBIT C to MASTER AFFORDABLE HOUSING COVENANT

Maximum Sales Price

The following assumptions shall be used in calculating the Maximum Sales Price of a For Sale Affordable Unit.

- i. Condominium Fees, if applicable: Use the actual monthly condominium fees, or if unknown, estimate monthly condominium fees at \$0.60 per square foot. If the actual size of the Affordable Unit is unknown, use the square footage estimated below based on unit type:
 - Multi-Family Development
 - Studio—500 SF
 - 1-Bedroom—625 SF
 - 2-Bedroom—900 SF
 - 3-Bedroom—1,050 SF
- ii. Homeowner Fees, if applicable: Use the actual monthly homeowner fees, or if unknown, estimate monthly homeowner fees at \$0.10 per square foot. If the actual size of the Affordable Unit is unknown, use the square footage estimated below based on home type.
 - Single-Family Development
 - 2-Bedroom 1,100 SF
 - 3-Bedroom 1,300 SF
 - 4-Bedroom 1,500 SF
- iii. Monthly Hazard Insurance, if single family home: Estimated to be \$125.00 per month. If a more recent survey or source is available, the Agency shall instruct Developer to use a different estimate.
- iv. Monthly Real Property Taxes: Base monthly real property taxes on the estimated price of the Affordable Unit assuming the current homestead deduction at current local real estate tax rates
- v. Mortgage Rate: Mortgage rates are determined by the most recent monthly average of a 30 year fixed rate mortgage at www.freddiemac.com plus a one percent (1%) cushion.
- vi. Down payment: Assume a down payment of 5% on the purchase of the Affordable Unit.

EXHIBIT D to MASTER AFFORDABLE HOUSING COVENANT

Provisions Governing Calculation of Maximum Resale Price

1. The **Maximum Resale Price** (“MRP”) for a subsequent sale of a For Sale Affordable Unit shall be determined through use of the formula $MRP = P \times (F) + V$ (“Formula”), where:

(a) P = the price Owner paid for the Affordable Unit;

(b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the Agency pursuant to this section; and

(c) F = the average of the Ten Year Compound Annual Growth Rates of the Area Median Income (“AMI”) from the first year of ownership of the For Sale Affordable Unit to the year of the sale of the For Sale Affordable Unit by the Affordable Unit Owner. This average may be expressed: (1) As the result of the formula $F = (1 + [((AMI \text{ Year } m / AMI \text{ Year } m-10) ^ (1/10) -1) + \dots ((AMI \text{ Year } k / AMI \text{ year } k-10) ^ (1/10) -1) / n]) ^ n$, where m = the year after the Affordable Unit was purchased by Owner, k = the year in which the Affordable Unit is sold by Owner, and n = the number of years the Affordable Unit is owned by Owner; or (2) as otherwise published by the Agency.

2. For the purposes of determining the value of “V” in the Formula, the following improvements made to a For Sale Affordable Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property: (a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the Agency; and (b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the Agency.

3. Ineligible costs shall not be included in the determining the value of “V” in the Formula.

4. The value of improvements may be determined by the Agency based upon documentation provided by the Affordable Unit Owner or, if not provided, upon a standard value established by the Agency.

5. The Agency may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the Agency finds that the improvement diminished or did not increase the fair 32 market value of the For Sale Affordable Unit or if the improvements make the Affordable Unit unaffordable to all Qualified Purchasers at the Designated Affordability Level.

6. The Agency may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.

7. Owner shall permit a representative of the Agency to inspect the For Sale Affordable Unit upon request to verify the existence and value of any capital improvements that are claimed by Owner.

8. No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the For Sale Affordable Unit.

9. The value of personal property transferred to a purchaser in connection with the resale of a For

Sale Affordable Unit shall not be considered part of the sales price of the For Sale Affordable Unit for the purposes of determining whether the sales price of the For Sale Affordable Unit exceeds the MRP.

10. Any capitalized terms used in this Schedule that are not defined herein shall have the meanings set forth in the Covenant. As used in this Schedule, the following capitalized terms shall have the meanings indicated below:

Eligible Capital Improvement: major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of an Affordable Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods. Improvements that meet these criteria will be given 100% credit by the Agency.

Eligible Replacement and Repair Cost: in-kind replacement of existing amenities and repairs and general maintenance that keep an Affordable Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (viii) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (ix) replacement of window sashes; (x) fireplace maintenance or in-kind replacement; (xi) heating system maintenance and repairs; and (xii) lighting system. Costs that meet these criteria will be given 50% credit for repairs as determined by the Agency.

Ineligible Costs: means costs of cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures not eligible for capital improvement credit as determined by the Agency. These improvements generally include: (i) cosmetic enhancements such as fireplace tile and mantel, decorative wall coverings or hangings, window treatments (blinds, shutters, 33 curtains, etc.), installed mirrors, shelving, refinishing of existing surfaces; (ii) non-permanent fixtures, such as track lighting, door knobs, handles and locks, portable appliances (refrigerator, microwave, stove/ oven, etc.); and (iii) installations with limited useful life spans, such as carpet, painting of existing surfaces, window glass and light bulbs.

EXHIBIT E to MASTER AFFORDABLE HOUSING COVENANT

Master Site Requirements Chart

Friendship Court
Master Site Requirements

The chart below includes the anticipated site requirements for all phases of the Project, but the requirements will be revisited and revised by Piedmont Housing Alliance (the “**Developer**”) and the City of Charlottesville before each phase (the “**City**”). The requirements for each phase will be binding on the entire site except for the early childhood center, community resources building, and commercial spaces built during each phase to provide healthcare, tenant services, and other commercial uses that benefit the tenants (the “**Unencumbered Parcels**”). Each phase of the project will be released from the Master Covenant upon execution of a site-specific covenant with the City at the time it is developed, which covenants will be approved by the City Manager and City Attorney. Any such covenants shall terminate upon foreclosure or deed in lieu of foreclosure. As noted below, Developer will use its best efforts to secure the right for the City to take action to prevent a foreclosure or deed in lieu of foreclosure. All capitalized terms not defined herein shall have the same meaning as defined in the Master Affordable Housing Covenant by and between the NHTE Piedmont Garrett Square Limited Partnership and the City, dated _____, 2020.

	SITE REQUIREMENTS FOR ALL PHASES			
Requirement	Phase 1	Phase 2	Phase 3	Phase 4
Minimum Unit Count Master Covenant Art. II, but see Article X, §10.3	Phase 1 should include a minimum of 106 Rental Units, 46 of which are dedicated Project-Based Section 8 Units. At a minimum, an additional 300 Affordable Units shall be provided between Phases Two, Three, or Four of the Project. Of these, 104 will be Project-Based Section 8 Units. The Developer may choose the unit count per phase for these additional units.	Phase 2 should include a minimum of 54 Project-Based Section 8 Units.	Phase 3 should include a minimum of 50 Project-Based Section 8 Units. By the end of Phase 3, all 150 of the original Project-Based Section 8 Units will be replaced.	Phase 4 should include a minimum of the number of Affordable Units necessary for the Project to reach between 425 and 475 Affordable Units total when combining Affordable Units from Phases 1, 2, 3, and 4, with a target of approximately 450 Affordable Units.
Affordability Master	All Affordable Units are reserved for households earning at or below 80% of	All Affordable Units are reserved for households earning at or below 80% AMI	All Affordable Units are reserved for households earning at or below 80% AMI	All Affordable Units are reserved for households earning at or below 80% AMI

	SITE REQUIREMENTS FOR ALL PHASES			
Requirement	Phase 1	Phase 2	Phase 3	Phase 4
Covenant, Article I (definition of Affordable Unit), but see Article X, §10.3	AMI who pay no more than 30% of income for Gross Housing Costs, including utilities.	who pay no more than 30% of their income on Gross Housing Costs, including utilities.	who pay no more than 30% of their income on Gross Housing Costs, including utilities.	who pay no more than 30% of their income on Gross Housing Costs, including utilities.
Affordability Distribution Master Covenant, Article II, and Article X §10.3	<p>106 Affordable Units include:</p> <ul style="list-style-type: none"> • 46 units are Project-Based Section 8 • 30 units will be reserved for households earning at or below 60% AMI • 30 units will be reserved for households earning at or below 80% AMI 	<p>Estimated 103-114 Affordable Units include:</p> <ul style="list-style-type: none"> • 54 units are Project-Based Section 8 • Est. 50% of additional units reserved for households earning at or below 60% AMI • Est. 50% of additional units reserved for households earning at or below 80% AMI 	<p>Estimated 88-102 Affordable Units include:</p> <ul style="list-style-type: none"> • 50 units are Project-Based Section 8 • Est. 50% of additional units reserved for households earning at or below 60% AMI • Est. 50% of additional units reserved for households earning at or below 80% AMI 	<p>Estimated 128-153 Affordable Units include:</p> <ul style="list-style-type: none"> • Est. 50% of units reserved for households earning at or below 60% AMI • Est. 50% of reserved for households earning at or below 80% AMI
Affordability Program Master Covenant, Article II, §2.1.5, but see Article X, §10.3	<p>46 Rental Units should receive Section 8 Project-Based Rental Assistance</p> <p>Section 8 Project-Based Rental Assistance is subject to a HAP Contract being in effect. Developer will take all commercially reasonable steps to ensure the HAP</p>	<p>54 Rental Units should receive Section 8 Project-Based Rental Assistance</p> <p>Section 8 Project-Based Rental Assistance is subject to a HAP Contract being in effect. Developer will take all commercially reasonable steps to ensure the HAP Contract is</p>	<p>50 Rental Units should receive Section 8 Project-Based Rental Assistance</p> <p>Section 8 Project-Based Rental Assistance is subject to a HAP Contract being in effect. Developer will take all commercially reasonable steps to ensure the HAP Contract is</p>	

	SITE REQUIREMENTS FOR ALL PHASES			
Requirement	Phase 1	Phase 2	Phase 3	Phase 4
	Contract is renewed throughout the Affordability Period.	renewed throughout the Affordability Period.	renewed throughout the Affordability Period.	
Affordability Period Master Covenant, Article X, but see §10.3	Ninety-Nine (99) years	Ninety-Nine (99) years	Ninety-Nine (99) years	Ninety-Nine (99) years
Exclusive Right to Lease Master Covenant, Article II, §2.1.5, but see Article X, §10.3	Following the expiration of the LIHTC extended use period and outside of any subsequent LIHTC extended use period entered into with respect to the property pursuant to a recapitalization, the Office of the Charlottesville City Manager (the “Agency”) or its designee will have the exclusive right to lease up to twenty percent (20%) of the Rental Affordable Units, for forty (40) years, at a rental rate not to exceed that which would be payable by a household of four (4) persons having an income of eighty percent (80%) AMI.	Following the expiration of the LIHTC extended use period and outside of any subsequent LIHTC extended use period entered into with respect to the property pursuant to a recapitalization, the Agency or its designee will have the exclusive right to lease up to twenty percent (20%) of the Rental Affordable Units, for forty (40) years, at a rental rate not to exceed that which would be payable by a household of four (4) persons having an income of eighty percent (80%) AMI.	Following the expiration of the LIHTC extended use period and outside of any subsequent LIHTC extended use period entered into with respect to the property pursuant to a recapitalization, the Agency or its designee will have the exclusive right to lease up to twenty percent (20%) of the Rental Affordable Units, for forty (40) years, at a rental rate not to exceed that which would be payable by a household of four (4) persons having an income of eighty percent (80%) AMI.	Following the expiration of the LIHTC extended use period and outside of any subsequent LIHTC extended use period entered into with respect to the property pursuant to a recapitalization, the Agency or its designee will have the exclusive right to lease up to twenty percent (20%) of the Rental Affordable Units, for forty (40) years, at a rental rate not to exceed that which would be payable by a household of four (4) persons having an income of eighty percent (80%) AMI.
Amenities	To the extent permitted by	To the extent permitted by	To the extent permitted by	To the extent permitted by

	SITE REQUIREMENTS FOR ALL PHASES			
Requirement	Phase 1	Phase 2	Phase 3	Phase 4
and Services Master Covenant, Articles II and III	VIRGINIA HOUSING and the tax credit regulations, households in Affordable Units shall have the same and equal use of all the amenities and services provided in all Phases.	VIRGINIA HOUSING and the tax credit regulations, households in Affordable Units shall have the same and equal use of all the amenities and services provided in all Phases.	VIRGINIA HOUSING and the tax credit regulations, households in Affordable Units shall have the same and equal use of all the amenities and services provided in all Phases.	VIRGINIA HOUSING and the tax credit regulations, households in Affordable Units shall have the same and equal use of all the amenities and services provided in all Phases.
Rental of Affordable Units Master Covenant, Article IV, but see Article X, §10.3	<p>Project Owner may obtain referrals from federal and City of Charlottesville agencies but must select Qualified Tenants for Rental Affordable Units through a first-come, first-served system.</p> <p>Project Owner shall use the lease agreement that is attached to the covenant, incorporate a Rental Affordable Unit Lease Rider (pending approval of HUD) and retain a copy of the lease for a period of no less than 5 years from the expiration or termination of such lease. The lease agreement may be modified at HUD’s direction without the City’s consent.</p> <p>The initial lease term for a Rental Affordable Unit is one</p>	<p>Project Owner may obtain referrals from federal and City of Charlottesville agencies but must select Qualified Tenants for Rental Affordable Units through a first-come, first-served system.</p> <p>Project Owner shall use the lease agreement that is attached to the covenant, incorporate a Rental Affordable Unit Lease Rider (pending approval of HUD) and retain a copy of the lease for a period of no less than 5 years from the expiration or termination of such lease. The lease agreement may be modified at HUD’s direction without the City’s consent.</p> <p>The initial lease term for a Rental Affordable Unit is one</p>	<p>Project Owner may obtain referrals from federal and City of Charlottesville agencies but must select Qualified Tenants for Rental Affordable Units through a first-come, first-served system.</p> <p>Project Owner shall use the lease agreement that is attached to the covenant, incorporate a Rental Affordable Unit Lease Rider (pending approval of HUD) and retain a copy of the lease for a period of no less than 5 years from the expiration or termination of such lease. The lease agreement may be modified at HUD’s direction without the City’s consent.</p> <p>The initial lease term for a Rental Affordable Unit is one</p>	<p>Project Owner may obtain referrals from federal and City of Charlottesville agencies but must select Qualified Tenants for Rental Affordable Units through a first-come, first-served system.</p> <p>Project Owner shall use the lease agreement that is attached to the covenant, incorporate a Rental Affordable Unit Lease Rider (pending approval of HUD) and retain a copy of the lease for a period of no less than 5 years from the expiration or termination of such lease. The lease agreement may be modified at HUD’s direction without the City’s consent.</p> <p>The initial lease term for a Rental Affordable Unit is one</p>

SITE REQUIREMENTS FOR ALL PHASES				
Requirement	Phase 1	Phase 2	Phase 3	Phase 4
	<p>year at the Maximum Allowable Rent. Leases for subsequent years require income recertification.</p> <p>Rental Affordable Units may not be subleased or assigned or subleased.</p>	<p>year at the Maximum Allowable Rent. Leases for subsequent years require income recertification.</p> <p>Rental Affordable Units may not be subleased or assigned or subleased.</p>	<p>year at the Maximum Allowable Rent. Leases for subsequent years require income recertification.</p> <p>Rental Affordable Units may not be subleased or assigned or subleased.</p>	<p>year at the Maximum Allowable Rent. Leases for subsequent years require income recertification.</p> <p>Rental Affordable Units may not be subleased or assigned or subleased.</p>
<p>Sale of Affordable Units</p> <p>Master Covenant, Article V, but see Article X, §10.3</p>	<p>In the event the Project contains For Sale Affordable Units, Owner shall not convey all or any part of its fee interest in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income and who is a Qualified Purchaser. Any subsequent purchaser of a For Sale Affordable Unit shall also be a Qualified Purchaser who has obtained a Certification of Income. Notwithstanding the foregoing, Owner may also convey all or part of its fee interest in For Sale Affordable Unit(s) or all or any part of its</p>	<p>In the event the Project contains For Sale Affordable Units, Owner shall not convey all or any part of its fee interest in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income and who is a Qualified Purchaser. Any subsequent purchaser of a For Sale Affordable Unit shall also be a Qualified Purchaser who has obtained a Certification of Income. Notwithstanding the foregoing, Owner may also convey all or part of its fee interest in For Sale Affordable Unit(s) or all or any part of its interest in the Project itself to a community</p>	<p>In the event the Project contains For Sale Affordable Units, Owner shall not convey all or any part of its fee interest in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income and who is a Qualified Purchaser. Any subsequent purchaser of a For Sale Affordable Unit shall also be a Qualified Purchaser who has obtained a Certification of Income. Notwithstanding the foregoing, Owner may also convey all or part of its fee interest in For Sale Affordable Unit(s) or all or any part of its interest in the Project itself to a community</p>	<p>In the event the Project contains For Sale Affordable Units, Owner shall not convey all or any part of its fee interest in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income and who is a Qualified Purchaser. Any subsequent purchaser of a For Sale Affordable Unit shall also be a Qualified Purchaser who has obtained a Certification of Income. Notwithstanding the foregoing, Owner may also convey all or part of its fee interest in For Sale Affordable Unit(s) or all or any part of its interest in the Project itself to a community</p>

	SITE REQUIREMENTS FOR ALL PHASES			
Requirement	Phase 1	Phase 2	Phase 3	Phase 4
	interest in the Project itself to a community land trust.	land trust.	land trust.	land trust.
Security Default on loan is addressed within the Ordinance and Security Agreement for the Loan	Developer shall make a loan to the project in the amount of the city loan. Such developer loan will be secured by a subordinate interest in the Phase 1 project and such subordinate interest shall be assigned to the city as security for its loan in the amount of [\$_____] to the Developer. None of the phases shall be cross defaulted or cross collateralized by the City or any lender or investor.	Developer shall make a loan to the project in the amount of the city loan. Such developer loan will be secured by a subordinate interest in the Phase 2 project and such subordinate interest shall be assigned to the city as security for its loan to the Developer. None of the phases shall be cross defaulted or cross collateralized by the City or any lender or investor.	Developer shall make a loan to the project in the amount of the city loan. Such developer loan will be secured by a subordinate interest in the Phase 3 project and such subordinate interest shall be assigned to the city as security for its loan to the Developer. None of the phases shall be cross defaulted or cross collateralized by the City or any lender or investor.	Developer shall make a loan to the project in the amount of the city loan. Such developer loan will be secured by a subordinate interest in the Phase 4 project and such subordinate interest shall be assigned to the city as security for its loan to the Developer. None of the phases shall be cross defaulted or cross collateralized by the City or any lender or investor.
Foreclosure Terms Foreclosure terms shall be addressed within Security Agreement for the Loan Also: see Master Covenant Article X,	The Developer shall use its best efforts to include language in a subordination agreement to be entered into with the senior lender that provides the City with the right to cure a default and prevent a foreclosure. Upon foreclosure or deed in lieu of foreclosure, Affordability Restrictions will terminate; except 20% of the additional units within the Project must remain at 60% AMI. If such affordability survival	The Developer shall use its best efforts to include language in a subordination agreement to be entered into with the senior lender that provides the City with the right to cure a default and prevent a foreclosure. Upon foreclosure or deed in lieu of foreclosure, Affordability Restrictions will terminate; except 20% of the additional units within the Project must remain at 60% AMI. If such affordability survival materially and	The Developer shall use its best efforts to include language in a subordination agreement to be entered into with the senior lender that provides the City with the right to cure a default and prevent a foreclosure. Upon foreclosure or deed in lieu of foreclosure, Affordability Restrictions will terminate; except 20% of the additional units within the Project must remain at 60% AMI. If such affordability survival materially and	The Developer shall use its best efforts to include language in a subordination agreement to be entered into with the senior lender that provides the City with the right to cure a default and prevent a foreclosure. Upon foreclosure or deed in lieu of foreclosure, Affordability Restrictions will terminate; except 20% of the additional units within the Project must remain at 60% AMI. If such affordability survival materially and

	SITE REQUIREMENTS FOR ALL PHASES			
Requirement	Phase 1	Phase 2	Phase 3	Phase 4
§10.3	materially and adversely affects the debt financing for any such phase, the City shall consider reducing such thresholds, but in all events each Phase will be subject to the tax credit Extended Use Agreement required by the Virginia Housing Development Authority. Any restriction related to the Project-Based Section 8 units and related income restriction under the current federal HAP contract.	adversely affects the debt financing for any such phase, the City shall consider reducing such thresholds, but in all events each Phase will be subject to the tax credit Extended Use Agreement required by the Virginia Housing Development Authority. Any restriction related to the Project-Based Section 8 units and related income restriction under the current federal HAP contract.	adversely affects the debt financing for any such phase, the City shall consider reducing such thresholds, but in all events each Phase will be subject to the tax credit Extended Use Agreement required by the Virginia Housing Development Authority. Any restriction related to the Project-Based Section 8 units and related income restriction under the current federal HAP contract.	adversely affects the debt financing for any such phase, the City shall consider reducing such thresholds, but in all events each Phase will be subject to the tax credit Extended Use Agreement required by the Virginia Housing Development Authority. Any restriction related to the Project-Based Section 8 units and related income restriction under the current federal HAP contract.

EXHIBIT F to MASTER AFFORDABLE HOUSING COVENANT

PHASE 1 AFFORDABLE HOUSING COVENANT

PHASE 1 AFFORDABLE HOUSING COVENANT

THIS **PHASE 1 AFFORDABLE HOUSING COVENANT** (this “**Covenant**”) is made as of the _____ day of _____, 2020 (“**Effective Date**”), by NHTE PIEDMONT GARRETT SQUARE LIMITED PARTNERSHIP (“**Landowner**”) having an address of 1101 30TH Street, N.W., Suite 400, Washington, District of Columbia, 20007, and FC PHASE 1, LLC, a Virginia limited liability company (“**Phase 1 Project Owner**”), having an address of 682 Berkmar Circle, Charlottesville, Virginia 22901, for the benefit of the City of Charlottesville, a municipal corporation, 605 East Main Street, City Hall, Charlottesville, Virginia, 22902 (the “**City**”).

RECITALS

R-1. Landowner is the fee simple owner of certain real property located in the City of Charlottesville as further described in **Exhibit A** to the Master Covenant (the “**Property**”) and such real property includes an area of land (the “**Parcel**”) that will be used for Phase 1 of a four-phase redevelopment of the development currently known as Friendship Court.

R-2. The Parcel is the subject of an option to lease dated March 12, 2019 (the “**Option**”) granted by Landowner to FC Phase 1 LLC, a Virginia limited liability company, whose managing member is controlled by Piedmont Housing Alliance, a Virginia nonprofit corporation (“**PHA**”), and NHT Communities, a District of Columbia nonprofit corporation (the “**Phase 1 Project Owner**”). On _____, 2020, the Phase 1 Project Owner exercised the Option and has entered into a long-term ground lease, dated _____, 2020, for the Parcel (the “**Ground Lease**”).

R-3. To further the public purpose of increasing the affordable housing stock within the City of Charlottesville, the City is willing to loan certain public funding to PHA upon execution of the Ground Lease by Phase 1 Project Owner and Landowner.

R-4. As contemplated by Article IX of the Master Covenant recorded within the land records of the City of Charlottesville, Virginia as Instrument No. [_____], the City, Landowner, and Phase 1 Project Owner desire to set forth herein the terms, restrictions and conditions upon which Phase 1 Project Owner will construct, maintain and lease the Affordable Units within Phase 1.

R-5. The Covenant shall be binding upon the entire Property except for the early childhood center, community resources building, and commercial space built to provide healthcare, tenant services, and other commercial tenant benefits, as well as any portions of the Property excluded by subsequent amendments.

R-6. As contemplated by Article IX of the Master Covenant, the parties hereto intend that, upon recordation of this Phase 1 Covenant, this Phase 1 Covenant shall become binding upon the land within Phase 1 of the Project, and the Phase 1 Parcel shall hereby be released from the Master Covenant (defined below).

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties hereby declare, covenant and agree as follows:

ARTICLE I

DEFINITIONS

For the purposes of this Covenant, the terms used herein shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular.

Affordability Period: is ninety-nine (99) years, calculated as set forth within Article IX.

Affordability Requirement: has the meaning given in Section 2.1

Affordable Unit: means a residential dwelling unit for occupancy by a household having household income at or below 80% of Area Median Income who are paying no more than 30% of income for Gross Housing Costs, including utilities.

Affordable Unit Marketing Plan: means Landowner's plan for marketing the rental or sale of the Affordable Units, as approved by the Agency pursuant to Section 2.3.

Affordable Unit Owner: means a Qualified Purchaser who own(s) a For Sale Affordable Unit.

Agency: means the Office of the Charlottesville City Manager, and any successor department whose mission includes administration of the City's Affordable Housing Program.

Area Median Income (AMI): means median family income limits for the City of Charlottesville, Virginia, established and adjusted by the U.S. Department of Housing and Urban Development (HUD) annually by household size.

Annual Household Income: means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR § 5.609, as may be amended, or as otherwise set forth by the Agency.

Annual Report: has the meaning given in Section 4.10.

Business Day means Monday through Friday, inclusive, with the exception of any holidays recognized by the City of Charlottesville government.

Certificate of Tenant Eligibility means a certification by a Household at its initial occupancy of an Affordable Unit, in a form approved by the Agency, that shall be given to the Agency, Landowner, and the Certifying Authority, representing and warranting the following: (a) the Household is a Qualified Tenant and has disclosed all of its Annual Household Income to the Certifying Authority, (b) the Household's Annual Household Income is at or below the maximum Annual Household Income for the applicable Affordable Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Unit as its principal residence, (e) that the Household size is within the occupancy Standard for the Affordable Unit, and (f) any other reasonable and customary representations requested by the Agency.

Certification of Income: means a certification made by a Certifying Authority that verifies the Annual Household Income of a Qualified Tenant, as applicable, meets the Designated Affordability Level for an applicable Affordable Unit and meets the requirements of Section 4.5 or Section 5.2.1, as applicable, in such form as the Agency approves.

Certification of Inspection: means a certification by Phase 1 Project Owner that it has performed or caused to be performed an inspection of a Rental Affordable Unit and that, to the best of Landowner's knowledge, such Rental Affordable Unit complies with all applicable statutory and regulatory requirements, in such form as the Agency approves.

Certification of Residency: means a certification made by a tenant that states that the tenant occupies the Affordable Unit as its principal residence, in such form as the Agency approves.

Certifying Authority: means PHA or any other entity or entities approved by the Agency pursuant to Section 2.4.

Code: means Sections 42 and 142 of the Internal Revenue Code of 1986, as amended.

Designated Affordability Level (DAL): means the percentage of AMI assigned to each Affordable Unit, at or below which a Qualified Purchaser's or Qualified Tenant's as applicable, Annual Household Income must fall.

For Sale Affordable Unit: means an Affordable Unit that is owned, or is to be owned, by a Qualified Purchaser.

Household(s): means all individuals who will occupy the Affordable Unit, including all individuals over eighteen (18) years of age whose names will appear on the lease, the purchaser's or tenant's, as applicable, spouse or domestic partner and children under eighteen (18) years of age. A Household may be a single family, one (1) individual living alone, two (2) or more families living together, or any other group of related or unrelated individuals who share living arrangements as allowable by this Covenant.

Household Size Adjustment Factor (HAF): means the factor related to the number of individuals in a Household for the purpose of establishing the Maximum Annual Household income of an Affordable Unit, as set forth in the following table:

Household Size	Household Adjustment Factor
1	0.7
2	0.8
3	0.9
4	1
5	1.1
6	1.2

Housing Cost: means (a) the total monthly payments for rent and Utilities for Rental Affordable Units and (b) the total monthly mortgage payments, property tax, hazard insurance, if applicable, and condominium or homeowner fees for For Sale Affordable Units.

HUD: means the United States Department of Housing and Urban Development.

Land Records: means the real estate property records for the City of Charlottesville located in the Circuit Court for the City of Charlottesville.

Landowner: means NHTE PIEDMONT GARRETT SQUARE LIMITED PARTNERSHIP .

Levels of Affordability refers to the Tiers of Affordable Housing defined in terms of AMI. Families earning: between 120 and 80% AMI are considered “moderate-income”; between 80 and 50% AMI, “low-income”; between 50 and 30% AMI, “very low-income” and below 30% AMI, “extremely low-income.”

Loan Agreement means that certain loan agreement by and between PHA and the City to be dated and executed as of the closing of the acquisition of the leasehold interest in the Parcel by the Phase 1 Project Owner, approved by Ordinance adopted by Charlottesville City Council on _____, 2020, including the promise to construct the Affordable Units in accordance with this Covenant.

Market-Rate Unit: means each Residential Unit that is not an Affordable Unit.

Master Covenant: means that Master Affordable Housing Covenant recorded within the land records of the City of Charlottesville, Virginia, as Instrument No. _____.

Maximum Allowable Rent: as defined in Section 4.4.2.

MAXI: is the maximum Annual Household Income of a Household occupying an Affordable Unit as calculated pursuant to Section 4 for Rental Affordable Units or Section 5 for For Sale Affordable Units.

Maximum Resale Price: is the maximum resale price of a For-Sale Affordable Unit as determined pursuant to procedures established by the Agency.

Maximum Sales Price: as defined in Section 5.1.1.

MINI is the Minimum Annual Household Income of a Household occupying an Affordable Unit, as calculated pursuant to Section 5.2.1 for any For Sale Affordable Units.

Mortgage: means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the City of Charlottesville.

Mortgagee: means the holder of a Mortgage.

Occupancy Standard: means the minimum and maximum number of individuals permitted to occupy any given Affordable Unit, as identified in the following chart:

Affordable Unit Size (Number of Bedrooms)	Minimum Number of Individuals in Affordable Unit	Maximum Number of Individuals in Affordable Unit
Studio/Efficiency	1	1
1	1	2
2	2	4
3	4	6
4	6	8
5	8	10
6	10	12

Occupancy Standard Factor: means the factor related to the assumed number of occupants for the purpose of establishing the Maximum Allowable Rent or Maximum Allowable or Maximum Sales Price, as applicable, of an Affordable Unit as set forth in the following table:

Size of Affordable Unit	Occupancy Pricing Standard	Occupancy Standard Factor
Efficiency Studio	1	.7
1 Bedroom	2	.8
2 Bedroom	3	.9
3 Bedroom	5	1.1

Over-Income Tenant: as defined in Section 4.6.5.

Parcel: is a portion of the Property on which Phase 1 will be constructed, as set forth on Exhibit A, attached and incorporated herein by reference.

Person: means any individual, corporation, limited liability company, trust, partnership, limited partnership, or other legal entity.

Phase 1: means the initial phase of construction of the Project to be constructed on the Parcel.

Phase 1 Project Owner means the Project Owner that will develop Phase 1 (FC Phase 1 LLC, a Virginia limited liability company), and all of FC Phase 1 LLC’s assignees, transferees, sublessees, subtenants, and successor(s) in interest to the Parcel.

Project: means the structures, landscaping, hardscape and/or site improvements to be constructed

or placed on the Property developed and owned by a Project Owner, including without limitation the Rental Affordable Units and For Sale Affordable Units referred to within the definition of “**Affordability Requirement**”. The term “Project” includes all phases of the proposed redevelopment—including, without limitation, Phase 1 and all subsequent phases of the redevelopment of the Property.

Project Owner means any person that has an interest in the Property deriving from the Ground Lease described within Recital 2 (“R-2”), including, without limitation: the Phase 1 Project Owner and all of the Phase 1 Project Owner’s assignees, transferees, sublessees, subtenants, and successors in interest.

Property: refers to the land described on **Exhibit A** to the Master Covenant, attached and incorporated herein by reference, which includes the Parcel, as well as other real estate identified, as of the date of this Covenant, by the City real estate parcel identification number 280112000 (currently assigned the street addresses of 400-426 Garret Street, Charlottesville, Virginia).

Qualified Tenant or Qualified Purchaser: each means a Household that (i) has an Annual Household Income, as certified by the Certifying Authority, less than or equal to the Maximum Annual Household Income for the applicable Affordable Unit at the time of leasing and subsequent lease renewals, (ii) shall occupy the Affordable Unit as its principal residence, (iii) shall not permit exclusive occupancy of the Affordable Unit by any other individual(s), (iv) shall use and occupy the Affordable Unit as an Affordable Unit subject to the Affordability Requirement and this Covenant and (v) shall occupy the Affordable Unit within the Occupancy Standard.

Rental Affordable Unit: means an Affordable Unit that shall be leased to a Qualified Tenant.

Rental Affordable Unit Lease Rider: is that certain lease rider, which is attached to this Covenant as **Exhibit B** and incorporated herein, as the same may be amended from time to time with the written approval of the Agency.

Rental Formula: is defined in Section 4.4.2.

Residential Unit: means a dwelling unit constructed within Phase 1 for residential occupancy by one or more individuals who comprise a household.

Sale: is defined in Section 5.1.

Utilities: means water, sewer, electricity, and natural gas.

ARTICLE II

AFFORDABILITY REQUIREMENT

2.1 **Requirement of Affordability.** All of the Residential Units within Phase 1 shall be constructed and reserved as either Rental Affordable Units or For Sale Affordable Units, subject to the Affordability

Requirement. For all purposes of this Phase 1 Covenant, the term “Affordability Requirement” means and refers to all of the following:

2.1.1. All Residential Units within Phase 1 shall be Rental Affordable Units or For Sale Affordable Units.

2.1.2. All Rental Affordable Units and For Sale Affordable Units are subject to the Affordability Period.

2.1.3. All Rental Affordable Units and For Sale Affordable Units are subject to the income limitations under subsection (g)(1) and the rent restrictions under subsection (g)(2) of Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”).

2.1.4. Rental Affordable Units shall be subject to the following:

(a) No fewer than 106 of the Residential Units within Phase 1 shall be Rental Affordable Units (“Required Rental Affordable Units”). The Required Rental Affordable Units are further subject to all of the following:

(i) no fewer than 46 Required Rental Affordable Units shall be rented to Households qualifying under the Program-Based Section 8 Program. These Rental Affordable Units shall participate in the federal Program-Based Section 8 Program throughout the Affordability Period, for so long as the federal Program is offered under federal law. In the event that the federal Program-Based Section 8 Program is discontinued by the federal government during the Affordability Period, then the 46 Rental Affordable Units referred to in this paragraph shall be maintained throughout the Affordability Period as Rental Affordable Units;

(ii) no fewer than 30 Required Rental Affordable Units shall be rented to Households with a MAXI of 60% Area Median Gross Income; and

(iii) no fewer than 30 Required Rental Affordable Units shall be rented to Households with a MAXI of 80% Area Median Gross Income.

(b) Additional Rental Affordable Units may be provided within Phase 1.

(c) The provisions of 2.1.4(a) and (b), above, are, unless otherwise provided, subject to subsection (g)(1)(C) of Section 42 of the Code and the federal Average Income Test.

2.2 **Affordable Unit Standards and Location.**

2.2.1 *[Reserved]*

2.2.2 *[Reserved]*

2.2.3 *[Reserved]*

2.2.4 *Exterior Finishes.* Exterior finishes of Affordable Units will be consistent across tiers of affordability.

2.2.5 *Interior Finishes.* Interior base finishes, appliances and equipment in the Affordable Units shall be similar across tiers of affordability.

2.2.6 *Affordable Unit Location.* As allowed within the parameters of LIHTC compliance guidelines or other federal law, Affordable Units of various tiers shall be dispersed throughout the Project, and shall not be concentrated on any one floor within a building, or within a section of the Project.

2.3 **Marketing Affordable Units.** Phase 1 Project Owner shall create an Affordable Unit Marketing Plan that sets forth its plan for marketing the Affordable Units to Households who may be Qualified Tenants or Qualified Purchasers, as applicable. The Affordable Marketing Plan shall be subject to the Agency's prior written approval and shall be submitted to and approved by the Agency prior to marketing any Affordable Units for sale or rent. Phase 1 Project Owner may contract with the Certifying Authority to implement the Affordable Unit Marketing Plan.

2.4 **Certifying Authority.** Phase 1 Project Owner shall select a Certifying Authority, which shall be subject to the Agency's prior written approval, not to be unreasonably withheld, conditioned or delayed. Phase 1 Project Owner may contact the Agency with questions and information about the selection of a Certifying Authority. The Certifying Authority shall review documentation and verify a Household's Annual Household Income and Household's size in order to determine whether that Household is a Qualified Tenant or Qualified Purchaser, as applicable. If a Household is determined to be a Qualified Tenant or Qualified Purchaser, as applicable, the Certifying Authority shall issue a Certification of Income for the subject Household.

ARTICLE III

USE

3.1 **Use.** Except as provided herein, all occupants of Rental Affordable Units shall have the same and equal use of all the amenities of the Parcel and services provided at the Parcel (except if unique services are required for certain tenants as approved by the Agency). No restrictions, requirements or rules shall be imposed on occupants of Rental Affordable Units at any tier of affordability that are not imposed equally on the occupants of the Rental Affordable Units within other tiers of affordability. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option to occupants of the Rental Affordable Units at any tier of affordability, such amenities, services, upgrades, or rental of parking and other facilities shall be offered to occupants of the Rental Affordable Units at other tiers of affordability. If there is no cost or fee charged to occupants of the Rental Affordable Units at one tier of affordability for such amenities, services, upgrades, or rental of parking and other facilities, there shall not be a cost or fee charged to occupants of Rental Affordable Units at other tiers of affordability. Except as provided herein, all Affordable Unit Owners shall have the same and equal use of all the amenities within the Project and services provided to residents within the Project (except if unique

services are required for certain residents as approved by the Agency). No restrictions, requirements or rules shall be imposed on Affordable Unit Owners at any tier of affordability that are not imposed equally on the Affordable Unit Owners within other tiers of affordability. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option to Affordable Unit Owners at any tier of affordability, such amenities, services, upgrades, or rental of parking and other facilities shall be offered to the Affordable Unit Owners at other tiers of affordability. If there is no cost or fee charged to Affordable Unit Owners at one tier of affordability for such amenities, services, upgrades, or rental of parking and other facilities, there shall not be a cost or fee charged to Affordable Unit Owners at other tiers of affordability.

3.2 **Demolition/Alteration.** Subject to normal wear and tear, Phase 1 Project Owner shall maintain, upkeep, repair and replace interior components (including fixtures, appliances flooring and cabinetry) of each Rental Affordable Unit with interior components of equal or better quality than those interior components being replaced. Affordable Unit Owners shall maintain, upkeep, repair and replace interior components (including fixtures, appliances flooring and cabinetry). Neither Project Owner nor any Affordable Unit Owner shall demolish or otherwise structurally alter an Affordable Unit, or remove fixtures or appliances installed in an Affordable Unit, other than for maintenance, repair, and replacement of equal or better quality without the prior written approval of the Agency, which approval shall be in the sole discretion of the Agency or as needed to rebuild after a casualty or condemnation.

ARTICLE IV

RENTAL OF AFFORDABLE UNITS

4.1 **Lease of Rental Affordable Units.** Project Owner shall reserve, maintain and lease the Rental Affordable Units to Qualified Tenants (a) in accordance with this Covenant, and (b) at a rate paid by the Qualified Tenant at or below the Maximum Allowable Rent.

4.2 **Rental Affordable Unit Lease Requirements.**

4.2.1 *Form of Lease.* To lease a Rental Affordable Unit to a Qualified Tenant, Phase 1 Project Owner shall use a lease agreement to which is attached and incorporated a Rental Affordable Unit Lease Rider, as may be amended from time to time. The Rental Affordable Unit Lease Rider shall be executed by Phase 1 Project Owner and each Qualified Tenant prior to the Qualified Tenant's occupancy of the Rental Affordable Unit. Any occupant of the Rental Affordable Unit who is eighteen (18) years or older shall be a party to the lease agreement and shall execute the Rental Affordable Unit Lease Rider.

4.2.2 *Effectiveness of Lease.* The lease of a Rental Affordable Unit shall only be effective if a Rental Affordable Lease Rider, a Certification of Income and a Certificate of Tenant Eligibility are attached as exhibits to the lease agreement. Failure to attach the foregoing shall render the lease null and void *ab initio*.

4.2.3 *Requirement to Maintain Copies of Leases of Rental Affordable Units.* Phase 1 Project Owner shall maintain or cause to be maintained copies of all initial and renewed leases executed

with Qualified Tenants for a period of no less than five (5) years from the expiration or termination of such lease.

4.3 **Rental Affordable Unit Admissions Process.**

4.3.1 *Referrals.* Phase 1 Project Owner may obtain referrals of prospective tenants of Rental Affordable Units from federal and City of Charlottesville agencies, provided such referrals comply with the requirements of this Covenant, Fair Housing laws, and the requirement that units be generally available to the public. In all events, before a prospective tenant leases a Rental Affordable Unit, their Annual Household Income shall be verified by a Certifying Authority.

4.3.2 *Consideration of Applicants.* For the initial occupancy of the Rental Affordable Units, Phase 1 Project Owner shall select Qualified Tenants through a first-come, first-served system, or other system approved by the Agency, as shall be further provided in the Affordable Unit Marketing Plan. Following the initial occupancy of the Affordable Units, Phase 1 Project Owner shall consider each applicant in the order in which received, whether received pursuant to the Affordable Unit Marketing Plan or referred pursuant to Section 4.3.1. Tenants of Rental Affordable Units participating in the Project-Based Section 8 Program shall be selected in accordance with requirements of that federal program. Any and all of the foregoing shall be consistent with federal Fair Housing laws and regulations and any units financed under the Code (tax credit or tax exempt bond financed projects) must be generally available to the public.

4.3.3 *Rejection of Applicants.* In connection with the leasing of a Rental Affordable Unit, Phase 1 Project Owner may reject any applicant if, after diligent review of such applicant's application, Phase 1 Project Owner determines in good faith that such applicant does not meet criteria to lease or occupy a Rental Affordable Unit, provided such criteria do not violate applicable City of Charlottesville and federal laws and is the same criteria used to lease or occupy the Market-Rate Units. In the event any rejected applicant raises an objection or challenges Phase 1 Project Owner's rejection of such applicant, Phase 1 Project Owner shall be solely responsible for ensuring that its rejection of such applicant is not in violation of federal or local law. Phase 1 Project Owner shall provide the Agency with all documents evidencing Phase 1 Project Owner's review and rejection of an applicant, upon the request of the Agency.

4.3.4 *Determination of Eligibility.* Each tenant seeking to occupy a Rental Affordable Unit shall have its Annual Household Income verified by and obtain a Certification of Income from the Certifying Authority prior to leasing such unit. Housing Choice Vouchers (or vouchers from similar programs) shall be an acceptable source of verifiable household income, for the Rental Affordable Units other than those which are part of the Program-Based Section 8 Program.

4.4 **Initial Rental Affordable Unit Lease Terms.**

4.4.1 *Term.* The term of any new Rental Affordable Unit lease agreement shall be for a period of one (1) year.

4.4.2 *Establishment of Maximum Rent—Rental Formula.* Rents on Rental Affordable Units shall

be rent restricted. Maximum Allowable Rent paid by the Tenant shall for the first lease year shall be based on the number of bedrooms and AMI as established annually by HUD. If a household pays for utilities, the maximum rent must be adjusted by the applicable utility allowance.

4.5 Income Determinations. The Annual Household Income for a prospective tenant of a Rental Affordable Unit shall be determined as of the date of the lease renewals for such Rental Affordable Unit annually. A Household's income eligibility to rent a Rental Affordable Unit is determined by calculating the MAXI for a Household occupying the Rental Affordable Unit. The Certifying Authority shall verify that the Household's Annual Household Income is not more than the applicable MAXI.

4.5.1 Maximum Annual Household Income. The MAXI is determined through AMI as established annually by HUD, and as specified in Section 2.1, above.

4.6 Subsequent Lease Years

4.6.1 Use of Rental Formula. For each lease year after the first lease year, Maximum Allowable Rent shall be determined in the same manner specified within Section 4.4.2, above.

4.6.2 Renewal by Tenants of Affordable Units. For each tenant of a Rental Affordable Unit who intends to renew its residential lease, no earlier than ninety (90) days and no later than thirty (30) days before each anniversary of the first day of a residential lease, Phase 1 Project Owner shall obtain the following: (i) a Certification of Residency from each such tenant; and (ii) a Certification of Income completed by the Certifying Authority. Phase 1 Project Owner shall not permit a renewal of a lease for a Rental Affordable Unit unless the tenant has provided the documents as required herein and the tenant is determined to be a Qualified Tenant. If the tenant fails to provide such documents, Phase 1 Project Owner shall treat such tenant as an Over-Income Tenant and charge market-rate rent, and Phase 1 Project Owner shall designate another unit as a Rental Affordable Unit in accordance with Section 4.6.6. The foregoing Certifications and requirements to be a continuing Qualified Tenant shall be as provided in Section 42 of the Code for any period when the requirements of the Low Income Housing Tax Credits and the Extended Use Agreement are binding on the Parcel.

4.6.3 Annual Recertification of Tenants. Upon receipt of renewal documents from the tenant of a Rental Affordable Unit at the time of recertification, Certifying Authority shall determine the tenant's household income eligibility pursuant to Section 4.5 for the subject Rental Affordable Unit and notify the tenant of the same within fifteen (15) days prior to the expiration of the then-current lease term. Any tenant whose Annual Household Income remains at or below the MAXI for the subject Rental Affordable Unit will be eligible to remain in the Rental Affordable Unit and to renew his/her lease at the then-current lease rate for the particular Rental Affordable Unit. The foregoing Certifications and requirements to be a continuing Qualified Tenant shall be as provided in Section 42 of the Code for any period when the requirements of the Low Income Housing Tax Credits and the Extended Use Agreement are binding on the Parcel.

4.6.4 Annual Recertification of Under Income Tenants. Upon annual recertification, any tenant whose Annual Household Income remains at or below the MAXI for the subject Rental

Affordable Unit may elect either to (i) remain in the Rental Affordable Unit up to the then-current Maximum Allowable Rent for the subject Rental Affordable Unit or (ii) vacate the Rental Affordable Unit at the end of the tenant's lease term.

4.6.5 Annual Recertification of Over-Income Tenants. Upon annual recertification, if a tenant's Annual Household Income is determined to exceed the MAXI for the subject Rental Affordable Unit (such tenant, an "**Over-Income Tenant**"), then the Over-Income Tenant may elect to remain in the Rental Affordable Unit and pay the rent applicable to (a) a higher Designated Affordability Level, if a higher Designated Affordability Level exists for the Parcel, for which the Over-Income Tenant's Annual Household Income qualifies, whereupon Phase 1 Project Owner shall change the Designated Affordability Level of the Rental Affordable Unit to the higher Designated Affordability Level pursuant to Section 4.6.6, or (b) a like-sized Market-Rate Unit, if the Over-Income Tenant's Annual Household Income does not qualify for a higher Designated Affordability Level, but qualifies for a like-sized Market-Rate Unit, whereupon Phase 1 Project Owner shall designate a Market-Rate Unit as a Rental Affordable Unit pursuant to Section 4.6.6.

4.6.6 Changes to Unit Location. If applicable, Owner may change the designation of a Rental Affordable Unit to a new Designated Affordability Level or to a Market-Rate Unit as necessary to allow an Over-Income Tenant to remain in the unit (i.e., to accommodate an existing tenant). Following any change in designation of a Rental Affordable Unit to a higher Designated Affordability Level or to a Market-Rate Unit of similar size and location in the property to the lower Designated Affordability Level from which the original Rental Affordable Unit had been changed in order to bring the Parcel in conformity with the Affordability Requirement.

4.6.7 Rent from Subsidies. Nothing herein shall be construed to prevent Phase 1 Project Owner from collecting rental subsidy or rental-related payments from any federal, state, or City of Charlottesville agency paid to Phase 1 Project Owner and/or the tenant of a Rental Affordable Unit, to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant. Such rental subsidy or rental-related payment shall not be included in determining Maximum Chargeable Rent or the income of an otherwise Qualified Tenant, all as provided in the Code.

4.7 No Subleasing of Rental Affordable Units. The tenant of a Rental Affordable Unit may not sublease any portion of its Rental Affordable Unit or assign its lease to any other Household, and Phase 1 Project Owner shall not knowingly allow such Rental Affordable unit to be subleased, except with the Agency's prior written consent, in the Agency's sole and absolute discretion. No Rental Affordable Unit may be offered or used for any short term rental or other transient occupancy.

4.8 Representations of Affordable Unit Tenant. By execution of a lease the tenant of a Rental Affordable Unit shall be deemed to represent and warrant to the Agency and Phase 1 Project Owner, each of whom may rely thereon, that the tenant's household meets, and will continue to meet, all eligibility requirements contained in this Covenant for a Qualified Tenant of a Rental Affordable Unit.

4.9 Representations of Phase 1 Project Owner. By its execution of a lease for a Rental Affordable Unit, Phase 1 Project Owner shall be deemed to represent and warrant to the Agency, which may rely on

the following, that: (i) the Household is determined to be a Qualified Tenant by the Certifying Authority, and (ii) Phase 1 Project Owner is not collecting more than the Maximum Allowable Rent from the Tenant.

4.10 Annual Reporting Requirements. Beginning in the first year that any Rental Affordable Unit is occupied by a tenant, Phase 1 Project Owner shall provide an annual report (“**Annual Report**”) to the Agency regarding the Rental Affordable Unit, which shall be submitted on each anniversary date of the Effective Date of this Covenant. The Annual Report shall include the following:

(a) the number and identification of Phase 1 Project Owner’s Rental Affordable Units, by bedroom count, that are occupied;

(b) the number and identification of Phase 1 Project Owner’s Rental Affordable Units, by bedroom count, that are vacant;

(c) for each Rental Affordable Unit that is vacant or that was vacant for a portion of the reporting period, the manner in which the Rental Affordable Unit became vacant (e.g. eviction or voluntary departure), the length of vacancy, and the progress in re-leasing that unit;

(d) for each occupied Rental Affordable Unit, the names, ages and ethnicity of all persons in the Qualified Tenant’s Household, the Household size, date of initial occupancy, and total Annual Household Income as of the date of the most recent Certification of Income;

(e) a sworn statement that, to the best of Phase 1 Project Owner’s information and knowledge, the Household occupying each Affordable Rental Unit meets the eligibility criteria of this Covenant for a Qualified Tenant;

(f) a copy of each new or revised Certification of Income for each Household renting a Rental Affordable Unit;

(g) a copy of each new or revised Certification of Residency for each Household renting a Rental Affordable Unit;

(h) a copy of each inspection report and Certification of Inspection for each Rental Affordable Unit; and

(i) a copy of all forms, policies, procedures, and other documents reasonably requested by the Agency related to the Rental Affordable Units.

The Annual reports shall be retained by Phase 1 Project Owner for a minimum of five (5) years after submission and shall be available, upon reasonable notice, for inspection by the Agency or its designee. Notwithstanding anything contained herein to the contrary, in the event that Phase 1 Project Owner provides a report to an agency within the City government with content substantially similar to the content of the Annual Reports described in this section, subject to the Agency’s prior written approval, then the reporting requirements under this section shall be satisfied upon Phase 1 Project Owner’s

delivery of such report to the Agency. The Agency may request Phase 1 Project Owner to provide additional information in support of its Annual Report, as necessary for the Phase 1 Project Owner to verify compliance with the requirements of this Covenant.

4.11 **Confidentiality.** Except as may be required by applicable law, including, without limitation, the Virginia Freedom of Information Act. Phase 1 Project Owner, the Certifying Authority and the Agency shall not disclose to third parties, other than Phase 1 Project Owner's Investor Member, the personal information of the Households, including the identity of the members of the Households, submitted as a part of the Annual Report.

4.12 **Inspection Rights.** The Agency or its designee shall have the right to inspect the Rental Affordable Units, upon reasonable advance notice to the Phase 1 Project Owner and during normal business hours as provided in the Leases and each Owner shall include notice of the Agency's right of inspection within all Leases of the Rental Affordable Units. If Phase 1 Project Owner receives such notice, Phase 1 Project Owner shall, in turn, give reasonable advance notice of the inspection to the tenant(s) occupying the specific Rental Affordable Unit(s). The Agency or its designee shall have the right to inspect a random sampling of the Rental Affordable Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and the provisions of this Covenant. The Agency or its designee shall have the right to conduct audits of a random sampling of the Rental Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

ARTICLE V

SALE OF AFFORDABLE UNITS

5.1. **Sale of For Sale Affordable Units.** In the event Phase 1 contains For Sale Affordable Units, the Phase 1 Project Owner shall comply with the provisions of this Article V for the sale of such Affordable Units. Phase 1 Project Owner shall not transfer or convey all or any part of its fee interest or its interest in the Ground Lease ("Sale"), whether or not for consideration, in a For Sale Affordable Unit to any person other than a Qualified Purchaser or to a community land trust. Each owner of a For Sale Affordable Unit shall only sell to a purchaser who has obtained a Certification of Income and who is a Qualified Purchaser or to a community land trust.

5.1.1. **Maximum Sales Price.** The sale price of each For Sale Affordable Unit upon an initial Sale shall not exceed an amount (the "Maximum Sales Price") that is affordable to a Household with an Annual Household Income at the Designated Affordability Level, adjusted by the Occupancy Standard Factor, spending not more than thirty percent (30%) of its Annual Household Income on Housing Cost. The Agency shall determine the Maximum Sales Price in accordance with **Exhibits C and/or D**, attached and incorporated herein by reference, or by another formula consistent with applicable state or federal laws and acceptable to the Agency in its sole discretion. The Housing Cost includes mortgage payments, property taxes, condominium and homeowner fees, and hazard insurance, if applicable. The Agency shall approve the Maximum Sales Price for each For Sale Affordable Unit prior to the marketing and sale of such For Sale Affordable Unit.

5.1.2. **Maximum Resale Price.** The Maximum Resale Price for each Sale subsequent to the initial Sale shall be calculated in accordance with **Exhibits C and/or D** attached and incorporated herein by reference, or by another formula consistent with applicable state or federal laws and acceptable to the Agency in its sole discretion. The Agency shall have the right to approve the Maximum Resale Price for each For Sale Affordable Unit prior to the marketing and resale of such For Sale Affordable Unit.

5.1.3. **Housing Purchase Assistance Program and other Subsidized Funding.** The Maximum Sales Price and Maximum Resale Price of a For Sale Affordable Unit shall be determined by the Agency without regard to the prospective purchaser's use of Housing Purchase Assistance Program and/or other subsidized funding for the purchase of the For Sale Affordable Unit, unless otherwise provided by this Covenant.

5.2. **Procedure for Sales.** The following procedures shall apply with respect to the initial sale or other transfer of title of a For Sale Affordable Unit, and also to each subsequent sale or other transfer of title of a For Sale Affordable Unit:

5.2.1. **Income Eligibility.** For any Qualified Purchaser, the Annual Household Income shall be determined as of the effective date of the sales contract for such For Sale Affordable Unit. If settlement for a For Sale Affordable Unit will not occur within 90 days after the effective date of the sales contract for that Unit, the Annual Household Income of the prospective Qualified Purchaser shall be determined again within 90 days prior to settlement. A Household's eligibility to purchase a For Sale Affordable Unit is determined by calculating both the MAXI for a Household seeking to occupy the For Sale Affordable Unit and the MINI for a Household seeking to occupy the For Sale Affordable Unit and verifying that the prospective Household's Annual Household Income is between the MAXI and MINI. The Maximum Annual Household Income is determined through the use of the formula: $MAXI = (AMI * DAL * HAF)$. The MINI is determined by multiplying the total Housing Cost by twelve (12) and dividing this number by forty-one percent (41%). The Housing Cost is determined by calculating the monthly mortgage payments using the actual terms of the Household's approved mortgage, and adding all applicable property taxes, homeownership or condominium fees, and hazard insurance. Each Qualified Purchaser shall have its Annual Household Income verified by and obtain a Certification of Income from the Certifying Authority prior to entering into the contract.

5.2.2. **Sale.** A sale or other transfer of title of a For Sale Affordable Unit shall only be effective if **(i)** a Certificate of Purchaser Eligibility submitted by a Household to Owner and dated within ninety (90) days of the closing of such Sale is recorded prior to or contemporaneous with the deed conveying the Affordable Unit and **(ii)** a Certification of Income is completed by a Certifying Authority within ninety (90) days before closing of such Sale. Owner, Mortgagee(s), District and any title insurer shall each be a third party beneficiary of each such Certificate of Purchaser Eligibility.

5.2.3. **Resale.** Prior to selling or otherwise transferring a fee interest in a For Sale Affordable Unit, the Affordable Unit Owner intending to re-sell such unit shall **(i)** contact the Agency to obtain the Maximum Resale Price and **(ii)** shall refer the prospective purchaser to the Agency to determine

their eligibility to purchase the For Sale Affordable Unit. The Maximum Resale Price shall be determined by the Agency in accordance with **Exhibits C and/or D** attached and incorporated herein by reference, or by such other formula acceptable to the Agency, in its sole discretion.

5.3. Notwithstanding the foregoing provisions, the initial or any subsequent sale or transfer of title of a For Sale Affordable Unit may be to a community land trust rather than a Qualified Purchaser. Following a sale or other transfer of title to a community land trust, the community land trust shall, for each subsequent sale or other transfer of title to the For Sale Affordable Unit, be bound by all of the provisions of this Article.

5.4. Closing Procedures and Form of Deed.

5.4.1. **Owner to Provide Copy of Covenant.** Phase 1 Project Owner or Affordable Unit Owner, as applicable, shall provide the Qualified Purchaser or community land trust with a copy of this Covenant prior to or at the closing on the Sale of the For Sale Affordable Unit.

5.4.2. **Form of Deed.** All deeds used to convey or otherwise transfer title to a For Sale Affordable Unit must have a fully executed Certificate of Purchaser Eligibility attached, if the sale or other transfer of title is to a Qualified Purchaser. Every deed shall include the following statement in twelve (12) point or larger type, in all capital letters, on the first page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING COVENANT, DATED AS OF _____, 20_ RECORDED AMONG THE LAND RECORDS OF THE CITY OF CHARLOTTESVILLE, VIRGINIA AS INSTRUMENT NUMBER _____, ON _____ 20___, WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

5.4.3. **Deed for For Sale Affordable Unit.** A deed for a For Sale Affordable Unit shall not be combined with any other property, including parking spaces or storage facilities, unless the price of such property is included in the Maximum Sales Price (for initial Sales) or Maximum Resale Price (for subsequent Sales).

5.4.4. **Post Closing Obligations.** The purchaser of a For Sale Affordable Unit shall submit to the Agency within thirty (30) days after the closing a copy of the final executed HUD settlement statement, a copy of the deed recorded in the Land Records (including the Instrument Number assigned to the deed at recordation, when available), the Certificate of Purchaser Eligibility, and the Certification of Income.

5.5. **Rejection of Applicants.** Phase 1 Project Owner or Affordable Unit Owner may reject a prospective purchaser (“applicant”) who has obtained a Certification of Income or other evidence of eligibility adopted by the Agency, if, based on such applicant’s application, background and/or creditworthiness (including, without limitation, the applicant’s inability to provide credible evidence that such applicant will qualify for sufficient financing to purchase the For Sale Affordable Unit), such owner determines in

good faith that such applicant does not meet the criteria to purchase a For Sale Affordable Unit, provided that such criteria does not violate applicable Virginia or federal laws and is the same criteria as Market-Rate Units, except as required by this Covenant. In the event any rejected applicant raises an objection or challenges the owner's rejection of such applicant, Phase 1 Project Owner or Affordable Unit Owner, as applicable, shall be solely responsible for ensuring that its rejection of any applicant is not in violation of state or federal law. Phase 1 Project Owner or Affordable Unit Owner shall provide the Agency with all documents evidencing owner's review and rejection of an applicant, upon the request of the Agency.

5.6. Representations of Owner. By its execution of a deed conveying or otherwise transferring legal title to a For Sale Affordable Unit to a Qualified Purchaser, the Phase 1 Project Owner or Affordable Unit Owner shall be deemed to represent and warrant to, and agree with, the Agency and, if applicable, the title company, each of whom may rely on the following: that (i) the Household is determined to be a Qualified Purchaser by the Certifying Authority at the applicable Designated Affordability Level, and (ii) the sale price satisfies the terms of this Covenant.

5.7. Annual Certification of Residency. During the Affordability Period, the Affordable Unit Owner shall submit to the Agency annually, on the anniversary of the closing date for the owner's For Sale Affordable Unit, a Certification of Residency by a Qualified Purchaser. The Certification of Residency shall be submitted on or with such form as may be prescribed by Agency.

5.8. Leasing For Sale Affordable Units. The Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit without the Agency's prior written approval, in the Agency's sole and absolute discretion. If the Agency approves the lease of a For Sale Affordable Unit, then that Unit shall be leased in compliance with the Rental Affordable Unit provisions of this Covenant.

5.9. Transfers and Conveyances. This Phase 1 Affordable Housing Covenant shall run with the land identified on **Exhibit A** as the Parcel and shall be binding upon the Landowner and Phase 1 Project Owner and all of their heirs, successors and assigns. Except as otherwise expressly provided in this Covenant, in the event that the right, title and interest of an Affordable Unit Owner is, in whole or in part, transferred to a third party by operation of law (such as, without limitation: by court order, administration of an estate, intestate succession, etc.) (each third party receiving such interest, a "Transferee"), then such Transferee, shall be automatically be bound by all of the terms, obligations and provisions of this Covenant and shall either: (i) occupy the For Sale Affordable Unit if he or she is a Qualified Purchaser, or (ii) if the Transferee does not wish to or is unable to occupy the For Sale Affordable Unit, he or she shall promptly sell it in accordance with this Covenant.

5.10. Prohibition on Occupancy by Persons who are not Qualified Purchasers. In no event shall an individual who is not a Qualified Purchaser, or a member of the Household of a Qualified Purchaser, reside in a For Sale Affordable Unit for longer than ninety (90) days.

5.11. Progress Reports. Until all initial Sales of For Sale Affordable Units are completed, the Phase 1 Project Owner shall provide Agency with annual progress reports, or more frequently upon request, on the status of its initial sale of the For Sale Affordable Units. Upon the conversion of a Rental Affordable Unit to a For Sale Affordable Unit, then the first sale of that Unit to a Qualified Purchaser, and each subsequent sale of such Unit, and the occupancy of such Unit, shall be governed by this Article V.

ARTICLE VI

DEFAULT; ENFORCEMENT AND REMEDIES

6.1 **Default; Remedies.** In the event Phase 1 Project Owner defaults under any term of this Covenant, and Phase 1 Project Owner does not cure such default within sixty (60) days following written notice of such default from the Agency, the City shall have the right to seek specific performance, injunctive relief or other equitable remedies, including compelling the re-sale or leasing of an Affordable Unit and the disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted hereunder, for any default(s). In the event such cure cannot reasonably be affected within the 60-day period, the Phase 1 Project Owner may request such additional time as may reasonably be necessary to cure such default provided the Project Owner has promptly initiated and diligently pursued such cure. Phase 1 Project Owner shall give notice of any such default to Phase 1 Project Owner's investment member, and any cure provided by such investor member shall be acceptable to the City as if rendered by Phase 1 Project Owner directly.

If Phase 1 Project Owner is in default under the terms of this Covenant, prior to exercising any remedies thereunder, the City shall provide simultaneous written notice of such default to Phase 1 Project Owner's investor member (the "Investor Member") if Phase 1 Project Owner or Investor Member has kept the City informed of the name and contact information for the Investor Member. Investor Member shall have the independent right to cure any defaults within the time periods set forth above. City hereby agrees that any cure of any default made or tendered by the Investor Member shall be (i) deemed to be a cure by Phase 1 Project Owner and (ii) accepted or rejected on the same basis as if made or tendered by Phase 1 Project Owner.

6.2 **No Waiver.** Any delay by the Agency in instituting or prosecuting any actions or proceedings with respect to a default hereunder, or in asserting its rights or pursuing its remedies hereunder, shall not operate as a waiver of such rights.

6.3 **Right to Attorney's Fees.** In any legal action to enforce this Covenant, the non-prevailing party shall pay the prevailing party's reasonable attorney fees and litigation costs incurred in connection with the prevailing party's efforts to enforce this Covenant. If the Charlottesville City Attorney's Office (CAO) serves as counsel for the City in such legal action, the reasonable attorney fees for the City shall be calculated based on the then applicable hourly rates prevailing within private practice within the City of Charlottesville, Virginia, and the number of hours that employees of the CAO prepared for or participated in any such action.

ARTICLE VII

COVENANT BINDING ON SUCCESSORS AND ASSIGNS

This Covenant is and shall be binding upon the Property and shall run with the land and any interest therein as of the Effective Date through the Affordability Period. The rights and obligations of City, Phase 1 Project Owner, and any Affordable Unit Owner, shall be binding upon and inure to the benefit of the

said parties and their respective heirs, successors, and assigns; provided however that all rights of City pertaining to the monitoring and/or enforcement of the obligations of Phase 1 Project Owner or any Affordable Unit Owner shall be retained by City, or such designee of the City as the City may so determine. No sale, transfer or foreclosure shall affect the validity of this Covenant, except as otherwise expressly provided within this Covenant.

ARTICLE VIII

MORTGAGES

8.1 Subordination of Mortgages. The provisions of this Article VIII shall only apply to For Sale Affordable Units, if applicable. All Mortgages placed against the Parcel, or any portion thereof, shall be subject and subordinate to this Covenant, except as provided in Section 8.3.3.

8.2 Amount of Mortgage. In no event shall the aggregate amount of all Mortgages placed with respect to an Affordable Unit exceed an amount equal to one hundred five percent (105%) of the Maximum Resale Price for such For Sale Affordable Unit. Prior to obtaining any Mortgage or refinancing thereof, the Affordable Unit Owner shall request from the Agency the then-current Maximum Resale Price for the For Sale Affordable Unit.

8.3 Default of Mortgage and Foreclosure.

8.3.1 Notice of Default. The Mortgagee shall provide the Agency written notice of any default and notice of intent to foreclose under the Mortgage on any For Sale Affordable Unit. Notwithstanding the foregoing, in no event shall failure to provide such notices preclude the Mortgagee's right to proceed with its remedies for default under the Mortgage.

8.3.2 Right of Purchase by the City. The Agency shall have the right to purchase a For Sale Affordable Unit in the event a notice of default or notice of intent to foreclose for a Mortgage in first position was recorded in the Land Records. The purchase price shall be an amount that is the greater of (i) the amount of the debt secured by all Mortgages recorded against the subject Affordable Unit, including commercially reasonable costs and expenses, if any, incurred by Mortgagee as a result of a default and due and payable under the terms of the Mortgage or (ii) the Maximum Resale Price. The Agency shall have thirty (30) days from the date a notice of default or a notice of foreclosure sale was recorded in the Land Records to exercise its option and to purchase the Affordable Unit. The Agency's right to purchase shall automatically expire upon the transfer of the Affordable Unit by foreclosure or deed in lieu thereof. The Agency may designate another agency or other third party to take title to the For Sale Affordable Unit.

8.3.3 Termination Upon Foreclosure and Assignment. In the event title to a For Sale Affordable Unit is transferred following foreclosure by, or deed in lieu of foreclosure to, a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 8.3.4 and 8.4.

8.3.4 **Apportionment of Proceeds.** In the event title to a For Sale Affordable Unit is transferred according to the provisions of Section 8.3.3, the proceeds from such foreclosure or transfer shall be apportioned and paid as follows: first, to the Mortgagee, in the amount of debt secured under the Mortgage, including commercially reasonable costs and expenses, if any, incurred by Mortgagee and due and payable under the terms of the Mortgage; second, to any junior Mortgagees, in the amount of the debt secured under such Mortgages; third, to the For Sale Unit Owner, up to the amount of the Maximum Resale Price as of the date of such sale or transfer; and fourth, to the City.

8.3.5 [*Reserved*]

8.4 **Assignment of Mortgage to the Secretary of HUD.** In the event a Mortgage recorded in the first position against a For Sale Affordable Unit is assigned to the Secretary of HUD, the following shall occur upon the date of assignment: (i) the Agency's right to purchase, whether or not such right has been triggered, shall automatically expire and (b) the terms of this Covenant applicable to such unit shall automatically terminate pursuant to Section 8.3.3, except that upon sale of such unit or foreclosure or deed in lieu thereof, the proceeds of such sale shall be apportioned as provided in Section 8.3.4.

ARTICLE IX

AMENDMENT OF COVENANT

Except as otherwise provided herein, neither this Covenant, nor any part hereof, can be amended, modified or released, unless such amendment, modification or release is set forth within a written instrument executed by a duly authorized official of the Agency on behalf of the City, and by a duly authorized representative of a Project Owner and recorded in the Land Records. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective.

ARTICLE X

AFFORDABILITY PERIOD

10.1. All Affordable Units in Phase 1 shall be and remain Affordable in accordance with the terms of this Covenant for a **period of ninety-nine (99) years (the "Affordability Period")**. The Affordability Period for each Rental Affordable Unit shall commence upon the issuance of a certificate of occupancy by the City's Building Code Official for that unit, and shall continue for a period of ninety-nine (99) years thereafter. The Affordability Period for each For-Sale Affordable Unit shall commence on the date of recordation of the deed transferring the initial ownership of the For-Sale Affordable Unit to a Qualified Purchaser and shall continue for a period of 99 years thereafter. Notwithstanding the foregoing, this Covenant may be released and extinguished upon the approval of the Agency, in its sole and absolute discretion.

10.2. Notwithstanding the foregoing, in the event the Phase 1 Project, or the Phase 1 Project Owner's interest in the Parcel, is foreclosed upon by an institutional or governmental lender following foreclosure

by, or deed in lieu of foreclosure to a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Section 10.3.

10.3. Notwithstanding the foregoing Section 10.2, if Virginia Housing (formerly known as Virginia Housing Development Authority/VHDA) is first lienholder and senior lender, and Virginia Housing is the successful bidder at foreclosure and becomes the successor in interest, then the income, rent or use restrictions required by this Covenant shall terminate, except: (i) twenty percent (20%) of the units within the Project may remain at sixty percent (60%) of area median income following such a foreclosure, and (ii) Virginia Housing may permit additional units at 60% AMI to survive such a foreclosure, provided that Virginia Housing determines, in its sole discretion, that the development will achieve a targeted debt service coverage rate (DCSR) of at least 1.25 while subject to such additional set-aside. The City Manager, with the approval of the City Attorney's Office, shall have authority to renegotiate income, rent and use restrictions required by this Covenant, and to enter into a binding amendment of this Covenant, without the requirement for City Council approval, if necessary to facilitate PHA's receipt of financing from Virginia Housing, provided that the renegotiated terms are no less than those Virginia Housing itself requires in its own Lending Policy.

ARTICLE XI

NOTICES

11.1 Any notices given under this Covenant shall be in writing and delivered by United States mail (return receipt requested, postage pre-paid), delivered by hand, or delivered by private overnight commercial courier service to the applicable Person at the addresses specified in this Article, or to such other persons or locations as may be designated in writing by the City or the Project Owner from time to time. All notices to be given to the City shall be given to the following address:

CITY: Charlottesville City Manager

By mail to: P.O. Box 911, Charlottesville, Virginia 22902, or

By delivery to: 605 East Main Street, 2nd Floor, Charlottesville, Virginia 22902

With a copy to: Charlottesville City Attorney, sent by U.S. mail to:

P.O. Box 911, Charlottesville, Virginia 22902

11.2 All notices to be given to **Phase 1 Project Owner** shall be given by mail or delivery to:

Piedmont Housing Alliance

682 Berkmar Circle

Charlottesville, Virginia, 22901

Attention: Executive Director

With a copy to:

Klein Hornig, LLP

1325 G Street, N.W., Suite 770

Washington, DC, 20005

Attention: Erik T. Hoffman

And to the **Phase 1 Project Owner's Investor Member**, given by mail or delivery to:

Housing Equity Fund of Virginia XXIII, L.L.C.
Housing Equity Fund of Virginia XXIV, L.L.C.
c/o Virginia Community Development Corporation
1840 West Broad Street, Suite 200
Richmond, VA 23220
Attention: Executive Director

With a copy to:
Applegate & Thorne-Thomsen, P.C.
425 S. Financial Place, Suite 1900
Chicago, Illinois 60605
Attn: Diane K. Corbett, Esq.

All notices to be given to the tenant of a Rental Affordable Unit shall be sent to the unit number referenced in its lease. All notices to be given to an Affordable Unit Owner shall be given by mail or delivery to the physical address of the For Sale Affordable Unit. It shall be the responsibility of the applicable person and any successor to give written notice to the City of its mailing and delivery addresses. The failure of the applicable person to keep the City apprised in writing of its mailing and delivery addresses shall constitute a default under this Covenant.

11.3 Notices shall be deemed delivered as follows: (i) if hand-delivered, then on the date of delivery or refusal thereof; (ii) if by overnight courier service, then on the next business day after deposit with the overnight courier service; and (ii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

ARTICLE XII

MISCELLANEOUS

12.1 **Applicable Law; Venue.** This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the Commonwealth of Virginia, without reference to the conflicts of laws provisions thereof. Each of the parties whose signatures are affixed to this Covenant irrevocably agrees, on behalf of itself and each of its heirs, successors in interest and assigns, to submit to the jurisdiction of the Circuit Court for the City of Charlottesville, Virginia for the purposes of any suit, action or other proceeding arising out of this Covenant or any transaction contemplated hereby. Each of the parties whose signatures are affixed to this Covenant, on behalf of itself and each of its heirs, successors in interest and assigns, irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant or the transactions contemplated hereby in the Circuit Court of the City of Charlottesville and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12.2 **Counterparts.** This Covenant may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

12.3 **Time of performance.** All dates for performance (including cure of any default) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a Saturday, Sunday or City holiday is automatically extended to the next Business Day.

12.4 **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS COVENANT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.5 **Further Assurances.** Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Covenant; provided that such additional documents and instruments do not materially increase the obligations or burdens upon the second party.

12.6 **Severability.** If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions; all other provisions shall be and remain in effect, and shall be enforceable without reference to the unenforceable or illegal provision.

12.7 **Limitation on Liability.** Provided that Phase 1 Project Owner or Affordable Unit Owner has exercised due diligence in the performance of its obligations and duties herein, Phase 1 Project Owner or Affordable Unit Owner shall not be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Phase 1 Project Owner or Affordable Unit Owner shall be liable if Phase 1 Project Owner or Affordable Unit Owner has knowledge, or should have knowledge, that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

12.8 **Agency Limitation on Liability.** Any review or approval by the City or the Agency shall not be deemed to be an approval, warranty, or other certification by the City or the Agency as to compliance of such submissions, the Phase 1 Project, any Affordable Unit or the Parcel with any building codes, regulations, standards, laws, or any requirements contained in this Covenant, or any other covenant granted in favor of the City that is filed among the Land Records or otherwise contractually required. The City shall incur no liability in connection with the Agency's review of any submissions required under this Covenant as its review is solely for the purpose of protecting the City's interest under this Covenant.

12.9 **No Third Party Beneficiary.** Except as expressly set forth in this Covenant, there are no intended third party beneficiaries of this Covenant, and no person other than City shall have standing to bring an action for breach of or to enforce the provisions of this Covenant.

12.10 **Representations of Phase 1 Project Owner.** As of the date hereof, Phase 1 Project Owner hereby further represents and warrants to City as follows:

(a) This Covenant has been duly executed and delivered by Phase 1 Project Owner, and constitutes the legal, valid and binding obligation of said persons, enforceable against said persons, and their heirs, successors and assigns;

(b) Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by Phase 1 Project Owner of any agreement or order which is binding on Phase 1 Project Owner; and

(c) The Phase 1 Project Owner (i) is duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the laws of the Commonwealth of Virginia and the City of Charlottesville; (ii) is authorized to perform under this Covenant; and (iii) has all necessary power and authority to execute and deliver this Covenant.

12.11 Federal Affordability Restrictions. In the event the Parcel is encumbered by other affordability restrictions (“Federal Affordability Restrictions”) as a result of federal funding or the issuance of Low-Income Housing Tax Credits for the Project, it is expressly understood that, to the extent, if any, that such Federal Affordability restrictions, requirements, and provisions conflict with any provision(s) of this Covenant, then in the event the conflicting provision(s) in this Covenant would cause a default of or finding of non-compliance with the Federal Affordability Restrictions during the compliance period for the Federal Affordability Restrictions, then the requirements of the Federal Affordability Restrictions shall control to the extent of the conflict. In all other instances, the requirements of this Covenant shall control.

[Signatures on Following Pages]

[Insert Signature Blocks]

EXHIBIT A
TO THE FRIENDSHIP COURT REDEVELOPMENT
PHASE 1 HOUSING COVENANT

Legal Description of Parcel

Phase 1 of Friendship Court Redevelopment is on a parcel of land comprising approximately 3.87 acres, being the easternmost portion (the "Phase 1 Parcel") of a larger tract of real property lying within the City of Charlottesville, Virginia, owned by NHTE Piedmont Garrett Square Limited Partnership ("NHTE Piedmont Garrett Square LP, and described in the tax records of the City of Charlottesville as Tax Parcel 280112000, NHTE Piedmont Garrett Square LP having taken title to the real property by deed recorded in the office of the Clerk of Circuit Court of Charlottesville, Virginia in Deed Book 876 at Page 72, the real property being more particularly described by the following metes and bounds: beginning at a pk nail found along the west line of 6th Street, S.E. north of its intersection with Monticello Avenue, said point being the point of beginning, thence departing 6th Street, S.E. and with the northwest radial arc of its intersection with Monticello Avenue along a curve to the right, with a chord bearing north 85° 35' 39" east 49.68', having a radius of 30.00' and a length of 58.53' to a pk nail found; thence with the north line of Monticello Avenue the following courses: north 38° 30' 49" west 120.51' to an iron rod found; along a curve to the right, with a chord bearing north 30° 09' 56" west 127.22, having a radius of 438.12' and a length of 127.67' to a point; along a curve to the left, with a chord bearing north 30° 09' 56" west 176.00', having a radius of 606.12' and a length of 176.62' to a point; north 38° 30' 49" west 287.33' to an iron rod found; thence departing Monticello Avenue, and with the northeast radial arc of its intersection with 2nd Street, S.E. along a curve to the right, with a chord bearing north 09° 45' 15" west 28.87', having a radius of 30.00' and a length of 30.12' to an iron rod found; thence with the east line of 2nd Street, S.E. the following courses: north 19° 00' 20" east 361.37' to an iron rod found; north 19° 00' 20" east 100.00' to an iron rod found; thence departing 2nd Street, S.E., and with the southeast radial arc of its intersection with Garrett Street, along a curve to the right, with a chord bearing north 64° 55' 52" east 28.74', having a radius of 20.00' and a length of 32.06' to an iron rod found; thence with the south line of Garrett Street the following courses: south 69° 08' 27" east 164.46' to a pk nail found; along a curve to the right, with a chord bearing north 64° 29' 53" east 260.59', having a radius of 1608.89' and a length of 260.87' to a point; south 59° 51' 10" east 356.35' to a pk nail found; thence departing Garrett Street and with the southwest radial arc of its intersection with 6th Street, S.E., along a curve to the right, with a chord bearing south 13° 42' 28" east 28.84', having a radius of 20.00' and a length of 32.22' to an iron rod found; thence with the west line of 6th Street, S.E., the following courses: south 32° 26' 15" west 100.00' to a pk nail found; south 32° 26' 15" west 509.21' to an iron rod found; south 29° 42' 07" west 186.95' to the point of beginning, and containing 11.771 acres, more or less, as shown on a boundary survey exhibit by Timmons Group dated February 27, 2019

EXHIBIT B

**TO THE FRIENDSHIP COURT REDEVELOPMENT
PHASE 1 HOUSING COVENANT**

Rental Affordable Unit Lease Rider

This Affordable Unit Lease Rider (“Rider”) is attached to and incorporated into the lease dated (“Lease”) between _____ (“Resident” or “You”) and _____, as Management Agent (“Manager”) for _____ (“Owner”) for Apartment _____ (“Premises”). All capitalized terms not defined in this Rider shall have the meaning provided in the Affordable Housing Covenant (as defined below).

In consideration of the mutual covenants set forth in the Lease and below, you agree that your use and possession of the Premises is subject to the terms and conditions set forth in the Lease and the following terms and conditions, which are in addition to and supplement the Lease:

AFFORDABLE UNIT: Resident acknowledges that the Premises is subject to that certain Affordable Housing Covenant between Owner and the City of Charlottesville dated _____, 20____, as may be subsequently amended, (the “Affordable Housing Covenant”). The Premises is currently designated as an Affordable Unit, which requires the Resident’s household income to be less than or equal to [_____] of the area median income (AMI).

DEFINED TERMS: Those terms not specifically defined herein shall be assigned the definition provided in the Affordable Housing Covenant.

ELIGIBILITY: In order for you, as resident, to be eligible to rent an Affordable Unit, you must be and remain an “Affordable Unit Tenant” as defined in the Affordable Housing Covenant.

INCOME CERTIFICATION/INCOME RECERTIFICATION: No more than ninety (90) days and no less than forty-five (45) days before each anniversary of the first day of the lease (or at the City’s option, every two years after the first day of the Lease) the Manager shall request that the Resident provide the Certifying Authority with the following:

- (i) an executed Certification of residency that states that Resident occupies the Premises as his/her/their principal residence,
- (ii) all information pertaining to the Resident’s household composition and income for all household members,
- (iii) a release authorizing third party sources to provide relevant information regarding the Resident’s eligibility for the Affordable Unit, as well as how to contact such sources, and

- (iv) any other reasonable and customary representations, information or documents requested by the Certifying Authority.

Resident shall submit the foregoing listed documentation to the Certifying Authority within fifteen (15) days of Manager's request. Within ten (10) days of Certifying Authority's receipt of the foregoing documentation and based on the results of the annual income recertification review, Certifying Authority will determine whether the Resident remains income eligible for the Premises and notify the Resident of his or her household's AMI percentage, and (a) if the Resident is no longer income eligible for the Premise, the income category for which the Resident is income eligible to lease a unit in the apartment community, or (b) if the Resident is income eligible for the Premises, provide a Certification of Income completed by the Certifying Authority, verifying that the income of the Resident meets income eligibility for the Premises.

Upon annual recertification, if the Resident remains income eligible for the Premises, the Resident will be eligible to remain in the Premises and to renew his/her lease at the then-current lease rate for the Premises. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Household Income applicable to the Premises, then the Resident may remain in the Premises and pay the rent applicable to an Affordable Unit at a higher affordability level for which the Resident's Annual Household Income qualifies. If the Resident's Annual Household is determined to exceed the Maximum Annual Income for the Affordable Unit with the highest AMI level in the Parcel, then the Owner may allow the Resident to remain in the Premises and to pay the applicable market-rate rent for the Premises.

Manager will notify Resident of all options (i.e., an Affordable Unit at a different AMI category or a market rate unit) for which Resident is income eligible prior to the expiration of the Resident's lease term. Prior to the expiration of the Resident's lease term, the Resident shall notify Manager in writing of the Resident's election to either (i) remain in the Premises and pay the rental rate applicable to the Resident's then current AMI category if the Resident's Annual Household Income is at or below the established AMI categories of []AMI or [] AMI, (ii) remain in the Premises paying the market rate rent for that unit if the Resident's then current income is above the highest AMI level, or (iii) vacate the Premises at the end of the Resident's Lease term. Resident's failure to notify Manager of Resident's election prior to the expiration of the lease term will be deemed by Manager as Resident's election to vacate the Premises.

In the event that Resident fails to pay the applicable rental rate or vacate the Premises upon expiration of the lease term, Manager shall pursue an action for eviction of Resident. Resident's agreement to pay the applicable rental rate or vacate was a condition precedent to Manager's initial acceptance of Resident's eligibility and Manager has relied on Resident's agreement. Resident acknowledges and agrees that the criteria to be income eligible to occupy the Premises is and serves as a City policy and objective, and that failure to vacate the Premises or pay the applicable rental rate is both a default under the Lease and in violation of the Affordable Housing Covenant.

PROHIBITION ON SUBLETS AND ASSIGNMENTS: Resident may not sublease any portion of the Premises or assign its lease to any other person, except with the prior written consent of the Agency, in its sole and absolute discretion.

LEASE EFFECTIVE: The Lease of the Premises shall only be effective if this executed Rider, a Certification of Income, a Certificate of Tenant Eligibility (for initial lease term), and a Certificate of Residency (for lease renewals) are attached as exhibits to the lease agreement.

Resident Signature

Date

Resident Signature

Date

Resident Signature

Date

EXHIBIT C
TO THE FRIENDSHIP COURT REDEVELOPMENT
PHASE 1 HOUSING COVENANT

(Maximum Sales Prices of For Sale Affordable Units)

The following assumptions shall be used in calculating the Maximum Sales Price of a For Sale Affordable Unit.

- i. Condominium Fees, if applicable: Use the actual monthly condominium fees, or if unknown, estimate monthly condominium fees at \$0.60 per square foot. If the actual size of the Affordable Unit is unknown, use the square footage estimated below based on unit type:
 - Multi-Family Development
 - Studio—500 SF
 - 1-Bedroom—625 SF
 - 2-Bedroom—900 SF
 - 3-Bedroom—1,050 SF

- ii. Homeowner Fees, if applicable: Use the actual monthly homeowner fees, or if unknown, estimate monthly homeowner fees at \$0.10 per square foot. If the actual size of the Affordable Unit is unknown, use the square footage estimated below based on home type.
 - Single-Family Development
 - 2-Bedroom 1,100 SF
 - 3-Bedroom 1,300 SF
 - 4-Bedroom 1,500 SF

- iii. Monthly Hazard Insurance, if single family home: Estimated to be \$125.00 per month. If a more recent survey or source is available, the Agency shall instruct Developer to use a different estimate.

- iv. Monthly Real Property Taxes: Base monthly real property taxes on the estimated price of the Affordable Unit assuming the current homestead deduction at current local real estate tax rates.

- v. Mortgage Rate: Mortgage rates are determined by the most recent monthly average of a 30 year fixed rate mortgage at www.freddiemac.com plus a one percent (1%) cushion.

- vi. Down payment: Assume a down payment of 5% on the purchase of the Affordable Unit.

EXHIBIT D
TO THE FRIENDSHIP COURT REDEVELOPMENT
PHASE 1 HOUSING COVENANT

(Provisions Governing Calculation of Maximum Resale Prices)

1. The **Maximum Resale Price** (“MRP”) for a subsequent sale of a For Sale Affordable Unit shall be determined through use of the formula $MRP = P \times (F) + V$ (“Formula”), where:

(a) P = the price Owner paid for the Affordable Unit;

(b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the Agency pursuant to this section; and

(c) F = the average of the Ten Year Compound Annual Growth Rates of the Area Median Income (“AMI”) from the first year of ownership of the For Sale Affordable Unit to the year of the sale of the For Sale Affordable Unit by the Affordable Unit Owner. This average may be expressed: (1) As the result of the formula $F = (1 + [((AMI \text{ Year } m / AMI \text{ Year } m-10) ^ (1/10) -1) + \dots ((AMI \text{ Year } k / AMI \text{ year } k-10) ^ (1/10) -1) / n]) ^ n$, where m = the year after the Affordable Unit was purchased by Owner, k = the year in which the Affordable Unit is sold by Owner, and n = the number of years the Affordable Unit is owned by Owner; or (2) as otherwise published by the Agency.

2. For the purposes of determining the value of “V” in the Formula, the following improvements made to a For Sale Affordable Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property: (a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the Agency; and (b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the Agency.

3. Ineligible costs shall not be included in the determining the value of “V” in the Formula.

4. The value of improvements may be determined by the Agency based upon documentation provided by the Affordable Unit Owner or, if not provided, upon a standard value established by the Agency.

5. The Agency may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the Agency finds that the improvement diminished or did not increase the fair 32 market value of the For Sale Affordable Unit or if the improvements make the Affordable Unit unaffordable to all Qualified Purchasers at the Designated Affordability Level.

6. The Agency may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.

7. Owner shall permit a representative of the Agency to inspect the For Sale Affordable Unit upon request

to verify the existence and value of any capital improvements that are claimed by Owner.

8. No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the For Sale Affordable Unit.

9. The value of personal property transferred to a purchaser in connection with the resale of a For Sale Affordable Unit shall not be considered part of the sales price of the For Sale Affordable Unit for the purposes of determining whether the sales price of the For Sale Affordable Unit exceeds the MRP.

10. Any capitalized terms used in this Schedule that are not defined herein shall have the meanings set forth in the Covenant. As used in this Schedule, the following capitalized terms shall have the meanings indicated below:

Eligible Capital Improvement: major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of an Affordable Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods. Improvements that meet these criteria will be given 100% credit by the Agency.

Eligible Replacement and Repair Cost: in-kind replacement of existing amenities and repairs and general maintenance that keep an Affordable Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (viii) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (ix) replacement of window sashes; (x) fireplace maintenance or in-kind replacement; (xi) heating system maintenance and repairs; and (xii) lighting system. Costs that meet these criteria will be given 50% credit for repairs as determined by the Agency.

Ineligible Costs: means costs of cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures not eligible for capital improvement credit as determined by the Agency. These improvements generally include: (i) cosmetic enhancements such as fireplace tile and mantel, decorative wall coverings or hangings, window treatments (blinds, shutters, 33 curtains, etc.), installed mirrors, shelving, refinishing of existing surfaces; (ii) non-permanent fixtures, such as track lighting, door knobs, handles and locks, portable appliances (refrigerator, microwave, stove/ oven, etc.); and (iii) installations with limited useful life spans, such as carpet, painting of existing surfaces, window glass and light bulbs.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	October 19, 2020
Action Required:	Approval and Appropriation
Presenter:	Kaki Dimock, Director, Human Services
Staff Contacts:	Kaki Dimock, Director, Human Services
Title:	Housing Opportunities for People with AIDS/H.I.V. (H.O.P.W.A.): \$20,050

Background:

The Department of Human Services, in coordination with the Thomas Jefferson Area Coalition for the Homeless (T.J.A.C.H.) and the Service Provider Council (S.P.C.), received a grant from the Virginia Department of Housing and Community Development. The Housing Opportunities for People with AIDS/H.I.V. (H.O.P.W.A.) award is \$20,050 and is a supplemental grant based on the COVID-19 pandemic for July 1, 2020 – June 30, 2021.

Discussion:

The City of Charlottesville has staff from Human Services and Social Services taking leadership roles in the governance of T.J.A.C.H. H.O.P.W.A. is an important resource in our community's efforts to end homelessness. The grant provides services in four key areas.

1. **Tenant-Based Rental Assistance (TBRA):** The Thomas Jefferson Health District (T.J.H.D.) partners with The Haven to provide T.B.R.A. to eligible participants. The T.J.H.D. screens participants for eligibility and inspects the proposed property to ensure that it meets H.U.D. requirements. Upon successful screening, The Haven contacts the landlord to arrange monthly rent payment, similar to rapid re-housing.
2. **Short-term Rental, Mortgage and Utility Assistance:** T.J.H.D. screens eligible participants for short-term assistance including emergency utility payments to avoid shut-off. .
3. **Supportive Services:** T.J.H.D. provides supportive services including crisis intervention, case management and service referrals.
4. **Homeless Management Information System(H.M.I.S.):** The City of Charlottesville as the award recipient will ensure that H.M.I.S. data is complete through an agreement with T.J.A.C.H. to have the Executive Director ensure data quality. Our Continuum of Care(C.O.C.) has a well-populated database for individuals experiencing homelessness. HMIS collaboration provides real-time monitoring of the needs and progress of individuals and households facing homelessness. Collaborative use of H.M.I.S. among

T.J.A.C.H. C.o.C. Service Providers expedites communication and reduces the need to interface disparate documentation systems.

5. **Administration:** The City of Charlottesville as the award recipient is eligible for an administrative fee. Staff proposes that we pass these dollars through to T.J.H.D. & The Haven to support the supervision of assigned staff.

Community Engagement:

This grant and plan are the product of extensive engagement of the service provider community for persons experiencing homelessness. This partnership is reflective of the new governance model for T.J.A.C.H. and the priority requests of the Interfaith Movement Promoting Action by Congregations Together (IMPACT).

Alignment with City Council’s Vision and Strategic Plan:

This grant advances the City of Charlottesville’s Strategic Plan Goal #1 of enhancing the self sufficiency of our residents. Specifically, it will facilitate the objective of increasing affordable housing options. This item primarily aligns with Council’s vision for Quality Housing Opportunities for All.

Budgetary Impact:

This grant will be entirely State, and Federal pass-through funds. No local match is required. There is no budget impact for the City of Charlottesville. All funds will be distributed to sub-recipients for service provision.

Recommendation:

Staff recommends approval and appropriation of grant funds.

Alternatives:

Council may elect to not accept the funds and the community will not have the capacity to administer the following services to persons experiencing a housing crisis while managing AIDS/H.I.V.: short-term rental assistance, utility assistance, rapid rehousing, H.M.I.S., and administration.

Attachments:

Appropriation

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

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

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

Revenues

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

Expenditures

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

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

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	November 2, 2020
Action Required:	Appropriation
Presenter:	Riaan Anthony, Park and Recreation Management Specialist
Staff Contacts:	Riaan Anthony, Park and Recreation Management Specialist II Vic Garber, Deputy Director, Parks and Recreation
Title:	Virginia Department of Education Special Nutrition Program Child and Adult Care Food Program - \$30,000

Background:

The City of Charlottesville, through Parks and Recreation, has received approval for a reimbursement of up to \$30,000 from the Virginia Department of Education Special Nutrition Program to provide free dinner to children 18 and under attending our drop-in afterschool programs through their Child and Adult Care Food Program.

Discussion:

Charlottesville Parks and Recreation will operate an afterschool meals program for 36 weeks, during the course of the regular school year. There are currently 5 locations, Friendship Court, Greenstone on 5th, South First Street, Westhaven Community Centers, and Crow Recreation Center that serve children 18 years and under. This year we will be sponsoring the Girls and Boys Club. The reimbursement will cover the costs of a nutritious dinner at these locations, which also have an educational/enrichment component. Dinner will be served from 4-8 pm at the various community centers. Most of the children served receive free or reduced meals during the school year. Over 400 children will be served each week during the school year.

The dinners are purchased through the City of Charlottesville School Food Service. The Parks and Recreation Department pays the bills to the City of Charlottesville Food Service and is then reimbursed by the Virginia Department of Education Special Nutrition Programs.

Alignment with City Council's Vision and Strategic Plan:

Approval of this agenda item aligns directly with Council's vision for Charlottesville to be America's Healthiest City and it contributes to Goal 2 of the Strategic Plan - Healthy and Safe

City. Children will receive a nutritious dinner, hopefully replacing a meal that did not exist or providing a healthier balanced option for them.

Community Engagement:

N/A

Budgetary Impact:

There is no impact to the General Fund. The funds will be appropriated, expensed and reimbursed to a Grants Fund. There is no required local match for this program.

Recommendation:

Staff recommends approval and appropriation of funds,

Alternatives:

If money is not appropriated, the free dinner program will not be offered to youth, most of whom receive free or reduced meals during the school year.

Attachments:

N/A

APPROPRIATION

**Virginia Department of Education Special Nutrition Program
Child and Adult Care Food Program
\$30,000**

WHEREAS, the City of Charlottesville, through Parks and Recreation, has received approval for reimbursement up to \$30,000 from the Virginia Department of Education Special Nutrition Program to provide free dinner to children attending select drop-in afterschool centers; and

WHEREAS, the grant award covers the period from period October 1, 2020 through September 30, 2021;

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the sum of \$30,000, received from the Virginia Department of Education Special Nutrition Program is hereby appropriated in the following manner:

Revenue – \$ 30,000

Fund: 209 **Internal Order: 1900342** G/L Account: 430120

Expenditures - \$30,000

Fund: 209 **Internal Order: 1900342** G/L Account: 530670

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$30,000 from the Virginia Department of Education Special Nutrition Program.

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	November 2, 2020
Action Required:	Appropriation
Presenter:	Chris Gensic, Parks and Recreation
Staff Contacts:	Chris Gensic, Parks and Recreation Ryan Davidson, Office of Budget and Performance Management
Title:	Virginia Outdoors Foundation Grant - Ragged Mountain Land Acquisition - \$65,000

Background:

The City of Charlottesville, through Parks and Recreation, has received a grant from the Virginia Outdoors Foundation (VOF) to assist with the acquisition of five additional acres of forested land adjacent to the Ragged Mountain Reservoir property. The match for this project comes in the form of funds remaining from the previous US Department of Agriculture (USDA) grant through the Community Forest Program used to acquire the 144 acres adjacent to this five acres.

Discussion:

The City of Charlottesville became aware of property for sale adjacent to the Ragged Mountain Reservoir a few years ago. With assistance from the Piedmont Environmental Council (PEC) the landowner agreed to sell the property if the City is awarded the VOF grant. The USDA grant program is intended to preserve forest properties to be used for recreation and education. The forest management plan already developed for the previous acquisition will be amended slightly to include this land, and it will be developed to primarily include trail system layout and plans for how to provide access and interpretation for environmental education.

Community Engagement:

The master plan for Ragged Mountain has a primary element related to preservation of forest and water resources. This acquisition opportunity will further the preservation goal and expand recreation opportunities. This will also provide for environment education opportunities for City and County elementary, secondary, and college students due to the property's proximity to so many schools.

Alignment with City Council's Vision and Strategic Plan:

Preservation of the property will further the council vision statement of being a Green City with an extensive natural trail system, along with healthy rivers and streams, and further Strategic Plan objective

3.4 “Be responsible stewards of natural resources”.

Budgetary Impact:

There is no impact to the General Fund. Funds will be received and expensed in the Capital Improvement Fund. The match is provided from remainder funds from a USDA Community Forest grant and does not include local dollars. Local donors have contributed to cover the legal fees (survey/appraisal, etc.) and the grants provide the funding for purchase. Long term maintenance will be limited to trail maintenance performed by City staff that already manages the adjacent trail systems. The City paid only for the title report (\$350.00) from the existing trial and land acquisition CIP fund.

Recommendation:

Staff recommends appropriation of grant funds.

Alternatives:

If grant funds are not appropriated, the property will not be acquired.

Attachments:

Grant award letter from VOF
Property owner letter
Map of property to be acquired.

APPROPRIATION

**Virginia Outdoors Foundation Grant – Ragged Mountain Land Acquisition
\$65,000**

WHEREAS, the City of Charlottesville, through Parks and Recreation, has been awarded \$65,000 from the Virginia Outdoors Foundation to acquire 5 acres of undeveloped forested land adjacent to the Ragged Mountain Reservoir Property; and

WHEREAS, the match for this grant will come from the remainder of a previous USDA grant award; and

WHEREAS, the grant funding will be passed through the parkland acquisition account and paid to the property owner;

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$65,000 is hereby appropriated in the following manner:

Revenue

\$65,000 Fund: 426 WBS: P-00534 G/L Account: 431110

Expenditures

\$65,000 Fund: 426 WBS: P-00534 G/L Account: 599999

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$65,000 from the Virginia Outdoors Foundation.

NOTES:

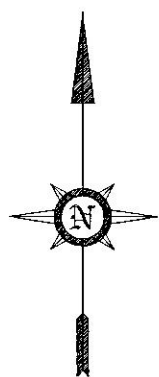
The boundary survey shown is based on a current field survey.

This Plat has been prepared without benefit of a current title report and does not therefore necessarily indicate all encumbrances on the property. It is therefore subject to easements, restrictions, conditions and reservations contained in duly recorded deeds, plats and other instruments constituting constructive notice in the chain of title to this property which have not expired by limitation of time contained therein or have not otherwise become ineffective.

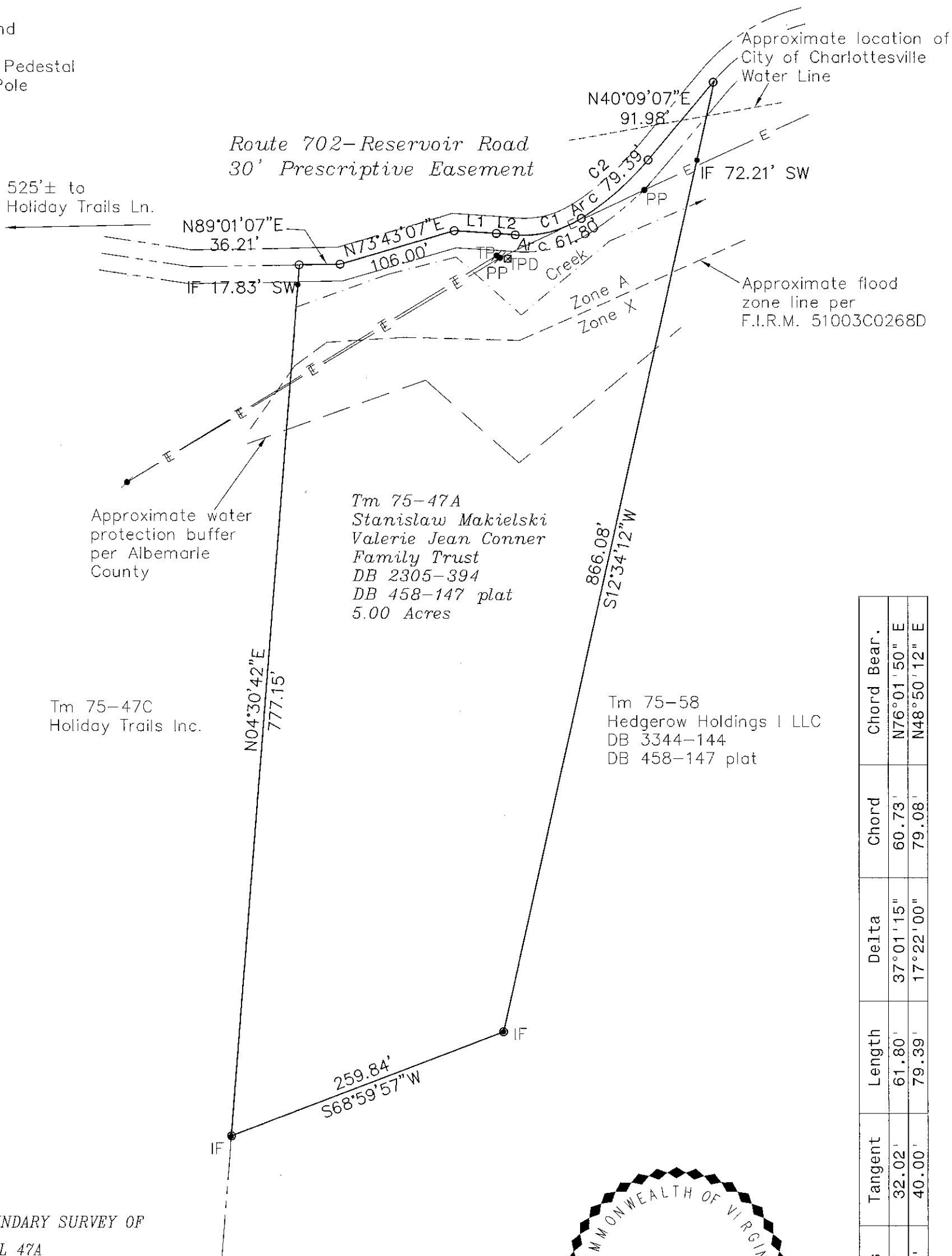
Course	Bearing	Distance
L1	S86°26'53"E	37.54'
L2	S85°27'33"E	16.79'

LEGEND

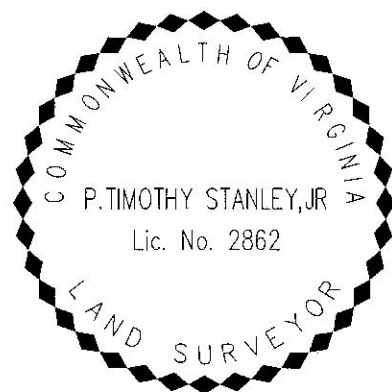
- IF Iron Rod Found
- PP Power Pole
- TPD Telephone Pedestal
- TP Telephone Pole



Magnetic North based on Plat recorded in DB 1795-132



Curve	Radius	Tangent	Length	Delta	Chord	Chord Bear.
C1	95.64'	32.02'	61.80'	37°01'15"	60.73'	N76°01'50"E
C2	261.91'	40.00'	79.39'	17°22'00"	79.08'	N48°50'12"E



PLAT SHOWING BOUNDARY SURVEY OF TAX MAP 75 PARCEL 47A

THE MAKIELSKI PROPERTY

SAMUEL MILLER DISTRICT, ALBEMARLE COUNTY, VIRGINIA

SCALE: 1" = 100' DATE: JUNE 19, 2018

750047A.dwg folder tm 75-47A

STANLEY LAND SURVEYS, PLC

LAND SURVEYING-LAND PLANNING

106 CROFTON PLAZA SUITE 8

PALMYRA, VA. 22963-0154

PHONE: (434) 589-8395

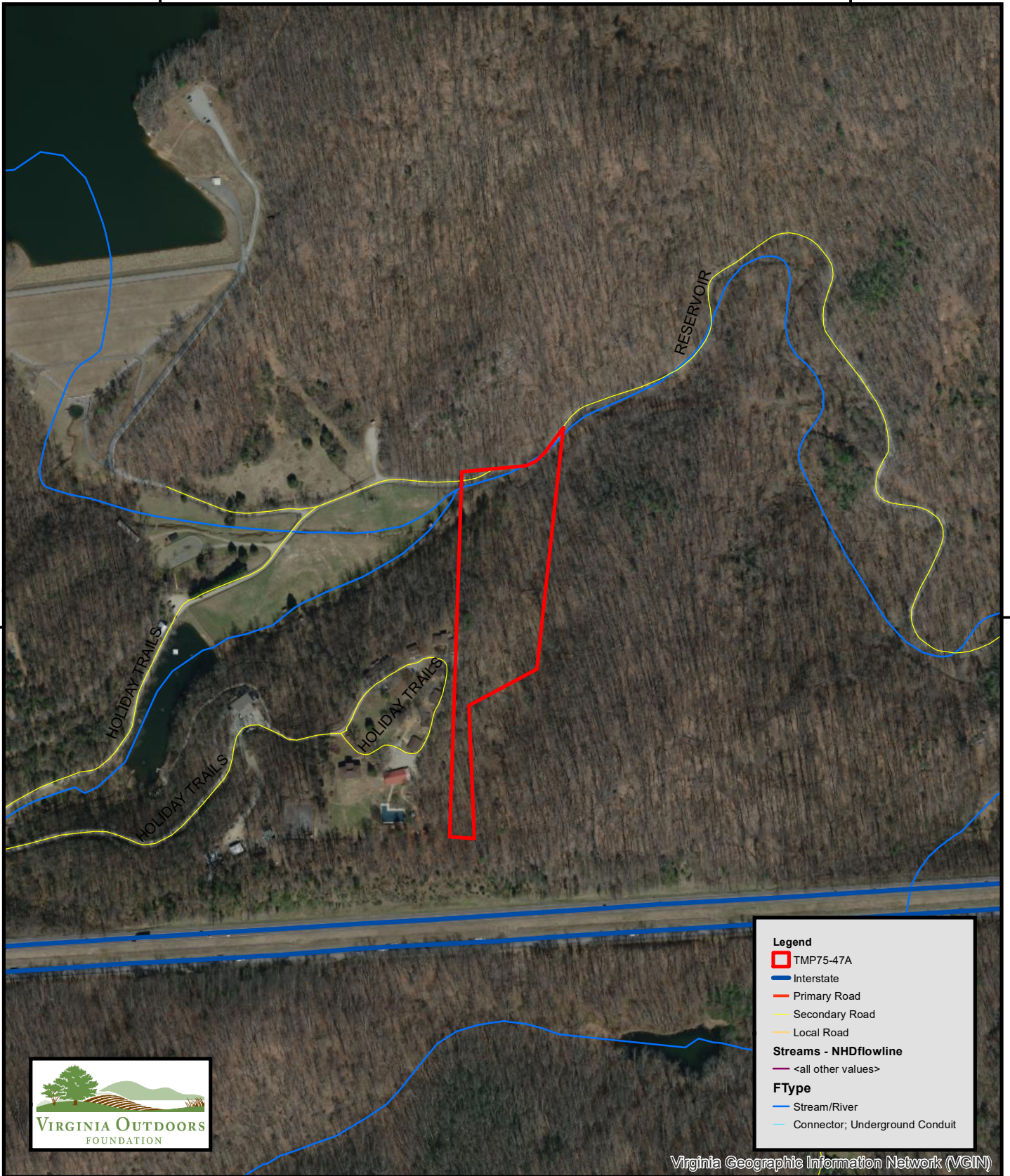


78°33'30"W

78°33'0"W

38°1'30"N

38°1'30"N



Virginia Geographic Information Network (VGIN)

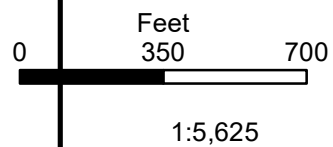
78°33'30"W

78°33'0"W

Projection: Lambert Conformal Conic
 GCS North America 1983
 Datum: D North America 1983

Map created MM/DD/YYYY by YOUR NAME HERE.
 Source data provided by LIST DATA SOURCES HERE.
 Aerial imagery acquired MM/DD/YYYY
 Aerial imagery © Commonwealth of Virginia.
 This map is for general reference and display purposes only.

Aerial Map
 Landowner ~ Acres
 County or Control #
 Site Visit Date:





VIRGINIA REALTORS® CONTRACT FOR PURCHASE OF UNIMPROVED PROPERTY



(This is a legally binding contract. If you do not understand any part of it, please seek competent advice before signing.)

This CONTRACT FOR PURCHASE OF UNIMPROVED PROPERTY made as of January 16, 2020, between Stanislaw J. Makielski, Trustee, Valerie Jean Conner, Trustee, of the Stanislaw J. Makielski and, Valerie Jean Conner Family Trust (the "Seller", whether one or more), whose address is 534 Oakland Ave, Tallahassee, FL 32301, and Rivanna Trails Foundation, BY: J. H. Verkerke, President (the "Purchaser", whether one or more), whose address is P.O. Box 1786, Charlottesville, Va 22902 provides: The Listing Company (who represents Seller) is Jos. T. Samuels Inc. 707 E Jefferson ST, Charlottesville, Va 22902 and the Selling Company (who does OR does not represent Purchaser) is Jos. T. Samuels Inc. 707 E Jefferson Street, Charlottesville, Va 22902

1. **REAL PROPERTY:** Purchaser agrees to buy and Seller agrees to sell the land and all improvements thereon located in the County or City of Albemarle, Virginia and described as (legal description): 5.00 acres shown on a plat by P. Timothy Stanley, Jr. Licensed Surveyor dated June 19, 2018. The Property is also shown on Albemarle Tax Map 75 as Parcel 47A. Being the same Property conveyed to Seller as recorded among the land records of Albemarle County in Deed Book 2305 at Page 394.

and more commonly known as: TBD Reservoir Road, Charlottesville, VA 22901 (the "Property").

2. **PURCHASE PRICE:** The Purchase Price (the "Purchase Price") of the Property is \$95,000.00.
 This sale shall be in gross, and the Purchase Price shown above shall be the exact sales price.
 The Purchase Price shall be adjusted at settlement to an exact purchase price of \$ _____ per (sq. ft.) (acre). The exact area to be determined by a survey to be made by a licensed surveyor and paid for by _____.

The Purchaser shall pay to the Seller at settlement the Purchase Price in cash or by cashier's certified check, subject to the prorations herein and from the following sources:

- (a) ~~THIRD PARTY FIRST TRUST:~~ This sale is subject to Purchaser's obtaining OR assuming: a conventional OR other (describe) (_____) loan secured by a first deed of trust lien on the Property in the principal amount of \$ _____, or _____ % of the Purchase Price bearing interest at a fixed rate not exceeding _____ % per year, or at an adjustable rate with an initial rate not exceeding _____ % per year and a maximum rate during the term of the loan not exceeding _____ % per year, or at the market rate of interest at the time of settlement, amortized over a term of _____ years, and requiring not more than a total of _____ loan discount points, excluding a loan origination fee, or an assumption fee not exceeding \$ _____. (If this contract provides for the assumption of a loan: (i) the parties acknowledge that the balance set forth above is approximate and that the principal amount to be assumed will be the outstanding principal balance on the date of settlement, and (ii) Purchaser shall assume all obligations of Seller under such loan.)
- (b) ~~THIRD PARTY SECOND TRUST:~~ As set forth in paragraph 4, this sale is also subject to Purchaser's obtaining a loan secured by a second deed of trust lien on the Property in the principal amount of \$ _____, or _____ % of the Purchase Price bearing interest at a rate not exceeding _____ % per year, amortized as follows _____, and requiring not more than a total of _____ loan discount points, excluding the origination fee.
- (c) ~~SELLER FINANCING:~~ Seller agrees that \$ _____ or _____ % of the Purchase Price shall be evidenced by a note made by Purchaser payable to Seller bearing interest at a rate of _____ % per year amortized as follows _____

_____. The note shall be secured by a deferred purchase money first OR second OR (specify priority) _____ deed of trust lien on the Property. The deed of trust and note shall provide, among other things, that: (i) the note shall be due and payable in full if the Property, or any interest therein, is transferred, sold or conveyed; (ii) Purchaser shall have the right to prepay the note at any time in whole or in part: with a premium or penalty of _____ % of the amount prepaid OR without premium or penalty; (iii) a lot release schedule shall be provided, if applicable; (iv) a late payment charge not exceeding five _____

percent of the payment may be assessed by seller for any payment more than seven (7) calendar days late; (v) a default under the terms of any prior financing shall constitute a default under the note and deed of trust; (vi) the note and deed of trust shall otherwise be in form satisfactory to Seller; (vii) other terms:

If this Contract provides for SELLER FINANCING, then (i) such financing shall be contingent upon review and approval by Seller of a current credit report on each Purchaser and a current personal financial statement of each Purchaser, which documents must be provided to Seller within _____ business days following execution of this Contract by both parties; (ii) Purchaser shall properly record applicable deed of trust, at its expense, at settlement; and (iii) Purchaser may not assign this Contract in whole or in part, without the prior written consent of Seller, which Seller shall be under no obligation to give. Any deed of trust securing SELLER FINANCING (i) shall contain a provision requiring the trustees under said deed of trust, without the necessity of obtaining the prior consent or joiner of the noteholder, to release land for easements and rights of ways, and/or land to be dedicated for public use from the above mentioned trust without curtailment and at no cost to Purchaser, provided such releases in their aggregate total less than _____ % of the total land area originally encumbered by the deed of trust; (ii) shall provide that Purchaser shall have the right, at any time after settlement, to raze existing improvements, cut, fill, grade, erect improvements and do all other things Purchaser believes necessary in the development of the Property, with OR without obligation to make any prepayment on account of the debt secured by the deferred purchase money deed of trust.

(d) **OTHER FINANCING TERMS:** This sale is not contingent on financing.

3. ~~DEPOSIT: Purchaser shall make a deposit of \$ _____ to be held by _____ (the "Escrow Agent") in the form of: check cash other _____ (the "Deposit"). Purchaser [select one]: has paid the Deposit to the Escrow Agent OR will pay the Deposit to the Escrow Agent within _____ days (the "Extended Deposit Date") after the date this Contract is fully executed by the parties. If Purchaser fails to pay the Deposit as set forth herein, then Purchaser shall be in breach of this Contract. At Seller's option and in lieu of all other remedies set forth in this Contract, Seller may terminate this Contract by written notice to Purchaser and neither party shall have any further obligation hereunder.~~

If the Escrow Agent is a Virginia Real Estate Board ("VREB") licensee, the parties direct the Escrow Agent to place the Deposit in an escrow account by the end of the fifth business banking day following the latter of: (i) the date this Contract is fully executed by the parties, or (ii) the Extended Deposit Date. If the Escrow Agent is not a VREB licensee, the parties direct the Escrow Agent to place the Deposit in an escrow account in conformance with applicable Federal or Virginia law and regulations. The Deposit may be held in an interest bearing account and the parties waive any claim to interest resulting from such Deposit. The Deposit shall not be released by the Escrow Agent until (i) credited toward the Purchase Price at settlement; (ii) Seller and Purchaser agree in writing as to its disposition; (iii) a court of competent jurisdiction orders a disbursement of the funds; or (iv) disbursed in such manner as authorized by the terms of this Contract or by Virginia law or regulations. Seller and Purchaser agree that Escrow Agent shall have no liability to any party for disbursing the Deposit in accordance with this paragraph, except in the event of Escrow Agent's negligence or willful misconduct.

If the Property is foreclosed upon while this Contract is pending, the terms of Section 54.1-2108.1 of the Code of Virginia shall apply to the disbursement of the Deposit. Foreclosure shall be considered a termination of this Contract by Seller and, absent any default by Purchaser, the Deposit shall be disbursed to Purchaser.

4. **FINANCING:**

(a) This Contract is contingent upon Purchaser obtaining and delivering to Seller a written commitment or commitments, as the case may be, for the third-party financing or loan assumption required in paragraph 2. Purchaser agrees to make written application for such financing or assumption (including the payment of any required application, credit, or appraisal fees) within five (5) business days of the date of acceptance of this Contract and to diligently pursue obtaining a commitment for such financing.

(b) If Purchaser does not obtain such written commitment and so notifies Seller or Selling Company or Listing Company in writing before 5:00 p.m. local time on _____ N/A _____, _____ (if no date is filled in, the date shall be the same date set forth in paragraph 7), then if Purchaser is otherwise in compliance with the terms of this Contract, this Contract shall terminate upon giving such a notice and the Deposit shall be refunded to Purchaser. If Purchaser does not obtain such a written commitment and notice thereof is not received by the deadline, or such later deadline as the parties may agree upon in writing, then Purchaser's financing contingency set out in subparagraph 4(a) above shall nonetheless continue unless

Seller gives Purchaser written notice of intent to terminate this Contract. If Seller gives Purchaser such notice, this Contract shall terminate as of 5:00 p.m. local time on the third day following Seller's delivery of such notice to Purchaser unless before that time Purchaser has delivered to Seller a commitment in compliance with the provisions of subparagraph 4(a) above, or a removal of Purchaser's financing contingency and evidence of the availability of funds necessary to settle without such financing.

(c) If the balance of the Purchase Price in excess of the Deposit is to be paid in cash without third party or seller financing. Purchaser shall give the Seller written verification from Purchaser's bank or other sources within fifteen (15) days after the date this Contract is fully ratified that Purchaser has or can have the balance of the Purchase Price in cash not later than the settlement date. If Purchaser fails to give such verification within such time, Seller may terminate this Contract by giving Purchaser written notice thereof within ten (10) days after the date by which verification was to be given.

(d) Unless specified in a written contingency, neither this Contract nor Purchaser's financing is dependent or contingent on the sale or settlement or lease of other real property.

(e) The occurrence of any of the following shall constitute a default by Purchaser under this Contract:

- (i) Purchaser fails to make timely application for any financing provided for hereunder, or to diligently pursue obtaining such financing;
- (ii) Purchaser fails to lock in the interest rate(s) provided for hereunder and the rate(s) increase so that Purchaser no longer qualifies for the financing;
- (iii) Purchaser fails to comply with the lender's reasonable requirements in a timely manner;
- (iv) Purchaser fails to notify the lender, Seller or Listing Company promptly of any material adverse change in Purchaser's financial situation that affects Purchaser's ability to obtain the financing;
- (v) Purchaser does not have the down payment, closing costs or fees, or other funds required to settle as provided in this Contract;
- (vi) Purchaser does or fails to do any act following ratification of this Contract that prevents Purchaser from obtaining the financing; or
- (vii) Purchaser makes any deliberate misrepresentation, material omission, or other inaccurate submission or statement that results in Purchaser's inability to secure the financing.

(f) Purchaser does OR does not intend to occupy the Property as a primary residence.

(g) Nothing in this Contract shall prohibit Purchaser from pursuing alternative financing from the financing specified in paragraph 2. Purchaser's failure to obtain the alternative financing shall be at Purchaser's risk, and shall not relieve Purchaser of the consequences set forth in this paragraph 4 should Purchaser fail to pursue, as required in this paragraph 4, the financing set forth in paragraph 2.

5. **LOAN FEES:** Except as otherwise agreed upon in this Contract, Purchaser shall pay all points, loan origination fees, charges and other costs imposed by a lender or otherwise incurred in connection with obtaining the loan or loans. The amount of any contributions Seller agrees to make under this Contract toward Purchaser's loan fees shall include miscellaneous and tax service fees charged by a lender for financing described in this Contract and which by regulation or law Purchaser is not permitted to pay.

6. **TITLE INSURANCE.** Purchaser may, at Purchaser's expense, purchase owner's title insurance. Depending on the particular circumstances of the transaction, such insurance could include affirmative coverage against possible mechanics' and materialmen's liens for labor and materials performed prior to Settlement and which, though not recorded at the time of recordation of Purchaser's deed, could be subsequently recorded and would adversely affect Purchaser's title to the Property. The coverage afforded by such title insurance would be governed by the terms and conditions thereof, and the premium for obtaining such title insurance coverage will be determined by its coverage. Purchaser may purchase title insurance at either "standard" or "enhanced" coverage and rates. For purposes of owner's policy premium rate disclosure by Purchaser's lender(s), if any, Purchaser and Seller require that enhanced rates be quoted by Purchaser's lender(s). Purchaser understands that nothing herein obligates Purchaser to obtain any owner's title insurance coverage at any time, including at Settlement, and that the availability of enhanced coverage is subject to underwriting criteria of the title insurer.

7. **SETTLEMENT; POSSESSION:** Settlement shall be made at Charlottesville, VA on or about July 01, 2020. Possession of the Property shall be given at settlement, unless otherwise agreed in writing by the parties. At settlement, Seller will deliver the deed described in paragraph 15, an affidavit acceptable to Purchaser and Purchaser's title insurance company as to parties in possession and mechanic's liens, applicable non-foreign status and state residency certificates and applicable IRS 1099 certificates.

8. **EXPENSES; PRORATIONS; ROLLBACK TAXES:**

(a) Each party shall bear its own expenses in connection with this Contract, except as specifically provided otherwise herein. Seller agrees to pay the expense of preparing the deed and the recordation tax applicable to grantors; all expenses incurred by Purchaser in connection with the purchase, including without limitation title examination, insurance premiums, survey costs, recording costs and the fees of Purchaser's attorney, shall be borne by Purchaser. All taxes, assessments, interest, rent escrow deposits, and other ownership fees, if any, shall be prorated as of the date of settlement.

DS SMT DS VCT DS JHV

(b) Rollback taxes shall be paid as follows: N/A

- 9. **BROKERAGE FEE; SETTLEMENT STATEMENTS:** Seller and Purchaser authorize and direct the settlement agent to disburse to Listing Company and/or Selling Company from the settlement proceeds their respective portions of the brokerage fee payable as a result of this sale and closing under the Contract. Each of Listing Company and/or Selling Company shall deliver to the settlement agent, prior to settlement, a signed written statement setting forth the fee to which such company is entitled and stating how such fee and any additional sales incentives are to be disbursed. Seller and Purchaser authorize and direct the settlement agent to provide to each of Seller, Purchaser, Listing Company and Selling Company a copy of the unified settlement statement for the transaction.
- 10. **BROKER INDEMNIFICATION:** Seller and Purchaser agree to hold harmless Listing Company, Selling Company, the officers, directors and employees, or any real estate broker or salesperson employed by or affiliated with the Listing Company or Selling Company for any delay, or expense caused by such delay, in settlement due to regulatory or legal requirements.
- 11. **STUDY PERIOD:** Purchaser shall have N/A days from the date this Contract is executed by both Purchaser and Seller to determine, through engineering and feasibility studies, whether Purchaser's plan of development of the Property is practical. Purchaser shall contract for such studies within ten (10) days from the date of execution, and deliver to Seller and Listing Company copies of the letter(s) ordering the studies, said letter(s) stipulating that true copies of all studies are to be sent to Seller or Listing Company, simultaneously with delivery to Purchaser. If within such study period Purchaser notifies Seller or Listing Company, in writing, that Purchaser's plan, in Purchaser's sole judgment, is not practical, Purchaser may terminate this Contract and receive a refund of the Deposit and the parties shall have no further liability or obligations hereunder, except as set forth herein. Time shall be of the essence of this provision.
- 12. **SOIL STUDY:** This Contract is contingent for N/A days from date of execution of this Contract by both Purchaser and Seller to allow _____ at its expense to obtain a soil study and/or percolation test, which shall lawfully allow for the erection and use of _____ on the Property. Such study or test shall be pursued diligently and in good faith and if such study or test reveals that Purchaser's intended use of the Property is not permissible or practicable, Purchaser shall have the right, upon written notice to Seller, to terminate this Contract, in which event the Deposit shall be returned to Purchaser and the parties shall have no further liability or obligations hereunder, except as set forth herein.
- 13. **ACCESS:** Purchaser and Purchaser's agents and engineers shall have the right to enter onto the Property at all reasonable times prior to settlement for purposes of engineering, surveying, title or such other work as is permitted under this Contract, so long as such studies do not result in a permanent change in the character or topography of the Property. Purchaser shall not interfere with Seller's use of the Property, and Purchaser, at Purchaser's expense, shall promptly restore the Property to its prior condition upon completion of Purchaser's studies or work. Purchaser to keep the Property free and clear from all liens resulting from its work, studies, investigations or other activities performed pursuant to this Contract and shall indemnify and hold Seller harmless against any loss or liability to person or property resulting from Purchaser's presence or activities on the Property. This obligation shall service settlement and transfer of title and possession to the Property.
- 14. **RISK OF LOSS:** All risk of loss or damage to the Property by fire, windstorm, casualty, or other cause is assumed by Seller until settlement. In the event of substantial loss or damage to the Property before settlement, Purchaser shall have the option of either (i) terminating this Contract and recovering the Deposit, or (ii) affirming this Contract, in which event Seller shall assign to Purchaser all of Seller's rights under any policy of policies of insurance applicable to the Property.
- 15. **TITLE:** At settlement Seller shall convey the Property to Purchaser by general warranty deed containing English covenants of title (except that conveyance from a personal representative of an estate or from a trustee or institutional lender shall be by special warranty deed), free of all encumbrances, tenancies, and liens (for taxes and otherwise), but subject to such restrictive covenants and utility easements of record which do not materially and adversely affect the use of the Property for Purchaser's intended purposes or render the title unmarketable. If the Property does not abut a public road, title to the Property must include a recorded easement providing adequate access thereto. In the event this sale is subject to a financing contingency under paragraph 2(a) or 2(b), the access to a public road must be acceptable to each lender. If the examination reveals a title defect of a character that can be remedied by legal action or otherwise within a reasonable time, then Seller, at Seller's expense, shall promptly take such action as is necessary to cure such defect. If the defect is not cured within 60 days after Seller receives notice of the defect, then Purchaser shall have the right to (i) terminate this Contract, in which event the Deposit shall be returned to Purchaser, and Purchaser and Seller shall have no further obligations hereunder, or (ii) waive the defect and proceed to settlement with no adjustment to the Purchase Price. If Seller has agreed to cure such defect, the parties agree that the settlement date prescribed in paragraph 7 shall be extended as necessary to enable Seller to cure such title defect, but not for more than 60 days unless agreed by the parties.
- 16. **PROPERTY OWNERS' ASSOCIATION DISCLOSURE:** The Seller represents that the Property [select one]: is OR is not located within a development which is subject to the Virginia Property Owners' Association Act (Sections 55.1-1800

et. seq. of the Code of Virginia) (the "Act"). If the Property is within such a development, the Act requires the Seller to obtain from the property owners' association an association disclosure packet and provide it to the Purchaser, or Purchaser's authorized agent. The information contained in the association disclosure packet shall be current as of the specified date on the disclosure packet. The Purchaser may cancel this Contract (a) within 3 days after the date of this Contract, if on or before the date that the Purchaser signs this Contract, the Purchaser receives the association disclosure packet or is notified that the association disclosure packet is not available; (b) within 3 days after receiving the association disclosure packet, if the association disclosure packet is available or notice that the association disclosure packet will not be available is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United Parcel Service and a receipt obtained; or (c) within 6 days after the postmark date if the association disclosure packet or notice that the association disclosure packet will not be available is sent to the Purchaser by United States mail. The Purchaser may also cancel this Contract at any time prior to settlement if the Purchaser has not been notified that the association disclosure packet will not be available and the association disclosure packet is not delivered to the Purchaser. Notice of cancellation shall be provided to the Seller (owner) or his agent by one of the following methods: (i) hand delivery; (ii) United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing; (iii) electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or (iv) overnight delivery using a commercial service or the United States Postal Service. In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the Seller shall cause any deposit to be returned promptly to the Purchaser, but not later than thirty days from the date of cancellation. Seller shall provide written instructions to the Association for delivery of the disclosure packet to Purchaser or Purchaser's authorized agent. The right to receive the association disclosure packet and to cancel this Contract terminates at settlement. If the Purchaser has received the association disclosure packet, the Purchaser has a right, at Purchaser's sole expense, to request an update of such disclosure packet from the property owners' association. A request for an updated disclosure packet does not extend the cancellation periods set forth above.

17. **CONDOMINIUM DISCLOSURE:** The Seller represents that the Property [select one]: is OR is not a condominium resale, which is subject to the Virginia Condominium Act (Section 55.1-1900 et seq. of the Code of Virginia) (the "Condominium Act"). If the Property is a condominium resale, the Condominium Act requires the Seller to obtain from the unit owners' association a resale certificate and provide it to the Purchaser or Purchaser's authorized agent. The information contained in the resale certificate shall be current as of the specified date on the resale certificate. The Purchaser may cancel this Contract (a) within 3 days after the date of this Contract, if on or before the date that the Purchaser signs this Contract, the Purchaser receives the resale certificate; (b) within 3 days after receiving the resale certificate if the resale certificate is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United Parcel Service and a receipt obtained; or (c) within 6 days after the postmark date if the resale certificate is sent to the Purchaser by United States mail. Notice of cancellation shall be provided to the Seller (owner) or his agent by one of the following methods: (i) hand delivery; (ii) United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing; (iii) electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or (iv) overnight delivery using a commercial service or the United States Postal Service. In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the Seller shall cause any deposit to be returned promptly to the Purchaser, but not later than thirty days from the date of cancellation. Seller shall provide written instructions to the Association for the delivery of the resale certificate to Purchaser or Purchaser's authorized agent. The right to receive the resale certificate and to cancel this Contract terminates at settlement. If the Purchaser has received the resale certificate, the Purchaser has a right, at Purchaser's sole expense, to request from the unit owners' association a resale certificate update or financial update. A request for an updated resale certificate does not extend the cancellation periods set forth above.
18. **NOTICE TO PURCHASER REGARDING SETTLEMENT AGENT AND SETTLEMENT SERVICES:** Choice of Settlement Agent: Chapter 10 (§55.1-1000 et seq.) of Title 55.1 of the Code of Virginia provides that in loans made by lenders and secured by first deeds of trust or mortgages on real estate containing not more than four residential dwelling units, the purchaser or borrower has the right to select the settlement agent to handle the closing of this transaction. The settlement agent's role in closing this transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, the lender for the purchaser will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party. Variation by agreement: The provisions of Chapter 10 (§55.1-1000 et seq.) of Title 55.1 of the Code of Virginia may not be varied by agreement, and rights conferred by this chapter may not be waived. The seller may not require the use of a particular settlement agent as a condition of the sale of the property. Escrow, closing, and settlement service guidelines: The Virginia State Bar issues guidelines to help settlement agents avoid and

prevent the unauthorized practice of law in connection with furnishing escrow, settlement or closing services. As a party to a real estate transaction, the purchaser or borrower is entitled to receive a copy of these guidelines from his settlement agent, upon request, in accordance with the provisions of Chapter 10 (§55.1-1000 et seq.) of Title 55.1 of the Code of Virginia.

To facilitate the settlement agent's preparation of various closing documents, including any HUD-1 or Closing Disclosure, Purchaser hereby authorizes the settlement agent to send such Closing Disclosure to Purchaser by electronic means and agrees to provide the settlement agent Purchaser's electronic mail address for that purpose only.

19. **MECHANICS LIEN NOTICE:**

(a) Virginia law (§ 43-1 et seq.) permits persons who have performed labor or furnished material for the construction, removal, repair or improvement of any building or structure to file a lien against the Property. This lien may be filed at any time after the work is commenced or the material is furnished, but not later than the earlier of (i) 90 days from the last day of the month in which the lien or last performed work or furnished materials or (ii) 90 days from the time the construction, removal, or improvement is terminated. **AN EFFECTIVE LIEN FOR WORK PERFORMED PRIOR TO THE DATE OF SETTLEMENT MAY BE FILED AFTER SETTLEMENT, LEGAL COUNSEL SHOULD BE CONSULTED.**

(b) Seller shall deliver to Purchaser at settlement an affidavit, on a form acceptable to Purchaser's lender, if applicable, signed by Seller that no labor or materials have been furnished to the Property within the statutory period for the filing of mechanics' or materialmens' liens against the Property. If labor or materials have been furnished during the statutory period, Seller shall deliver to Purchaser an affidavit signed by Seller and the person(s) furnishing the labor or materials that the costs thereof have been paid.

20. **NON-BINDING MEDIATION:** In an effort to avoid the expense and delay of litigation, the parties agree to submit any disputes or claims arising out of this Contract, including those involving the Listing Company or the Selling Company, to mediation prior to instituting litigation. Such mediation will be *non-binding*, that is, no party will be obligated to enter into any settlement arising out of mediation unless that settlement is satisfactory to that party. Any settlement the parties enter into will be binding, but if the parties are not able to reach agreement on a settlement, they may resort to arbitration or litigation as if the mediation had never taken place. The mediation will be performed by a mutually-agreeable mediator or mediation service in the area. This agreement to mediate does not apply to foreclosure, unlawful detainer (eviction), mechanics lien, probate, or license law actions. Judicial actions to provide provisional remedies (such as injunctions and filings to enable public notice of pending disputes) are not violations of the obligation to mediate and do not waive the right to mediate.

21. **NOTICE TO PURCHASER(S):** Purchaser should exercise whatever due diligence Purchaser deems necessary with respect to information on sexual offenders registered under Chapter 23 (Section 19.2-987 et seq.) of Title 19.2. Such information may be obtained by contacting your local police department or the Department of State Police, Central Records Exchange at (804) 674-2000 or <http://sex-offender.vsp.virginia.gov/sor/>.

22. **DEFAULT:** If Seller or Purchaser defaults under this Contract, the defaulting party, in addition to all other remedies available at law or in equity, shall be liable for the brokerage fee referenced in paragraph 9 hereof as if this Contract had been performed and for any damages and all expenses incurred by non-defaulting party, Listing Company and Selling Company in connection with this transaction and the enforcement of this Contract, including, without limitation attorneys' fees and costs, if any. Payment of a real estate broker's fee as the result of a transaction relating to the Property which occurs subsequent to a default under this Contract shall not relieve the defaulting party of liability for the fee of Listing Company in this transaction and for any damages and expenses incurred by the non-defaulting party, Listing Company and Selling Company in connection with this transaction. In any action brought by Seller, Purchaser, Listing Company or Selling Company under this Contract or growing out of the transactions contemplated herein, the prevailing party in such action shall be entitled to receive from the non-prevailing party or parties, jointly and severally, in addition to any other damages or awards, reasonable attorneys' fees and costs expended or incurred in prosecuting or defending such action.

23. **OTHER TERMS:** (Use this space for additional terms not covered elsewhere in this Contract.) _____

24. **BROKERS; LICENSEE STATUS:**

(a) Listing Company and Selling Company may from time to time engage in general insurance, title insurance, mortgage loan, real estate settlement, home warranty and other real estate-related businesses and services, from which they may receive compensation during the course of this transaction, in addition to real estate brokerage fees. The parties acknowledge that Listing Company and Selling Company are retained for their real estate brokerage expertise, and neither has been retained as an attorney, tax advisor, appraiser, title advisor, home inspector, engineer, surveyor, or other professional service provider.



(b) Disclosure of Real Estate Board/Commission licensee status, if any is required in this transaction: None

25. **MISCELLANEOUS:** This Contract may be signed in one or more counter parts, each of which shall be deemed to be an original and all of which together shall constitute one and the same document. Documents delivered by facsimile machine shall be considered as originals. Unless otherwise specified herein, "days" mean calendar days. For the purpose of computing time periods, the first day shall be the day following the date this Contract is fully ratified. This Contract represents the entire agreement between Seller and Purchaser and may not be modified or changed except by written instrument executed by the parties. This Contract shall be construed, interpreted and applied according to the laws of the state in which the Property is located and shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties. To the extent any handwritten or typewritten terms herein conflict with or are inconsistent with the printed terms hereof, the handwritten and typewritten terms shall control. Whenever the context shall so require, the masculine shall include the feminine and singular shall include the plural. Unless otherwise provided herein, the representations and warranties made by Seller herein and all other provisions of this Contract shall be deemed merged into the deed delivered at settlement and shall not survive settlement.

26. **WIRE FRAUD ALERT.** Criminals are hacking email accounts of real estate agents, title companies, settlement attorneys, and others, resulting in fraudulent wire instructions being used to divert funds to the account of the criminal. Owner is advised to not wire any funds without personally speaking with the intended recipient of the wire to confirm the routing number and the account number. Owner should not send personal information such as Social Security numbers, bank account numbers, and credit card numbers except through secured email or personal delivery to the intended recipient.

27. **ELECTRONIC SIGNATURES.** ^{DS} JHV ^{DS} /SJM ^{DS} VJC If this paragraph is initialed by both parties, then in accordance with the Uniform Electronic Transactions Act (UETA) and the Electronic Signatures in Global and National Commerce Act, or E-Sign, regarding electronic signatures and transactions, the parties do hereby expressly authorize and agree to the use of electronic signatures as an additional method of signing and/or initialing this Agreement. The parties hereby agree that either party may sign electronically by utilizing an electronic signature service.

28. **ACCEPTANCE:** This Contract, when signed by Purchaser, shall be deemed an offer to enter into a bilateral contract. If not accepted by Seller by _____ (time), _____, _____, it shall become null and void.

WITNESS the following duly authorized signatures: (SEPARATE ALL COPIES BEFORE SIGNING BELOW)

PURCHASER:

_____/_____
DATE PURCHASER

1/17/2020 /
DATE PURCHASER ^{DocuSigned by:}
Rivanna Trails Foundation
BY: J. H. Verkerke, President

_____/_____
DATE PURCHASER

_____/_____
DATE PURCHASER

SELLER:

1/17/2020 /
DATE SELLER ^{DocuSigned by:}
Stanislaw J. Makielski, Trustee

1/17/2020 /
DATE SELLER ^{DocuSigned by:}
Stanislaw J. Makielski, Trustee
Valerie Jean Conner, Trustee

_____/_____
DATE SELLER
of the Stanislaw J. Makielski and

_____/_____
DATE SELLER
Valerie Jean Conner Family Trust

Receipt of deposit per paragraph 3 above is hereby acknowledged.
_____/_____

For information purposes only:

Selling Company's Name and Address:

Jos. T. Samuels Inc.
 707 E Jefferson Street
 Charlottesville, Va 22902
 Office Phone: (434)981-3322 Fax: (540)301-5533
 MLS Broker Code: _____ Office ID No. _____
 Agent Name: **Joseph T. Samuels, Jr.**
 Agent ID. No.: _____
 Agent E-mail address: **joe@jtsamuels.com**

Listing Company's Name and Address:

Jos. T. Samuels Inc.
 707 E Jefferson ST
 Charlottesville, Va 22902
 Office Phone: (434)981-3322 Fax: (540)301-5533
 MLS Broker Code: _____ Office ID No. _____
 Agent Name: **Joseph T. Samuels, Jr.**
 Agent ID. No.: _____
 Agent E-mail address: _____

This Contract has been executed by Purchaser and Seller as of _____,
 Listing Firm **Jos. T. Samuels Inc.**; Selling Firm **Jos. T. Samuels Inc.**

^{DS} SMT ^{DS} VJCT ^{DS} JHV

COPYRIGHT©2019 by the VIRGINIA REALTORS®. All rights reserved. This form may be used only by members in good standing with the VIRGINIA REALTORS®. The reproduction of this form, in whole or in part, or the use of the name "VIRGINIA REALTORS®", in connection with any other form, is prohibited without prior written consent from the VIRGINIA REALTORS®.



VIRGINIA REALTORS®
ADDENDUM TO Contract of Purchase



This ADDENDUM which is attached to and made a part of the Contract of Purchase
(the "Agreement") dated January 16, 2020, between Stanislaw J. Makielski, Trustee, Valerie Jean Conner, Trustee, of the Stanislaw J. Makielski and , Valerie Jean Conner Family Trust
("Seller") and Rivanna Trails Foundation, BY: J. H. Verkerke, President
("Purchaser") for the Property, whose address is: TBD Reservoir Road, Charlottesville, VA 22901

This Addendum provides as follows:

1. This Contract may be assigned to the City of Charlottesville or Piedmont Environmental Council.
2. Until July 1, 2020 this Contract is contingent upon:
 - (a) approval and/or commitment by the City of Charlottesville to take title to the Property.
 - (b) Purchaser raising sufficient funds to complete the purchase. Purchaser agrees to make a diligent and good faith effort to raise such funds.

The contingencies in Para. 2 above automatically expire on July 1, 2020 at which time Purchaser is not obligated to complete the purchase and the Parties hereto agree to execute a Virginia Association of Realtors Release of Contract Amendment wherein the Earnest Money Deposit is returned to Purchaser. Purchaser may remove the Contingencies by delivering Notice to Seller's broker Joseph T. Samuels, Jr., at joe@jtsamuels.com. Upon receipt of such Notice Seller and Purchaser shall proceed to Settlement within thirty (30) days under the terms and conditions provided for in the body of this Contract.

PURCHASER:

DATE / SIGNATURE
 1/17/2020 / Rivanna Trails Foundation
DocuSigned by:
J. H. Verkerke, President
 DATE / SIGNATURE
 BY: J. H. Verkerke, President

DATE / SIGNATURE

DATE / SIGNATURE

SELLER:

1/17/2020 / Stanislaw J. Makielski, Trustee
DocuSigned by:
 DATE / SIGNATURE
 1/17/2020 / Stanislaw J. Makielski, Trustee
DocuSigned by:
Valerie Jean Conner, Trustee
 DATE / SIGNATURE
 of the Stanislaw J. Makielski and
 Valerie Jean Conner Family Trust

COPYRIGHT© 2017 by Virginia REALTORS®. All rights reserved. This form may be used only by members in good standing with Virginia REALTORS®. The reproduction of this form, in whole or in part, or the use of the name "Virginia REALTORS®", in connection with any other form, is prohibited without prior consent from Virginia REALTORS®.



**DISCLOSURE OF BROKERAGE RELATIONSHIP
EXPLANATION TO CONSUMERS**



Real estate licensees in Virginia are required by law to make prompt written disclosure of any brokerage relationship to members of the public who are unrepresented. Licensees must also make written disclosures and obtain timely written consents from their clients before entering into other brokerage relationships. The attached form is provided to you to satisfy these requirements and to help you understand the nature of the brokerage relationship of the licensee.

THE LICENSEE'S DUTIES

A licensee must have a written brokerage agreement to represent a client and a licensee owes his client certain duties. A licensee who is not representing you in a transaction can nonetheless provide you other valuable information and assistance. However, you should always keep in mind whom the licensee represents in your transaction, and thus to whom that licensee owes the duties described below.

WHOM DOES THE LICENSEE REPRESENT?

In any real estate transaction, a licensee may represent the seller, the buyer, or, under certain circumstances, both seller and buyer.

The Seller	A licensee represents a seller via a written brokerage agreement called a listing agreement, in which case the licensee owes his primary responsibilities to the seller. The licensee must disclose his relationship with the seller whenever dealing with an unrepresented buyer. The licensee is also allowed to assist an unrepresented buyer with ministerial duties - such as filling in the blanks of a contract and holding the escrow deposit.
The Buyer	If a buyer desires to be represented by a licensee, then the buyer and the licensee must enter into a written brokerage agreement by which the licensee agrees to represent the interests of the buyer. The licensee must disclose his relationship with the buyer whenever dealing with an unrepresented seller. Furthermore, the licensee may perform ministerial duties for an unrepresented seller - such as delivering offers and counteroffers.
The Buyer and The Seller	A licensee and his firm may represent both the buyer and the seller in a particular transaction, but only with the informed written consent of both the buyer and the seller. A licensee representing both the buyer and seller in a dual capacity is necessarily limited in his ability to represent either the buyer or seller fully and exclusively. The licensee must safeguard the confidentiality of any information obtained within the confidentiality and trust of the brokerage relationship, unless disclosure of such information is required by law. Specifically, the licensee must not tell the buyer that the seller will accept a price lower than the listing price, nor tell the seller that the buyer will pay a price higher than the price offered.
Designated Licensees	Virginia law also permits a principal or supervising broker to designate different licensees affiliated with the broker to represent different clients in the same transaction. Designated agency/representation requires informed written consent from both parties. Unlike the dual relationship discussed in the previous paragraph, these designated licensees represent only the interest of their respective clients, and may therefore represent those interests fully. The principal or supervising broker who is supervising the transaction will be considered dual broker of both seller and buyer. Designated licensees may not disclose, except to their broker, personal or financial information received from the clients during the brokerage relationship and any other information a client requests to be kept confidential, unless required by law to be disclosed or the client consents to its disclosure in writing.

COPYRIGHT©2016 by the VIRGINIA ASSOCIATION OF REALTORS®. All rights reserved. This form may be used only by members in good standing with the VIRGINIA ASSOCIATION OF REALTORS®. The reproduction of this form, in whole or in part, or the use of the name "VIRGINIA ASSOCIATION OF REALTORS®", in connection with any other form, is prohibited without prior written consent from the VIRGINIA ASSOCIATION OF REALTORS®.

DS DS DS
SJMt VJCT JHV



VIRGINIA ASSOCIATION OF REALTORS®
DISCLOSURE OF DESIGNATED AGENCY OR REPRESENTATION*
IN A RESIDENTIAL REAL ESTATE TRANSACTION

Property Address (if applicable): TBD Reservoir Road
Charlottesville, VA 22901

The undersigned do hereby acknowledge disclosure that Jos. T. Samuels, Inc.
(Brokerage Firm) represents more than one party in this residential real estate transaction:

- [X] Seller(s) and Buyer(s)
[] Landlord(s) and Tenant(s)

The undersigned understand that the foregoing dual agent or representative (Broker) may not disclose to either client or such client's designated agent or representative any information that has been given to the dual agent or representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed.

The principal or supervising broker has assigned [] Seller OR [] Landlord
as a (select one below):

- [] Standard Agent OR [] Limited Service Agent OR [] Independent Contractor

The principal or supervising broker has assigned [] Buyer OR [] Tenant
as a (select one below):

- [] Standard Agent OR [] Limited Service Agent OR [] Independent Contractor

The undersigned by signing this notice do hereby acknowledge their consent to the disclosed designated representation by the licensee.

SELLER/LANDLORD BUYER/TENANT
1/17/2020 Stanislaw J. Makielski, Trustee Rivanna Trails Foundation
Date Signature Date Signature

SELLER/LANDLORD BUYER/TENANT
1/17/2020 Valerie Jean Conner, Trustee J. H. Verkerke, President
Date Signature Date Signature
BY: J. H. Verkerke, President

*"Designated Agency" means representing a client as a standard agent or as a limited service agent. "Designated Representation" means representing a client as an independent contractor.

Copyright © 2016 by the Virginia Association of REALTORS®. All rights reserved. This form may be used only by members in good standing with the Virginia Association of REALTORS®. The reproduction of this form, in whole or in part, or the use of the name "Virginia Association of REALTORS®", in connection with any other form, is prohibited without the prior consent from the Virginia Association of REALTORS®.

VAR Form 103 Revised 07/16
Reviewed 07/16

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	November 2, 2020
Action Requested:	Appropriation
Presenter:	Kaki Dimock, Director, Department of Human Services
Staff Contacts:	Shayla Givens, Department of Human Services Kaki Dimock, Director, Department of Human Services
Title:	Runaway Emergency Shelter Program Grant - \$209,444

Background:

In FY2020 the Human Services Department, in partnership with ReadyKids, applied for and received a 3 year grant from the Department of Health and Human Services Administration for Children and Families in the amount of \$200,000 in federal funds and \$22,222 in local matching funds. In FY2021, the first year of the grant, the local match will be met with a transfer of \$9,444 from the Human Services Department for a total appropriation of \$209,444. An in-kind match of \$12,778 from ReadyKids, to provide Runaway Emergency Shelter Program (R.E.S.P.) services, will be applied to the grant as well.

Discussion:

The funds support services that provide emergency shelter, counseling and after care services for youth in crisis for the purpose of keeping them safe and off the streets, with a goal of reunification with family. Funded services will include: emergency shelter available 24 hours per day, 7days a week; individual and family counseling to help resolve conflict and develop new communication skills to facilitate reunification with the family; and additional support services that help youth build meaningful connections with their community and encourage positive youth development. This collaborative initiative anticipates serving 36 youth through the shelter program, 360 youth through the counseling program, and 525 youth through the hotline over the course of the three year grant period.

Alignment with City Council's Vision and Strategic Plan:

The Runaway Emergency Services Program grant aligns with the City of Charlottesville's Strategic Plan – Goal 2: A Healthy and Safe City; Objective 2.3: Improve community health and safety outcomes by connecting residents with effective resources.

Community Engagement:

In order to increase prevention services, R.E.S.P. staff conduct extensive outreach efforts, particularly in area schools reaching out to youth through a variety of activities including presentations to health classes and at tables during lunch.

Budgetary Impact:

There is no impact to the General Fund. The grant will be appropriated and expensed from the grants fund. There is a local match of \$22,222, that the Human Service's Department will provide in cash (\$9,444) and that ReadyKids will provide as an in-kind match (\$12,778). The cash match of \$9,444 will come from funding that was previously appropriated as part of the FY21 Human Services budget.

Recommendation:

Staff recommends approval and appropriation of funds.

Alternatives:

If the funds are not appropriated, the grant would not be received and the Runaway Emergency Shelter Program services would not be provided.

Attachments:

Appropriation

APPROPRIATION
Runaway Emergency Shelter Program
\$209,444

WHEREAS, the City of Charlottesville has been awarded \$200,000 from the Department of Health and Human Services Administration for Children and Families with cash match of \$9,444 provided by the Human Services Fund and in-kind match of \$12,778 provided by ReadyKids;

WHEREAS, the funds will be used to operate the Runaway Emergency Shelter Program through a partnership between the Human Services Department and ReadyKids. The grant award covers the period from September 30, 2020 through September 29, 2021;

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$209,444 is hereby appropriated in the following manner:

Revenue – \$209,444

\$200,000	Fund: 211	Internal Order: 1900391	G/L Account: 431110
\$ 9,444	Fund: 211	Internal Order: 1900391	G/L Account: 498010

Expenditures - \$209,444

\$ 69,948	Fund: 211	Internal Order: 1900391	G/L Account: 519999
\$125,000	Fund: 211	Internal Order: 1900391	G/L Account: 530010
\$ 14,496	Fund: 211	Internal Order: 1900391	G/L Account: 599999

Transfer - \$9,444

\$ 9,444	Fund: 213	Cost Center: 3413003000	G/L Account: 561211
----------	-----------	-------------------------	---------------------

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$200,000 from the Department of Health and Human Services Administration for Children and Families.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	November 2, 2020
Action Required:	Appropriation
Presenter:	Maribel Street, Emergency Management Coordinator
Staff Contacts:	Symia Tabron, Accountant
Title:	Local Emergency Management Performance Grant (L.E.M.P.G.) - \$7,500

Background:

The Virginia Department of Emergency Management has allocated \$7,500 in 2019 Emergency Management Performance Management Grant (L.E.M.P.G.) funding from the Federal Emergency Management Agency to the City of Charlottesville. The locality share is \$7,500, for a total project of \$15,000.

Discussion:

The City of Charlottesville is the grant administrator for this grant, which will be passed to the Office of Emergency Management at the Charlottesville-U.V.A.-Albemarle County Emergency Communications Center. The grant award period is July 1, 2019 to June 30, 2020. The objective of the L.E.M.P.G. is to support local efforts to develop and maintain a Comprehensive Emergency Management Program. The 2019 L.E.M.P.G. funds will be used by the Office of Emergency Management to enhance local capabilities in the areas of planning, training and exercises, and capabilities building for emergency personnel and the whole community.

Alignment with City Council's Vision and Strategic Plan:

This emergency management program supports City Council's America's Healthiest City vision, specifically, "Our emergency response system is among the nation's best," as well as Goal 2 of the Strategic Plan, specifically sub-elements 2.1 (Provide an effective and equitable public safety system) and 2.4 (Ensure families and individuals are safe and stable). Maintaining our response and recovery capability is an on-going process that requires regular planning discussions and well as training and exercising with community response partners. Citizen preparedness, including awareness of local hazards and actions they can take to survive and recover from an emergency is a critical part of the local response system.

Community Engagement:

The L.E.M.P.G. engages the community through public outreach efforts led by the Office of Emergency Management. Increasing citizen awareness of hazards and promoting steps individuals can take to prepare for, respond to, and recover from emergency situations is a critical priority for the Office of Emergency Management. Community outreach efforts include presenting on preparedness to community groups and designing and implementing targeted messaging through various media. This funding allows the Assistant Emergency Manager to dedicate additional time in support of this mission.

Budgetary Impact:

This has no impact on the General Fund. The funds will be expended and reimbursed to a Grants fund. The locality match of \$7,500 will be covered with an in-kind match from the Office of Emergency Management budget.

Recommendation:

Staff recommends approval and appropriation of grant funds.

Alternatives:

If grants funds are not appropriated, the Office of Emergency Management will not be able to completely fund the full-time salary for the Assistant Emergency Management Coordinator. A reduction in time for this position will negatively impact the quantity and quality of public outreach on emergency preparedness to community members.

Attachments:

Appropriation

APPROPRIATION
2019 Local Emergency Management Performance Grant (LEMPG)
\$7,500

WHEREAS, the City of Charlottesville has received funds from the Virginia Department of Emergency Management in the amount of \$7,500 in federal pass through funds and \$7,500 in local in-kind match, provided by the Charlottesville-UVA-Albemarle Emergency Communications Center Office of Emergency Management; and

WHEREAS, the funds will be used to support programs provided by the Office of Emergency Management; and

WHEREAS, the grant award covers the period from July 1, 2019 through June 30, 2020;

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$7,500 is hereby appropriated in the following manner:

Revenue – \$7,500

\$7,500 Fund: 209 I/O: 1900380 G/L: 430120 State/Fed pass thru

Expenditures - \$7,500

\$7,500 Fund: 209 I/O: 1900380 G/L: 510010 Salaries

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$7,500 from the Virginia Department of Emergency Management, and the matching in-kind funds from the Charlottesville-UVA-Albemarle Emergency Communications Center Office of Emergency Management.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	November 2, 2020
Action Required:	Consideration of a Zoning Text Amendment
Presenter:	Missy Creasy, Assistant Director, NDS
Staff Contacts:	Read Brodhead, Zoning Administrator, NDS Craig A. Fabio, Asst. Zoning Administrator, NDS Lisa Robertson, Acting City Attorney
Title:	<u>ZT20-10-02</u> – Family Day Home

Background:

At the July 2020 Planning Commission meeting, the following Zoning Text Amendment request was initiated:

A Zoning Text Initiation to make family day homes for up to 12 children by right uses in all zoning districts and exempt them from off street parking requirements, and to also ask staff to develop standard drop off and pick up code to ensure safety given this change. In addition, make all efforts to administratively speed up childcare applications.

Staff took two different routes for review of this item including state and local actions. Ms. Robertson contacted the City Council’s legislative subcommittee about this matter and worked to develop more specific recommendations for Delegate Hudson and Senator Deeds, as to which of the state regulations the City contemplates might be most easily [and safely] relaxed during COVID. Legislative items must come from Council directly. In addition, Ms. Robertson put together an informational/ background memo for the PC and council subcommittee on this issue which was sent on July 22, 2020. The request for changes required at the state level has been submitted and feedback is forthcoming.

In addition to state level consideration, staff reviewed the city code provisions and state code updates and drafted language for consideration that would bring our local ordinance up to date and provide for additional allowances for larger family day homes. Please note that any state

code requirement currently in place is allowable regardless of the outdated language we have in the current city code. Staff provided draft ordinance language for discussion at the September 9, 2020 Planning Commission meeting and held a joint public hearing on October 13, 2020 on the request as updated from September discussion. The Planning Commission recommended approval on October 13, 2020.

Proposed Zoning Text Changes

Revise **§34-420, 34-480, and 34-796 Use Matrixes** as follows:

- Amend to allow Family day home (1-4 children) as a by-right use in all zoning districts which allow residential use.
- Amend to allow Family day home (5-12 children) as a provisional use in all districts which allow for residential use.

Revise **§34 Article IX. Generally Applicable Regulations, Division 9. Standards for Provisional Use** as follows:

- Provide regulations for family day home (5-12 children) by provisional use.

Revise **§34-1200. Definitions.** as follows:

- Amend the definition for “Family day home” to confirm a lawfully established residential use prior to implementing a family day home.
- Amend the definition for “Occupancy, residential” to clarify that the family day home (1-4 children) use is considered residential occupancy.

Discussion:

Overview of Staff Analysis

Staff recommended approval of the proposed zoning text amendment.

- Staff reviewed the city code provisions and state code updates and drafted language for consideration that would bring our local ordinance up to date and provide for additional allowances for larger family day homes. Please note that any state code requirement currently in place is allowable regardless of the outdated language we have in the current city code. This would also broaden the locations where this use can be considered. In

addition, larger family day homes must currently go through a special use permit process which is long and costly and a provisional use permit process would streamline that yet provide for similar oversight and public engagement requirements.

- The 2013 Comprehensive Plan provides provisions for updating regulations to support uses that provide for economic vitality.
- Staff believes the proposed regulations are in line with the goals of the 2013 Comprehensive Plan.

Planning Commission

At the September 9th Work session, the Planning Commission discussion focused on hours of operation for the provisional use permit and providing as much flexibility as possible.

At the public hearing on October 13, 2020, Commissioners asked for background on the hours of operation proposal. Staff noted that the proposal was in line with providing flexibility and noted that if conditions in the future change that it could be reviewed at that time. There was also a question concerning provisional use verses by right in some districts for Family Day Home (5-12 children) and it was noted that with the change in number of children requirements due to updates in state legislation that this was an ideal opportunity to streamline the requirements.

Alignment with City Council's Vision Areas and Strategic Plan:

The proposed zoning text amendment aligns with the City Council Vision of **Economic Sustainability**, as it will provide for additional options for in home entrepreneurship.

The proposed changes align with **Strategic Plan, Goal 1.4 and Goal 4.3** as it can increase opportunities for new family day homes as well as opportunities to expand existing family day home opportunities.

Community Engagement:

No public comment was provided at the public hearing.

Budgetary Impact:

No budgetary impact.

Recommendation:

The Commission took the following action:

Commissioner Solla-Yates moved to recommend approval of this zoning text amendment to the text of Chapter 34 (Zoning Ordinance) of the City of Charlottesville, 1990, as amended, to provide updates to family day home uses to include Section 34-420, 34-480, and 34-796 Use Matrixes to allow family day home (1-4 children) as a by-right use in all zoning districts which allow residential use, to allow family day home (5-12 children) as a provisional use in all districts which allow for residential use, to update Section 34-1200: Definitions under “Family day home” to confirm a lawfully established residential use prior to implementing a family day home and under “Occupancy, residential” to clarify that the family day home (1-4 children) use is considered residential occupancy, and to add a Section to Article IX. Generally Applicable Regulations, Division 9. Standards for Provisional Use to provide regulations for family day home (5-12 children) by provisional use on the basis that the changes would serve the interests of public necessity, convenience, general public welfare and good zoning practice. Seconded by **Commissioner Dowell**. *Motion is Approved 7-0.*

Alternatives:

City Council has several alternatives:

- (1) by motion, take action to approve the attached ordinance (granting the ZTA);
- (2) by motion, request changes to the attached ordinance, and then approve the ZTA in accordance with the amended ordinance;
- (3) by motion, deny the requested ZTA (as recommended by the Planning Commission).

Attachment:

- (1) Proposed Ordinance Approving a Zoning Text Amendment
- (2) Planning Commission Staff Report with Attachments, October 13, 2020
(<https://www.charlottesville.gov/1077/Agendas-Minutes> Page 4)

ORDINANCE
AMENDING AND RE-ENACTING THE CODE OF THE CITY OF
CHARLOTTESVILLE, CHAPTER 34 (ZONING) TO ESTABLISH UPDATED
REGULATIONS FOR FAMILY DAY HOMES

WHEREAS, the Planning Commission initiated a zoning text amendment proposing amendments to the City’s zoning ordinance, provisions regulating family day homes (“Proposed Zoning Text Amendment”); and

WHEREAS, a joint public hearing on the Proposed Zoning Text Amendment was held by the Planning Commission and City Council on October 13, 2020, after notice to the public as required by law, and, following conclusion of the public hearing, the Planning Commission voted to recommend approval of the Proposed Zoning Text Amendment for the public necessity, convenience, general welfare or good zoning practice; and

WHEREAS, after consideration of the Planning Commission’s recommendation, the City staff report and recommendations therein given, and the public comment received, this Council is of the opinion that that the Proposed Zoning Text Amendment, as recommended by the Planning Commission, has been designed to give reasonable consideration to the purposes listed in Sec. 15.2-2283 of the Code of Virginia (1950), as amended, and this Council hereby finds and determines that the public necessity, convenience, general welfare and good zoning practice require the Proposed Zoning Text Amendment; now, therefore,

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that Chapter 34 of the Code of the City of Charlottesville (1990), as amended, is hereby amended and re-enacted as follows:

1. Amend the provisions of §34-420 (Use matrix—Residential zoning districts), as follows:

Residential Zoning Districts											
Family day home	R-1	R-1U	R-1S	R-1SU	R-2	R-2U	R-3	R-UMD	R-UHD	MR	MHP
1-4 1-5 children	B	B	B	B	B	B	B	B	B	B	B
5-12 6-12 children	S P	S P	S P	S P	S P	S P	B P	P	P	B P	P

2. Amend the provisions of §34-480 (Use matrix—Commercial districts), as follows:

Commercial Zoning Districts						
Family day home	B-1	B-2	B-3	M-I	ES	IC
1-4 1-5 children	B	B	B	B		B
5-12 6-12 children	B P	B P	B P	P		P

3. Amend the provisions of §34-796 (Use matrix—Mixed use corridor districts), as follows:

Mixed Use Zoning Districts														
Family day home	D	DE	DN	WME	WMW	CH	HS	NCC	HW	WSD	URB	SS	CD	CC
1-4 1-5 children	B	B	B	B	B	B	B	B	B	B	B	B	B	B
5-12 6-12 children	P	P	P	P	P	P	P	P	P	P	P	P	P	P

4. Amend §34-1200, the definitions of “family day home” and “residential occupancy”, as follows:

Family day home means a child care program serving one (1) to twelve (12) children under the age of thirteen (13) (exclusive of the provider's own children and any children who reside in the home), where such program is offered in the **lawfully established** residence of the provider or the **lawfully established** residence of any of the children in care. Any program serving more than twelve (12) children shall be considered a child daycare facility.

Occupancy, residential for purposes of this zoning ordinance, this term refers to the number of persons who may reside together within one (1) dwelling unit, as a single housekeeping unit. Each of the following shall be deemed a single housekeeping unit: (i) one (1) person; (ii) two (2) or more persons related by blood or marriage, together with any number of their children (including biological children, stepchildren, foster children, or adopted children); (iii) two (2) persons unrelated by blood or marriage, together with any number of the children of either of them (including biological children, stepchildren, foster children, or adopted children); (iv)

within certain designated university residential zoning districts: up to three (3) persons unrelated by blood or marriage; (v) within all other residential zoning districts: up to four (4) persons unrelated by blood or marriage; (vi) group homes, residential facilities and assisted living facilities, as defined in the Code of Virginia, § 15.2-2291, which are licensed by the department of social services or the department of behavioral health and developmental services and which are occupied by no more than eight (8) mentally ill, mentally retarded, developmentally disabled, aged, infirm, or disabled persons together with one (1) or more resident counselors; (vii) a group of persons required by law to be treated as a single housekeeping unit, in accordance with the Federal Fair Housing Act, or a similar state law. **A family day home that serves one (1) to (4) four children shall be considered part of a residential occupancy by a single family.**

5. Add a new §34-1176, as follows:

§34-1176.—Family day home (5-12 children).

A provisional use permit that authorizes a family day home serving five (5) to twelve (12) children shall be subject to the following regulations:

1. Each provisional use permit for a family day home will be valid from January 1 (or such other date during a calendar year on which such permit is issued) through December 31 of the calendar year in which the permit is issued.
2. The operator of the family day home must reside at the property as his/her primary residence, or must be caring for children who reside within the residence.
3. No clients or employees shall be allowed to visit the property on which a family day home is conducted earlier than 6:00 a.m. or later than 11 p.m. The family day home may operate up to 12 hours within each 24 hour period.
4. Applicants for a family day home provisional use permit must obtain, and provide to the zoning administrator:
 - a. A copy of a valid city business license (or a statement from the commissioner of revenue that no city business license is required)
 - b. A copy of a valid state license. Following initial issuance of the provisional use permit, the operator shall keep the zoning administrator supplied with a valid state license at all times while the provisional use permit is valid.
 - c. A traffic safety plan that addresses drop-off and pick-up procedures related to automotive traffic.

5. In addition to the resident(s) of the dwelling, not more than one (1) other individual may be engaged in the activities of the family day home on the property at any given time.
6. One (1) exterior sign, of dimensions no greater than two (2) square feet, may be placed on the exterior of the dwelling or an accessory structure to indicate the presence of the family day home. The sign shall not be lighted.
7. A provisional use permit for a family day home may be revoked by the zoning administrator should a permit holder fail to maintain compliance with any of the regulations set forward in this section. An operator whose provisional use permit has been revoked pursuant to this paragraph shall not be permitted to apply for a new permit for any location for one calendar year after the end of the permit term.
8. Once an application requesting a provisional use permit is received by the zoning administrator, notification shall be sent by registered or certified letter to the last known address of each adjacent property owner. If the zoning administrator receives no written objection from a person so notified within 30 days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance and all other applicable local ordinances, the zoning administrator shall issue the permit. If the zoning administrator receives a written objection from a person so notified within 30 days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance, the zoning administrator shall consider such objection and may (i) issue or deny the permit or (ii) refer the permit to the local governing body for consideration.

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	November 2, 2020
Action:	Approval of allocation
Presenter:	Chris Cullinan, Director of Finance
Staff Contacts:	Kaki Dimock, Director of Human Services Chris Cullinan, Director of Finance
Title:	Bridge Ministry Request for Allocation of \$54,750 of CARES Contingency Reserve

Background:

During its regularly scheduled meeting on October 5, 2020, City Council established a CARES Contingency Reserve of \$625,000. On October 19, 2020, City Council allocated a significant amount of this reserve to specific COVID-related expenses, in accordance with staff recommendations relating to requests received from various entities. A request for support from The Bridge Ministry was discussed that evening without resolution.

The Bridge Ministry submitted a programmatic update in which the Ministry identified a need for approximately \$328,500 for support of 9 individuals released from the Albemarle Charlottesville Regional Jail. At City Council's meeting on October 5, 2020, questions were raised as to whether Bridge Ministry's request meets the CARES Funding requirements, and about how many of the individuals who received the services were from the City of Charlottesville.

Staff also noted to Council that the Bridge Ministry has received public funding from the City in the past, but the Bridge Ministry does not regularly audit its financial statements. In 2017 the City requested an audit of the Ministry's financial statements (and agreed to pay for the audit), and the requested audit was received in May 2020. The purpose of the request is to assure that the City's public funding is actually supporting services that benefit Charlottesville residents, with minimal amounts of funding are going to administrative costs. (It should be noted: it is not unusual for smaller charitable nonprofits to be without audited financial statements. Federal law only requires certain charitable nonprofits who receive more than \$750,000 federal funding in a given year to comply with special audit requirements; however, unless state law mandates an

audit, or unless a locality requires the audit as a condition of grant funding, many charitable nonprofits and religious organizations would not necessarily obtain an audit in the normal course of their operations). The City of Charlottesville does require that agencies with operating budgets in excess of \$500,000 obtain an independent auditor annually to qualify for funding through the Vibrant Community Fund.

Discussion:

At the city manager’s request, staff sought and received additional information from The Bridge Ministry and analyzed their request for funding as to eligibility for CARES Act Funding. Staff have reviewed the request and finds that the activities are sufficiently COVID-related to be eligible for funding. The Bridge Ministry reports that 8 of the 9 individuals served by the program are from Charlottesville.

Alignment with Council Vision Areas and Strategic Plan:

This action aligns with the Council’s Vision as a Great Place to Live for All of Our Citizens. It also aligns with the City Council’s Strategic Plan Goals.

Budgetary Impact:

There is no direct impact on the City’s budget. A second round of CARES funds in the amount of \$4,123,776 has been received from the Commonwealth, of which City Council appropriated \$625,000 for a Contingency Reserve (approximately 15%). Sufficient funds remain in the Contingency Reserve.

All funds are subject to conditions established by the U.S. Treasury and the Commonwealth and must be expended for eligible expenditures incurred between March 1, 2020 and December 30, 2020. Any unused funds must be returned.

Recommendation:

Staff recommends approval to use remaining CARES Contingency Reserve Funds in the amount of \$54,750. This amount translates to 1/6th of the annualized amounts identified by The Bridge Ministry, given that these funds must be expended in full over the remaining two months of 2020 (i.e., on or before 12/30/2020).

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	November 2, 2020
Action Required:	Report
Presenter:	Jeff Werner, Preservation & Design Planner, Department of Neighborhood Development Services (NDS) Ben Ford, Ph.D., Principal, Rivanna Archaeological Services
Staff Contacts:	Jeff Werner, Preservation & Design Planner, NDS Alex Ikefuna, Director, NDS
Title:	Update on unmarked burials near the Gilmer/Craven/Hotopp Cemetery at Pen Park

Background:

On December 2, 2019, City Council approved a resolution authorizing the use of \$9,319 from the Department of Neighborhood Development Services Small Area Plans CIP fund to study the archeological evaluation of possible unmarked graves outside the enclosed family plots at the Gilmer/Craven/Hotopp Cemetery at Pen Park. With that approval, Council requested an update on the findings, after which options for next steps would be explored.

The City acquired Pen Park in the 1970s. *Pen Park*, as it was named by Dr. George Gilmer who acquired the property in 1777, changed ownership several times, with the occupants being the Gilmer family (from 1777 to 1812), the Craven family (from 1819 to 1845), and the Hotopp family (from 1866 to 1904). While others owned and occupied Pen Park for brief periods, the Gilmers, Cravens, and Hotopps are the only families to establish cemeteries there.

The City retained the services of Rivanna Archeological Services (RAS) who, on July 15, 2020, coordinated with NAEVA Geophysics Inc. to conduct an examination of the site using Ground Penetrating Radar (GPR). Evaluation of the GPR data suggests the likelihood of 43 unmarked and unrecorded graves outside the walls of the three family plots, roughly in three rows and primarily to the east, *behind* the family plots.¹ The majority lie outside the Gilmer and Craven sections. Both families enslaved individuals and the evidence suggests these graves are most likely those of individuals enslaved at Pen Park. There are at least four apparent graves directly outside the Hotopp section, possibly representing the graves of enslaved individuals or other

¹ See page 26 of the RAS report. The 43 anomalies detected by GPR are consistent with human burials; however, it is likely there are additional graves not detected by the GPR and it is likely that some of the detected anomalies are not graves. However, taken together, all of the evidence indicates, without doubt, the presence of multiple unmarked and unrecorded human graves in the area examined.

individuals who lived on the property and were employed by the family. Three apparent graves are not within the cluster immediately east of the family plots cluster and are therefore difficult to interpret—one at the northeast corner of the Gilmer plot and two located several yards south of the Hotopp plot.

The GPR evidence indicates patterns in the subsurface anomalies—sizes, depths, alignment in rows, and an east-west orientation—consistent with human burials. Despite the strength of the GPR data, the number of likely graves can only be estimated. A precise determination of the number and location of graves would require physical disturbance of the upper layer of soil; however, RAS recommends—and staff concurs—that the GPR findings are conclusive enough to establish the presence of human graves, without physical disturbance, and that the area examined should be delineated and protected.

Discussion:

With these findings, staff has initiated or will initiate the following steps:

- Coordinate with the Department of Parks and Recreation to keep golf carts off the areas with unmarked graves. (See area indicated in Figure #1 on page 1 of the RAS report.)
- Coordinate with the Department of Parks and Recreation to record on the Pen Park site plan the location of the area within which unmarked graves were located, such that this area is not disturbed by any future work or activity. (See area indicated in Figure #17 on page 26 of the RAS report.)
- Outreach: Issue a press release about the findings and include a request to the community for any information about the unmarked graves—from oral histories, family traditions, etc. Seek assistance in community outreach through local groups such as the Preservers of the Daughters of Zion Cemetery, Jefferson School African American Heritage Center, Central Virginia History Researchers, and the Burke Brown Steppe Chapter of the Afro-American Historical and Genealogical Society.

Moving forward, staff recommends that Council consider the following:

- Number and locate unmarked graves: The archeologist and staff recommend that the area east of the family plots not be disturbed; however, Council may request further examination to provide a precise determination. (See detailed discussion below.)
- Identities: The community will likely ask if these individuals can be identified (i.e. DNA testing). Any attempt to do so would require invasive disturbance of the graves and the results would be speculative, at best. Staff does not recommend such an effort; however, should Council want more information, there are experts who can provide it.
- Research: The goal of the examination was to determine the existence of unmarked graves. This goal has been achieved. The project did not include exhaustive archival and documentary research that could provide information about the identities of who these individuals might be. Council could request that research.
- Remembrance: Council should request the Historic Resources Committee (HRC) provide recommendations on how to memorialize and interpret this site. While disrupted by the public health emergency, in developing an appropriate narrative for Court Square, the HRC was planning to engage descendants of enslaved persons. A similar approach would be appropriate.

Additional suggestions (from RAS report):

Parks and Rec Planning

- Treatment of the vegetation at the Pen Park cemetery: The area surrounding the Pen Park cemetery enclosure is currently planted in sod but also contains large shrubs and trees. The City should consider creating management practices that address this vegetation. For example, should new plantings in the area of the newly identified burials be allowed? When a tree dies or needs to be removed, the City should make sure that disturbances are minimal and that stump grinding does not occur.
- Use of golf carts: The City may want to consider how golf carts are used in the vicinity of the Pen Park cemetery. Because of the adjacent 14th tee, golf carts frequently stop east of and adjacent to the Pen Park cemetery. Should the area containing the newly discovered burials be a restricted area where temporary parking of golf carts is prohibited? Should a more formal parking area for golf carts be created next to the 14th tee?
- Maintenance of the asphalt cart path: An asphalt surfaced golf cart path passes approximately 50 feet to the east of the Pen Park cemetery. The City should consider developing a policy for future repair and new construction of the golf cart path in the vicinity of the Pen Park cemetery.
- Maintenance of adjacent utilities: A sprinkler control box is located approximately 40 feet east of the brick enclosed Gilmer section of the Pen Park cemetery. Other buried utility lines may be located nearby. The City should consider developing a policy for future repair and new construction associated with water and electrical lines in the vicinity of the Pen Park cemetery.
- Public access to/use of the Pen Park cemetery:
 - **Developing an Event Policy:** The discovery of additional previously unidentified burials, most likely interments of enslaved African Americans held by the Gilmer, Craven and other families, as well as the potential future memorialization of the site, may mean that future visitors wish to hold commemorative events at the Pen Park cemetery. The City should consider the development of an event policy for the Pen Park cemetery that will take into account reasonable access to the park as well as potential conflicts with the use of the golf course.
 - **Public Access to the Pen Park cemetery:** The discovery of additional previously unidentified burials, as well as the potential future development of an educational and interpretive program in this location, may mean that more people will come to visit the Pen Park cemetery. The City should ensure that there is adequate public access to the Pen Park cemetery in the future. Currently the only access is via a concrete-surfaced pedestrian path. The City should consider the construction of a limited handicap access parking area, located in an appropriate place, that will allow all visitors adequate access to the site and which will facilitate the hosting of future commemorative events.

It should be noted that the three family plots remain in use. Descendants of the Gilmer, Craven, and Hotopp families have a right to access and use their plots. 1916 was the last burial in the Craven section. In 1991, George Gilmer, Jr. was interred in his family's plot (his wife's remains will also be placed there). In 2008, Dorothy Hotopp Wilber was interred in the Hotopp family plot.

Additional Archaeological Research

Should the City of Charlottesville want to determine the precise location and number of all of the graves outside of the Pen Park cemetery, additional archaeological investigations would be recommended. While the GPR survey has identified a total of 43 potential grave shafts adjacent to the Pen Park cemetery, additional archaeological investigations have the ability to 1) confirm that each potential grave shaft is in fact a human interment and to locate additional human interments not previously identified by the GPR survey; 2) to pin point the precise location of each human interment; and 3) to further define the full spatial extent of the newly identified burials. Confirming the identify of potential grave shafts and knowing the full extent of the burials adjacent to and outside of the Pen Park enclosure will be helpful in planning for any future memorialization of the site, as well as for developing guidelines for the future use and maintenance of the vicinity.

The recommended additional archaeological investigations *will not excavate individual grave shafts or knowingly disturb or relocate any human remains*. However because any excavation within or adjacent to the Pen Park cemetery has the potential to recover human remains, it is recommended that any future archaeological work east of the Pen Park cemetery occur with oversight from the Virginia Department of Historic Resources. It is recommended that the City secure a Permit for Archaeological Excavation of Human Remains from the Virginia Department of Historic Resources. Securing this permit in advance of any future archaeological fieldwork ensures that the cemetery delineation work plan receives an additional layer of review and oversight. Additionally, the permit enables the archaeological consultant to manage inadvertently encountered human remains in the unlikely event of their discovery.

The goal of additional archaeological excavation adjacent to the Pen Park cemetery should be the positive location and identification of each human interment, and the full definition of the extent of burials. The most accurate means of identifying all human interments and defining the extent of burials within a cemetery is to remove the topsoil from the project area. At the interface of the topsoil and the underlying naturally occurring subsoil, the tops of the grave shafts will be recognizable by their shape as well as the coloring and disturbed nature of the fill soils they contain, differentiating them from the surrounding naturally occurring red clay subsoil. Archaeological investigations should consist of shallow, controlled excavation that will extend only to a depth sufficient to visually identify each burial, generally less than 1-foot below grade. This work can be conducted with the assistance of a backhoe with a smooth edged bucket enabling the shallow excavation and removal of topsoil over a large area. Extant trees within the project area will be avoided leaving small 'islands' of turf where tree roots will be protected. Archaeological excavation and removal of topsoil should extend to a point approximately 25 feet beyond the last identified burial, or to a point where excavation is no longer possible, thereby defining a reasonable boundary for the previously unidentified burials. Once all human interments are positively located and identified, a surveyor should be brought in to accurately locate each burial and any relevant cultural features within the project area. Once the individual grave shafts have been accurately mapped by a surveyor, a permeable landscape fabric should be placed on top of the burials and the project area soils replaced. The area composing the newly identified burials, as well as any future memorialized area, should be entered as part of the legal record for Pen Park.

Alignment with City Council’s Vision and Strategic Plan

- Council’s *Vision 2025*:
 - Charlottesville cherishes and builds programming around the evolving research and interpretation of our *historic heritage and resources*.
- *City Strategic Plan*:
 - Goal 3.5: Protect historic and cultural resources.
- Additionally, from the recommendations of the Blue Ribbon Commission on Race, Memorials, & Public Spaces:
 - **Highlighting and Linking Historic Places:** [...] council provide financial and planning support for historic resource surveys of African American, Native American and local labor neighborhoods and sites, seeking National Register listing and zoning and design guideline protection, where appropriate.

Community Engagement

See the public outreach items noted in the *Discussion*. (Staff contacted the Preservers of the Daughters of Zion Cemetery and discussed ways to reach out to the descendant community.)

Budget Impact

No budget impact relative to the completion of this report. Additional actions, including those presented above, may require additional funding. These can be presented and discussed at a future meeting.

Recommendation

At this time, staff does not recommend any action by Council at the November 2, 2020 meeting. Given the scale, solemn nature, and sensitivity of this discovery, we recommend a period of reflection and discussion prior to any decision-making. We suggest that Council take the time to review the report and visit this site—staff can be available to provide insight and answer questions—and then plan for a thorough discussion at a future Council meeting.

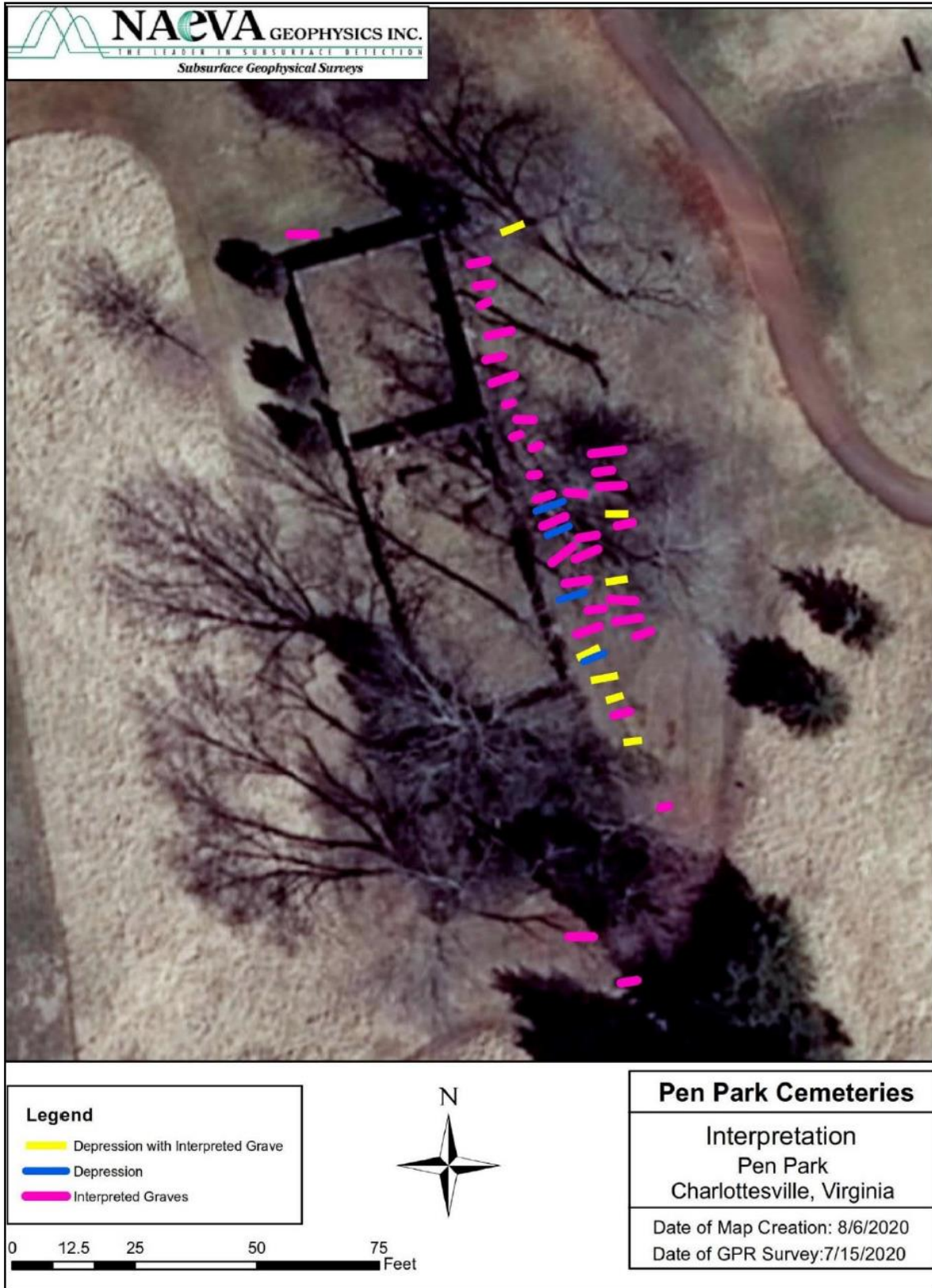
Alternatives

Council may decide to initiate action on items presented in the *Discussion*.

Attachments

- Map: Pen Park cemetery and GPR identified potential grave shafts. (Fig. #15, RAS report.)
- Rivanna Archeological Services report, *The Pen Park Cemetery Survey*, dated October 15, 2020. (RAS report includes the Geophysical Investigation Report, dated October 9, 2020.)

Pen Park cemetery and GPR identified potential grave shafts. (Fig. #15, RAS report.)



The Pen Park Cemetery Survey

(VDHR 002-0190)
City of Charlottesville

Produced for the City of Charlottesville, Virginia

Produced by Rivanna Archaeological Services, LLC
Charlottesville, Virginia



Report Author: Benjamin P. Ford, Ph.D.
Principal, Rivanna Archaeological Services, LLC

October 15, 2020

MANAGEMENT SUMMARY

Since 2000, several depressions have been noted in the ground surface adjacent to and east of the Pen Park cemetery. At the request of the City of Charlottesville, in September of 2019 Rivanna Archaeological Services staff visited Pen Park Cemetery and confirmed the presence of the unusual depressions. Based on their size, orientation and clustering, it was believed that they could be unmarked burials.

In order to determine more conclusively the nature of the surface depressions, Rivanna Archaeological Services proposed a two-tiered research design composed of a Ground Penetrating Radar survey surrounding the entire Pen Park cemetery, as well as ground-truthing of a limited number of surface features and radar anomalies designed to verify the identity of the potential burials.

On July 15, 2020, NAEVA Geophysical Inc. conducted a Ground Penetrating Radar survey on a ca. 0.28-acre project area surrounding the Pen Park cemetery enclosure. Based on profile and plan view visualizations, NAEVA identified a total of 43 potential grave shafts located predominantly east of the Pen Park cemetery. An analysis of the Ground Penetrating Radar findings documented that the 43 newly identified grave shafts were located to the rear and behind the Pen Park cemetery, were arranged in at least three rows, and that the grave shafts extended the whole length of the Gilmer, Craven and Hotopp family sections. It is believed that this population of individuals likely represents enslaved African Americans owned by the Gilmer, Craven and other families, as well as possibly African Americans employees and their families associated with the 1866 – 1904 Hotopp farm and vineyard operation at Pen Park.

Because of the certainty that the surface depressions and Ground Penetrating Radar anomalies represented a significant sized burial ground, the limited excavation and ground-truthing originally proposed as part of the research design was abandoned. It was recommended that the City of Charlottesville acknowledge and memorialize the additional 43 burials in some way, and that plans be developed to guide the future use of the cemetery by the public and the continued use of the adjacent Meadowcreek Golf facility.

TABLE OF CONTENTS

Management Summary	i
Table of Contents	iii
List of Figures and Tables	v
Project Area Description	1
Project Background and Objectives	2
Previous Research	3
Historical Research	3
Archaeological Research	4
Historical Context	5
Gilmer Family (1777- 1812)	5
Craven Family (1819- 1845)	9
Pollard, Schafer and Early Families (1845 – 1866)	10
Hotopp Family (1866 – 1905)	11
Pen Park in the Twentieth Century (1905 – 1966)	15
A Park for the City of Charlottesville (1966 – Present)	16
The Pen Park Cemetery	17
Research Design	19
Preliminary Reconnaissance Level Ground Surface Examination	20
Ground Penetrating Radar (GPR) Survey	21
Methods	21
Findings	23
Discussion and Analysis	25
Size and Shape of the Pen Park Cemetery	25
Number of Human Interments	26
Identification of the Population	28
Black and White Cemeteries in Pre-Emancipation Virginia	28
Pen Park Cemetery Burial Patterns	28

Recommendations	30
Memorialization	30
Guidelines for the Future Use and Treatment of the Pen Park Cemetery	30
Additional Archaeological Research	31
References Cited	33
Appendix One	36
Geophysical Investigation Report: External Area Around Pen Park Cemetery, Charlottesville, Virginia.	36

LIST OF FIGURES AND TABLES

Figure #1:	Pen Park showing project area surrounding cemetery (red outline) at lower right.	1
Figure #2:	Map showing vicinity of Pen Park and its architectural and archaeological resources.	4
Figure #3:	Pen Park residence, taken in the late nineteenth century. Note the 'H-shape' to the residence with the smaller older structure (at left) located behind the newer younger structure (at right) and hyphen connecting them.	6
Figure #4:	Detail, Map of Albemarle County from Surveys and Reconnaissances made under the Direction of Albert H. Campbell, Capt. P. Eng. & Chief, showing the Pen Park residence of William T. Early. Lt. C. S. Dwight, 1864.	11
Figure #5:	Detail, A Map of Albemarle County, Virginia, From Original Surveys, showing the William Hotop [Hotopp] Pen Park residence overlooking the Rivanna River. Green Peyton, 1875.	12
Figure #6:	Plat of Pen Park estate. J. T. E. Simms, S. A. C., July 1903.	14
Figure #7:	Plat showing division of the former Pen Park estate. M. M. Van Doren, October 1, 1913.	15
Figure #8:	Plat of the division of the former Pen Park estate. M. M. Van Doren, C. E., September 28, 1920.	16
Figure #9:	DAR and Gilmer family members at the Pen Park cemetery for the dedication of a marker to Dr. George Gilmer, 1927.	17
Figure #10:	Detail, 1937 aerial photograph, showing the Pen Park domestic complex with the main residence (blue circle), and tree shrouded cemetery (red outline).	18
Figure #11:	East side of Pen Park cemetery looking north and showing flagged oblong east-west oriented depressions in the ground surface indicating potential burials.	20
Figure #12:	GPR Survey area (blue shading) surrounding the Pen Park cemetery.	21
Figure #13:	GPR Survey along the east side of the Pen Park cemetery.	22
Figure #14:	GPR Survey north of the Pen Park cemetery.	22
Figure #15:	Map showing Pen Park cemetery and GPR identified potential grave shafts.	24
Figure #16:	Pen Park cemetery showing the area kept in trees in 1937 (red outline, at left) and the same area in 2018 (red outline, at right).	25

Figure #17:	Pen Park cemetery in 2018 showing long rectangular enclosure and area kept in trees (red outline) in 1937. Note the area east of the enclosure kept in trees in 1937 includes the area where a large number of potential graves were identified.	26
Table #1:	Archaeological and Architectural Sites identified within Pen Park	4
Table #2:	Enslaved African Americans owned by the Gilmer Family, 1787 – 1812.	7
Table #3:	Division of the Enslaved African Americans owned by George Gilmer, 1804.	8

PROJECT AREA DESCRIPTION

The Pen Park cemetery project area is located in the City of Charlottesville’s Pen Park, a 280-acre park overlooking the Rivanna River and containing the Meadowcreek Golf Course. The project area is an approximately 12,800 square foot (0.28 acre) area surrounding the Pen Park cemetery, a brick, stone and iron fence enclosure composed of three sections containing members of the Gilmer, Craven and Hotopp families.

The area surrounding the Pen Park cemetery is covered in sod with plantings of large deciduous and evergreen shrubs and trees. Elevation of the project area is approximately 400 feet asl, and the ground slopes down slightly to the south and east. The project area is underlain by the Catoctin greenstone formation, a northeast-southwest oriented band of igneous rock.¹ Soils in the project area are a Yadkin clay loam with slope between 2 and 7%. The soils are generally located on terraces and are not considered prime farmland.²



Figure #1: Pen Park showing project area surrounding cemetery (red outline) at lower right.

¹ Wilbur A. Nelson, *Geology and Mineral Resources of Albemarle County*, pp: 24-27. Bulletin No. 77, Virginia Division of Mineral Resources. (Charlottesville: Virginia Division of Mineral Resources, 1962).

² U.S.D.A. Natural Resources Conservation Services, *Web Soil Survey*. Electronic resource, Accessed September 21, 2020. <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>.

PROJECT BACKGROUND AND OBJECTIVES

Rivanna Archaeological Services, LLC [RAS] was contacted by the City of Charlottesville in late August of 2019 regarding the presence of several potential graves located outside of and adjacent to the east side of the existing Pen Park cemetery enclosure. On September 3, 2019, RAS staff visited the Pen Park cemetery to conduct a preliminary examination of the ground surface surrounding the existing enclosure. RAS staff confirmed the presence of a limited number of east-west oriented oblong depressions along the east side of the Pen Park cemetery, surface indications that suggested the presence of unmarked graves.

Based on the strong potential for the presence of unmarked graves outside of the Pen Park cemetery, RAS developed a research design that proposed a Ground Penetrating Radar (GPR) survey surrounding the Gilmer-Craven-Hotopp family enclosure, coupled with limited archaeological excavations designed to ground-truth a limited number of surface indications and/or GPR anomalies. The goal of the project was to determine if the several potential graves were in fact human interments and to gain a greater understanding of the quantity and extent of potential graves in this area.

PREVIOUS RESEARCH

Historical Research

A limited amount of historical research has been conducted on the Pen Park property and its associated Gilmer, Craven and Hotopp cemeteries. This research was largely driven by local events including the purchase of the then 134-acre Pen Park estate by the City of Charlottesville in 1971, student research through the Historic Preservation Program of the University of Virginia School of Architecture in the late 1990s, and a conditions and preservation survey of cemeteries maintained by the City of Charlottesville in 2003.

In response to a request for information following the purchase of Pen Park, in December of 1972 President of the Albemarle County Historical Society John Nalle produced a three-page letter that summarized the property's the eighteenth- and nineteenth-century ownership. It was in late 1971 that the City of Charlottesville acquired the initial 134-acre parcel at Pen Park to be developed as a new park. The interest in this purchase stimulated research on the history of the property as an aid to future development.³

As part of a comprehensive study of the Rivanna River, graduate students in the Community Public History and Planning Seminar in the Historic Preservation Program of the University of Virginia conducted research on individual sites along this important Albemarle County drainage. Pen Park was one of the sites selected for archival research. Shelly Pellish, a graduate student, summarized the history and development of the Pen Park estate and also presented preservation issues and promoted interpretive initiatives.⁴

Jeanne Siler, an intern with the City of Charlottesville in the summer of 2001, compiled information on the history and development of Pen Park from a variety of primary and secondary sources. In addition, Siler also interviewed Nancy Gilmer and Dorothy Hotopp Wilbur, descendants of the Gilmer and Hotopp families, on their memories of the Pen Park property and the family cemeteries there.⁵

In 2003 Lynette Strangstad issued a report based on a survey of Maplewood, Oakwood, Daughters of Zion and the Pen Park cemeteries. The report documented existing conditions and outlined general maintenance and conservation issues. The report issued general recommendations including that each cemetery be researched, mapped and documented and that a preservation plan be developed for each. In particular, Strangstad noted the presence of potential unmarked graves indicated by oblong east-west oriented depressions located outside of the Pen Park cemetery enclosures.⁶

³ Charlotte Tucker, History – A Vital Element in Planning. *The Daily Progress*, January 13, 1972; John M. Nalle, President, Albemarle County Historical Society to Mrs. Charlotte Tucker, Assistant Editor, *The Jefferson Journal*, December 11, 1972. Albemarle Charlottesville Historical Society, Charlottesville, Virginia.

⁴ Shelly Pellish, Pen Park. Notes on Brown Bag Lunch presented to the Albemarle County Historical Society, May 3, 1999. Albemarle Charlottesville Historical Society, Charlottesville, Virginia.

⁵ Jeanne Siler, *History of Pen Park and Its Cemeteries*, n.d. [2001]. Ms. in possession of the City of Charlottesville.

⁶ Lynette Strangstad, *Preliminary Site Evaluation, Charlottesville City Cemeteries, Charlottesville, Virginia*, np. Prepared for the City of Charlottesville, Virginia. Prepared by Stone Faces and Sacred Spaces, Mineral Point, Wisconsin, 2003.

Archeological Research

In the mid-1970s, C. G. Holland conducted an opportunistic survey of Albemarle County lands. In Between 1975 and 1978, Holland surveyed the exposed soils of the former Pen Park and identified four prehistoric sites consisting mostly of lithic debris and scatter (Figure #2 / Table #1).

Table #1: Archaeological and Architectural Sites identified within Pen Park.

<i>VDHR Site No.</i>	<i>Site Name</i>	<i>Prehistoric / Historic</i>	<i>Site Type</i>	<i>Chronological Period</i>
44AB0025	n/a	P	Camp	1606 – 15000 BCE
44AB0026	n/a	P	Camp	3001 – 6500 BCE
44AB0027	n/a	P	Camp	3001 – 6500 BCE
44AB0056	n/a	P	Camp, temporary	3001 – 6500 BCE
44AB0090	n/a	P	Camp	1606 – 15000 BCE
002-0190	Pen Park	H	Cemetery	1786 - Present

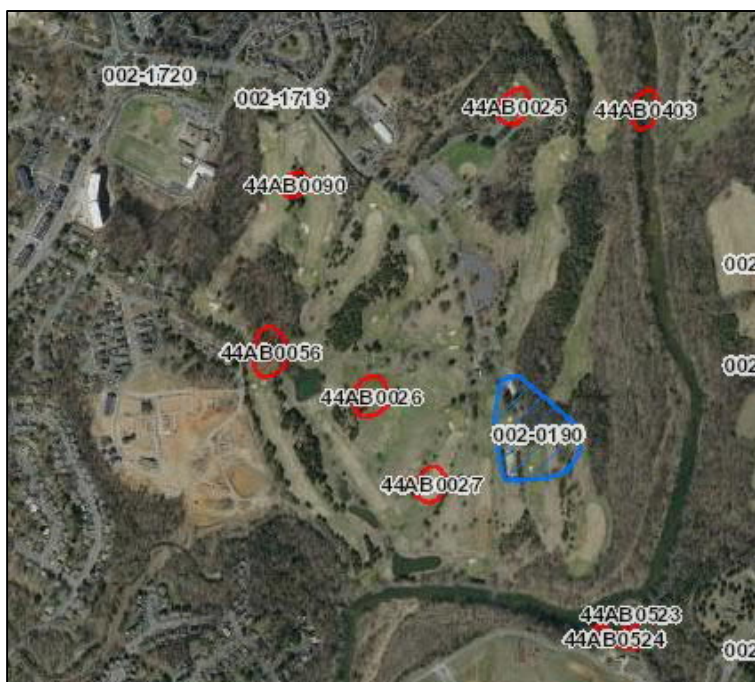


Figure #2: Map showing vicinity of Pen Park and its architectural and archaeological resources.

Upon the City of Charlottesville's acquisition of an additional 32 acres from Esther Wayland in 1979, the new parcel underwent a reconnaissance level archaeological survey. The survey consisted of a walkover of plowed fields at the northern end of the project area, as well as opportunistic excavation of shovel test pits on 30-foot intervals in the southern end of the project area. A single archaeological site was identified (44AB0090) consisting of quartz debris and shatter, a quartz biface and several quartz biface fragments scattered over a 2-acre area (Table #1).⁷

⁷ James R. Wood, A Cultural Resource Reconnaissance of the Charlottesville, Virginia, Pen Park Land Acquisition, p4. Prepared for the Virginia Research Center for Archeology and the Virginia Commission of Outdoor Recreation. Prepared by James Madison University, Archeological Research Center, 1980.

HISTORICAL CONTEXT

The following represents a preliminary history of the Pen Park property that focuses on the period of development between 1777 and the present, and particularly the Gilmer, Craven and Hotopp family tenure. The goal is to provide an accurate social and physical history of the property and to develop an adequate context for understanding if there may be additional unmarked interments outside of and surrounding the Gilmer, Craven and Hotopp family cemeteries.

Gilmer Family (1777 – 1812)

The land within which Pen Park is contained was originally a 400-acre tract of land patented in 1733 by Charles Lynch and located on the “south side of the Rivanna River.”⁸ Sixteen years later in 1749, Lynch sold the 400-acre parcel, along with an adjacent 245-acre parcel he had patented in 1748, to Robert Adams a nearby landholder.⁹ In 1773 Adams sold the 645 acres he acquired from Lynch, as well as an additional 430 acres, to John Harvie.¹⁰ Neither Lynch, Adams or Harvie are believed to have resided on the 400-acre parcel, although the land was likely cleared and cultivation begun in the mid-to-late eighteenth century.

Dr. George Gilmer acquired what would become Pen Park in 1786. In that year he purchased from John Harvie a 565-acre parcel located “on the Rivanna River.” The parcel included the original 400-acre Charles Lynch tract and a 137-acre tract originally patented by Harvie’s brother, Richard, in 1781.¹¹ Soon after his purchase, it is believed that George Gilmer and his family settled on the property overlooking the Rivanna River. Family history states that Gilmer named the property Pen Park after the Bristol, England estate of John Harmer. Gilmer had been educated in Bristol, England in the mid-eighteenth century and likely stayed with the Harmer family at their Pen Park home.¹²

It is George Gilmer who built the first residence at Pen Park shortly after his purchase. Based on a late nineteenth-century photograph (Figure #3), Professor K. Edward Lay describes the Pen Park domicile as an ‘H-plan’ structure, one that likely began as an eighteenth-century single-story residence, and was developed over time with the construction of an adjacent much larger two-story nineteenth-century residence with a connecting hyphen.¹³

⁸ Virginia Land Patent Book 15:47, June 20, 1773. Richmond, Library of Virginia.

⁹ Albemarle County Deed Book [ACDB] 1:160. Clerk’s Office, Albemarle County Courthouse, Charlottesville, Virginia.

¹⁰ ACDB 6:86.

¹¹ ACDB 9:309.

¹² Ruth D. Gilmer, Pen Park, p2-3. Gilmer Family file. Albemarle Charlottesville Historical Society, Charlottesville, Virginia.

¹³ K. Edward Lay, *The Architecture of Jefferson Country, Charlottesville and Albemarle County, Virginia*, pp: 56, 62. (Charlottesville: University Press of Virginia, 2000).



Figure #3: Pen Park residence, taken in the late nineteenth century. Note the 'H-shape' to the residence with the smaller older structure (at left) located behind the newer younger structure (at right) and hyphen connecting them.

The year after his acquisition of what would become Pen Park, Albemarle County Personal Property Tax Records document that Gilmer was charged tax on a total of 50 enslaved African Americans, 18 over the age of 16, and 32 under the age of 16. Gilmer was also charged tax on 14 horses and 39 cattle.¹⁴ In 1790, Gilmer was charged taxes for 27 enslaved individuals, and five years later in 1795 he was charged taxes for 34 enslaved individuals (Table #2).¹⁵

¹⁴ Albemarle County Personal Property Tax Records [ACPPTR], 1787. Richmond, Library of Virginia.

¹⁵ ACPPTTR, 1790; ACPPTTR 1795.

Table #2: Enslaved African Americans owned by the Gilmer Family, 1787 – 1812.¹⁶

Year	Name	Enslaved Under 16	Enslaved Over 16	Total Enslaved
1787	George Gilmer	32	18	50
1788	George Gilmer	8	18	26
1789	George Gilmer	10	18	28
1790	George Gilmer	5	22	27
1791	George Gilmer	7	25	32
1792	George Gilmer	6	26	32
1793	George Gilmer	7	29	36
1794	George Gilmer	12	27	39
1795	George Gilmer	8	26	34
1796	George Gilmer Estate	8	29	37
1797	Mrs. Lucy Gilmer	10	28	38
1798	George Gilmer Estate	5	34	39
1799	George Gilmer Estate	11	30	41
1800	George Gilmer Estate	7	28	35
1801	George Gilmer Estate	7	28	35
1802	George Gilmer (Jr.)	2	8	10
	Peachy Gilmer	0	3	3
1803	George Gilmer (Jr.)	2	9	11
	Peachy Gilmer	1	3	4
1804	George Gilmer (Jr.)	2	13	15
	Peachy Gilmer	1	2	3
1805	George Gilmer (Jr.)	1	13	14
	Peachy Gilmer	0	2	2
1806	George Gilmer (Jr.)	0	11	11
	Peachy Gilmer	0	4	4
1807	George Gilmer (Jr.)	1	10	11
1808	George Gilmer (Jr.)	1	10	11
1809	George Gilmer (Jr.)	1	11	12
1810	George Gilmer (Jr.)	2	10	12
1811	George Gilmer (Jr.)	3	9	12
1812	George Gilmer (Jr.)	2	11	13

George Gilmer died in December of 1795. His will, made out in March of that year, left his Pen Park estate to his wife Lucy for her natural state, as well as “half of all slaves such as she may choose.”¹⁷ After Lucy’s death in 1799, Pen Park was operated and maintained by William Wirt, a son-in-law, and his wife Mildred Gilmer. Mildred also died in 1799 and Wirt subsequently removed to Richmond.

Following the death of George Gilmer in 1795, his real and personal estate was divided between his ten children (Thomas, Mildred, George, Peachy, John, James, Harmer, Lucy, Francis, and Susanna). In 1797 Mildred Wirt and her husband William filed for their share but Mildred’s death in 1799 abated the cause.¹⁸ In January of 1803 George and Peachy Gilmer, both over the age of 21, received their

¹⁶ ACPPTR, 1787 – 1812.

¹⁷ Albemarle County Will Book, 3:265. Clerk’s Office, Albemarle County Courthouse, Charlottesville, Virginia.

¹⁸ William Wirt et ux vs. George Gilmer, Albemarle County Chancery Records, Index 1800-014. Library of Virginia, Richmond, Virginia.

share of the estate's enslaved African Americans.¹⁹ In 1804 John Gilmer filed a chancery suit against the other Gilmer heirs to divide the real and personal property of the George Gilmer estate and receive his share. In January of that year, commissioners assigned by the Albemarle County court divided the remaining enslaved African Americans formerly owned by George Gilmer into six lots based on the value assigned to them. A total of 57 individuals, men, women and children were itemized, valued and divided (Table #3).²⁰

Table #3: Division of the Enslaved African Americans owned by George Gilmer, 1804.

Lot	Name / Association	Value Assigned	# Individuals	
Lot 1	Mountain Fanny, a woman	L 35	1	
	Malinda her child, a girl	L 55	1	
	Urseley her child, a girl	L 35	1	
	Richmond Fanny and child	L 80	2	
	Archer her child, a boy	L 65	1	
	Lucy, girl of Priscilla's	L 55	1	
	John, Cesars son	L 105	1	
	John, Ellimont	L 105	1	
	Lot 2	Harry, a man	L 45	1
Rachel, a woman his wife		L 45	1	
Breechia, a boy and child of Rachel		L 65	1	
China, a girl and child of Rachel		L 40	1	
Riland, a boy and grandchild of Rachel		L 30	1	
Anderson, a boy and son of Rachel		L 20	1	
Clarinda, a woman and child of Rachel		L 80	1	
Polly and child		L 90	2	
Sam, a man		L 75	1	
Carey, a boy and child of Hannahs		L 40	1	
Lot 3		Scaton and child	L 100	2
		Priscilla a girl, her child	L 55	1
		Patsy, a girl, her child	L 40	1
	Albert, a boy, her child	L 35	1	
	Mary and child	L95	2	
	Billy, a man	L110	1	
	Cesar, a man	L 70	1	
	Aggy, a woman and wife to Cesar	L 35	1	
	Lot 4	Jack, a man	L 110	1
Suckey, his wife and child		L 90	2	
Wilson, a boy and child of Suckey		L 30	1	
Eady, a girl and child of Suckey		L 15	1	
Mary (of Pen Park), a woman		L 85	1	
Davy, a man		L 105	1	
Polly, a woman		L 80	1	
Sealia, a girl, daughter of Cuffy		L 30	1	
Old Dole, worse than nothing by		L 0.10	1	
Lot 5	Tener, a woman and her child	L 95	2	
	Elianor, a girl, her child	L 45	1	
	Lousey, a boy, her child	L 30	1	

¹⁹ The papers in this chancery cause were too decayed to read the names of the enslaved allotted to George and Peachy. See George Gilmer vs. John Gilmer etc. Albemarle County Chancery Records, Index 1807-002. Library of Virginia, Richmond, Virginia.

²⁰ John Gilmer vs. George Gilmer, etc. Albemarle County Chancery Records, Index No. 1805-004. Library of Virginia, Richmond, Virginia.

	Cuffy, a man	L 110	1
	Israel, a boy and child of Cuffys	L 65	1
	Dilea, a girl and child of Cuffys	L 60	1
	Isaac, a man	L 115	1
Lot 6	Hannah and child	L 95	2
	Nelson, a boy her child	L 55	1
	James, a boy her child	L 21	1
	Bob, a man	L 115	1
	Molley, an old woman	L 20	1
	Tamer, a woman	L 85	1
	Beck, her child	L 90	1
	Jenney, a girl	L 55	1

The Albemarle County lands owned by the George Gilmer estate were ordered to be divided between the remaining eight children in 1807. Pen Park was inherited by Francis W. Gilmer. The Gilmer children, particularly George Gilmer Jr., continued to farm the Pen Park plantation into the early nineteenth century. Francis W. Gilmer sold the core of Pen Park, containing the primary residence and adjacent 400 acres of land to Richard Sampson in 1812. Excepted from the 400-acre sale was a one-acre graveyard “which shall be laid off as the said Francis W. Gilmer ...shall determine together with a right of way thereto.”²¹ Although less wealthy than the Gilmers, during his tenure at Pen Park Richard Sampson is documented on being taxed for 13 enslaved African Americans in 1815, and 9 in 1818.²²

Craven Family (1819 – 1845)

John H. Craven purchased the 400-acre Pen Park plantation from Richard Sampson in 1819.²³ Craven had moved to Albemarle County around 1800. In 1811 he purchased a mill seat in partnership with James Dinsmore from George Swink and George Gilmer, the son of Dr. George Gilmer of Pen Park.²⁴ The mill seat was located at the confluence of Meadow Creek and the Rivanna River and was part of the Dr. George Gilmer Pen Park estate divided up by his children. Craven and Dinsmore developed this industrial center as the Park Mills, a three-story structure measuring 36 by 50 feet and valued at \$10,000 in 1812.²⁵

Craven was known as an exceptional farmer. He was one of several individuals who were founding members of the Albemarle Agricultural Society established in 1817. Craven could not have farmed without an enslaved labor force. The 1820 U.S. Census documents that John H. Craven owned 44 enslaved African American. A decade later in 1830, Personal Property tax records document that Craven was taxed on 37 enslaved individuals. By 1840 the U.S. Census recorded that Craven owned 53 enslaved African Americans.²⁶

²¹ ACDB 18:253.

²² ACPPTR 1815; ACPPTR 1818.

²³ ACDB 21:358.

²⁴ ACDB 17:359.

²⁵ Policy issued to John H. Craven and James Dinsmore. Mutual Assurance Society Insurance Records, 1812. No. R5V46N566.

²⁶ Fourth U.S. Census, 1820. Population Statistics, Albemarle County, Virginia; Personal Property Tax Records, Albemarle County, Virginia, 1830; Sixth U.S. Census, 1840. Population Statistics, Albemarle County, Virginia. Craven

John H. Craven died in 1845. A year earlier, Craven had deeded his Pen Park property in trust to Alexander Rives and James W. Saunders to secure several debts. After his death, the debts were still not satisfied and Pen Park was put up for auction. An advertisement for the sale of Pen Park described the property in detail.

Extensive Sale of Choice Lands in Albemarle – Pen-Park, the celebrated seat of the late John H. Craven, is in market.

In pursuance of the provisions of a deed of trust, of record in the Clerk's Office of the County court of Albemarle, executed to us by John H. Craven, to secure certain debts therein mentioned, we shall proceed, on Friday the 30th day of May next, or, if prevented by bad weather, then on the next fair day, to expose to public sale on the premises, that valuable, well known and highly improved estate, PEN-PARK, situate with in about a mile of the town of Charlottesville, and two and a half miles of the University of Virginia. This farm, comprising between four and five hundred acres, is beautifully situated in a bend of Rivanna River, with a fine exposure to the South and East. It has been long celebrated for he productiveness of its soil, and the high state of improvement, to which it was brought under the successful husbandry of its late proprietor. The farm buildings are of the most commodious and substantial character. There are also large and thriving orchards of the most select fruit. The dwelling-house is large and convenient and occupies a gradually swelling eminence in the centre of the farm – commanding the most striking views of the rich landscape, and picturesque scenery surrounding it. On both sides of this farm are valuable quarries of sand-stone, which have already been usefully employed in the construction of fences and out-buildings, and which, being very accessible, and easily worked, constitutes the cheapest material for permanent enclosures. It may be confidently affirmed, that no farm of superior – if, indeed, of EQUAL – advantages, is to be found in the neighborhood, so favorably known for the fertility of its soil, the salubrity of its climate, and the character of its society.²⁷

In May of 1845, the property was sold to Stapleton C. Sneed. A month later Sneed, likely serving as a land agent, turned around and sold Pen Park, then a 460-acre tract, to one Benjamin Pollard. In each case, the 1-acre cemetery was excepted from the sale.²⁸

Pollard, Schafer and Early Families (1845 – 1866)

From 1845 to 1866, a series of short-term owners purchased and cultivated the Pen Park plantation. Benjamin Pollard owned Pen Park for three years until he sold it to Charles W. Pollard in 1848, likely a relative. Charles W. Pollard owned Pen Park for only four years before selling it to Zebulon D. Shafer in 1852. Shafer held Pen Park for six years before he sold it to William T. (Buck) Early in 1858 (Figure #4).²⁹

also owned the Rose Hill plantation in Albemarle County and many of the enslaved African Americans recorded between 1820 and 1840 could have been living at this plantation as well.

²⁷ Richmond Enquirer, Vol. 43, No. 5, May 23, 1845.

²⁸ ACDB 42:491; 42:488.

²⁹ ACDB 46:46; 53:265; 57:262.



Figure #4: Detail, *Map of Albemarle County from Surveys and Reconnaissances made under the Direction of Albert H. Campbell, Capt. P. Eng. & Chief*, showing the Pen Park residence of William T. Early. Lt. C. S. Dwight, 1864.

Hotopp Family (1866 – 1904)³⁰

Immigrants from Germany in 1850, brothers Wilhelm (William) and Heinrich (Henry) Hotopp acquired the then 410-acre Pen Park estate from William T. Early in 1866 (Figure #5). Three years later in 1869, Henry conveyed his share of Pen Park to William.³¹ William Hotopp originally planted a 2-acre vineyard at Pen Park. This was expanded substantially to 60-acres by the end of the nineteenth century. To support his Pen Park vineyard, Hotopp also built a wine cellar and barn on the property. William Hotopp, along with several others, formed the Monticello Wine Company in 1873, a cooperative serving regional grape growers.

³⁰ Twenty year old Julia Hotopp, a resident of Pen Park and daughter of William Hotopp, claimed to have been assaulted by an unidentified African-American man on July 11, 1898. Hotopp's claim led to the public lynching of John Henry James at Wood's Crossing in Albemarle County on July 12, 1898.

³¹ ACDB 61:305; 64:210.



Figure #5: Detail, *A Map of Albemarle County, Virginia, From Original Surveys*, showing the William Hotopp [Hotopp] Pen Park residence overlooking the Rivanna River. Green Peyton, 1875.

William Hotopp's viticultural experiment was received positively by the local media. "Mr. Hotopp is progressing very satisfactorily with his experiment in grape culture at Pen Park. So far everything promises well."³² By the late 1860s, his progress in planting different varieties, the slow but gradual expansion of his vineyard, and the relative success of his grapes received additional attention and spurred other farmers to plant both grapes and other fruit for local consumption and export.

In the Spring of 1866, Mr. Hotopp bought the farm he now owns within one and a half miles of Charlottesville and in March of that year planted an experimental vineyard of something under two acres to determine what varieties were best adapted to our soil and climate. The kinds experimented with were Concord, Delaware, Norton's Virginia, Clinton, Hartford Prolific, Ives Seedling, Diana, Alvey, Iona, Catawba, Isabella, Creveling, Adirondack, Rebecca, Israella, Taylor's Bullitt, Rogers' Hybrid No. 12, Cynthianna, Herbemont and a few other varieties not important to be mentioned. The object of this experimental vineyard was to test the value of the different varieties enumerated, both for fruit and wine, so as to deduce from actual experience the knowledge necessary to pursue the business of vine-dressing, on the safest and surest basis. ...Mr. Hotopp's main experiment was upon a strong red gravelly soil with a south eastern exposure. ...Mr. Hotopp has placed in cultivation about 14 acres in the

³² Charlottesville Daily Chronicle, July 9, 1867.

various stages of 4th, 3rd, 2nd and 1st year. ...It is the intention of Mr. Hotopp to plant 60 acres gradually as he can supply himself with plants of his own raising.³³

A report in the Virginia Commissioner of Agriculture for 1879 noted that the "vineyard of Mr. William Hotopp" possessed 29 acres of vines in production, six acres in Concord, two acres in Delaware, one half acre in Rivira, w acres in Ives, 5 acres in Clinton, 2 acres in Diana and Catawba, one half acres in Louisiana, and eleven acres in Norton's Virginia.³⁴

Throughout the late nineteenth century, the success of the Hotopp farm and Pen Park vineyard would not have been possible without the farm laborers and vineyard workers he employed. The 1880 U. S. Census of Agriculture recorded that Hotopp paid a total of \$800 in wages in 1879 to employees working on his farm and vineyard. An 1886 report of the Bureau of Statistics noted that William Hotopp employed seven African-American men in 1886 on his vineyard and farm. U. S. Census records document that in 1870 and 1880 the Hotopps had six African-American domestic servants living and working in their household. In addition, at least three to four other African-American households, located adjacent to the Hotopps and likely living on the Pen Park estate, were occupied by African-American families in which the occupation of the male head of household was listed as 'works on farm,' or 'day laborer.'³⁵

William Hotopp died in 1898. A suit between his heirs followed and in October of 1898 a decree of the Circuit Court of Albemarle County declared that Pen Park would be sold. A day later, the 410-acre Pen Park property, was sold to his seven children for \$40,000.³⁶ The outcome of a second suit between the Hotopp heirs in 1903 decreed that the property was again required to be sold. In 1904, Pen Park was auctioned in front of the Albemarle County courthouse. The property was described as "the valuable and historic 'Pen Park' farm and vineyard, on the Rivanna River.Excellent dwelling, with handsome grounds and good farm buildings on the land; also the noted Pen Park vineyard and wine cellar, from which the well known Hotopp wines have been produced. The farm contains 410 acres, of which some 60 or 70 are in vineyard, about 50 in woodland, and the balance in productive and well-improved farming land."³⁷

A handbill posted before the June 6th 1904 auction described the Pen Park property in detail.

Public Sale of Famous Farm near Charlottesville, Va. – Monday, June 6th, 1904, Court day, at 12 o'clock M., in front of the court house of Albemarle County, the historic 'Pen Park' farm, once the home of the Gilmores [sic] and also the residence at one time of William Wirt. The property consists of some four hundred and seven acres of land, of which a portion is splendid Rivanna bottom, the residue is upland of which there are perhaps 50 acres in wood. Thearable land, partly in grass and partly in vineyard (there

³³ Grape Culture in Albemarle. Charlottesville Chronicle, October 14, 1869.

³⁴ Thomas Pollard. Third Annual Report of the Commissioner of Agriculture, pp: 133. (Richmond: R. E. Frayser, 1879).

³⁵ Tenth U.S. Census, 1880. Non-Population Statistics, Productions of Agriculture, Albemarle County, Virginia; John D. Imboden, Virginia, p: 177. In United States Treasury Department, Report on the Internal Commerce of the United States, by William F. Switzler, Chief of the Bureau of Statistics, Treasury Department. (Washington D.C.: Government Printing Office, 1886); Ninth U. S. Census, 1870. Population Statistics, Albemarle County, Virginia; Tenth U. S. Census, 1880. Population Statistics, Albemarle County, Virginia.

³⁶ ACDB 112:214.

³⁷ Public Sale of Noted Farm and Vineyard, Richmond Times Dispatch, July 2, 1903, p6.

being some 60 or 75 acres of the latter) is all in a high state of cultivation and is of excellent quality. The farm was owned by William Hotopp at the time of his death and it was there that the celebrated Hotopp Wine was manufactured. There is a large dwelling house on the place containing some 12 or 13 rooms (with a large cellar underneath the dwelling suitable for the storage of wine) and the property has on it all of the usual outbuildings, including several cabins for tenants, needed for a comfortable home and profitable farm. The 'Pen Park' cliff on the river contains a large quantity of rock admirably adapted for building purposes. This property is about two miles from Charlottesville on the north of the City, and Rio station on the Southern railway is about one mile to the north of the farm. Besides the vineyard mentioned above there is a quantity of other fruit on the place, such as apples, peaches, pears, etc.³⁸

In June of 1904, the then 407-acre Pen Park estate was sold out of the Hotopp family to the partnership of C. E. Hughes and Robert L. Thomas (Figure #6). The deed of sale did not include the 1-acre Pen Park graveyard.³⁹

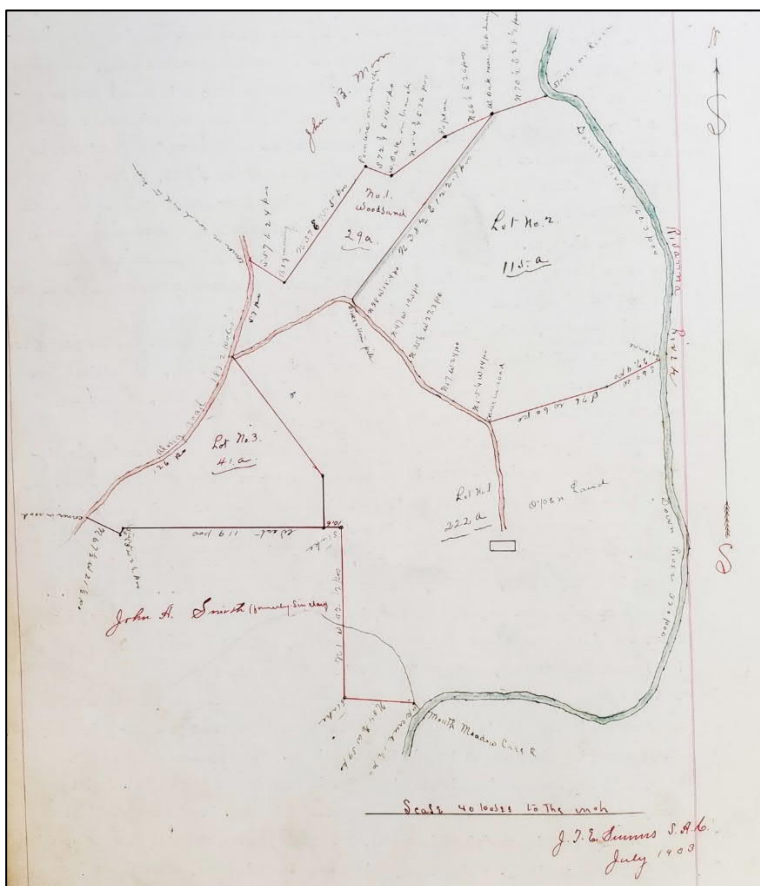


Figure #6: Plat of Pen Park estate. J. T. E. Simms, S. A. C., July 1903.

³⁸ Public Sale of Famous Farm. Handbill, May 19, 1904. Clara M. Hotopp, etc. vs. Emma Hotopp, etc. Albemarle County Chancery Records, Index 1905-035 (original: 1905-033 Cc).

³⁹ ACDB 130:377.

Pen Park in the Twentieth Century (1904 - 1966)

Like many former large estates of the period, the 407-acre Pen Park property was subdivided and resold several times during the early twentieth century. After acquiring C. E. Hughes' share, Robert L. Thomas sold the 407-acre Pen Park to William L. Flannagan and O. T. Allegre in 1909.⁴⁰ Flannagan and Allegre held on to Pen Park for a few years and in 1913 divided the 407 acres into four lots. They sold the 60-acre lot 1, including the Pen Park 'mansion house,' to W. G. Payne. They then divided the bulk of the property between themselves. Allegre received Lots 2 and 3, and Flannagan received Lot 4 (Figure #7).⁴¹



Figure #7: Plat showing division of the former Pen Park estate. M. M. Van Doren, October 1, 1913.

⁴⁰ ACDB 141:157.

⁴¹ ACDB 153:440, 153:442. The Pen Park residence reportedly burned to the ground in the first decade of the twentieth century.

Over the course of 1918, F. Y. Newton acquired both the Payne parcel (lot 1 – 60 acres), and the Allegre parcels (lot 2 – 68 8/10 acres; and lot 3 – 80 9/10 acres).⁴² In 1920 he redivided the residual Pen Park estate and sold a new 107-acre parcel to Robert F. Wayland. The parcel, identified as “part of a tract known as Pen Park including the mansion house and other improvements thereon,” included lots 16, 17 and 18 on a new plat (Figure #8).⁴³

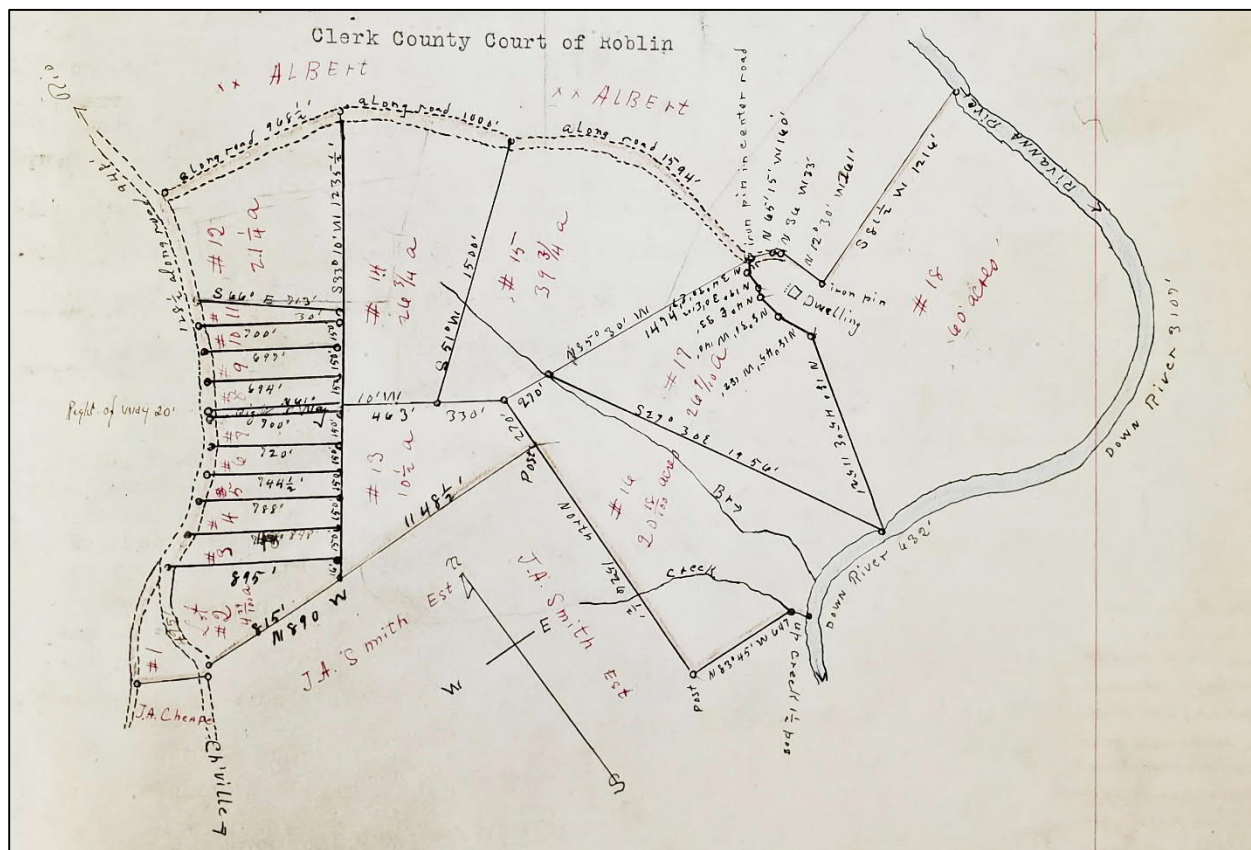


Figure #8: Plat of the division of the former Pen Park estate. M. M. Van Doren, C. E., September 28, 1920.

The son of Robert F. Wayland, Rosser L. Wayland, acquired additional lands including lots #14 and 15 on the 1920 plat in 1925 (Figure #8).⁴⁴ The Wayland family owned lands composing the former Pen Park estate for nearly half a century utilizing it as pasture for a dairy farm as well as limited cultivation of crops. In 1929 Robert F. Wayland sold the then 137-acre Pen Park parcel to his wife, Dora, and five children “in equal shares as tenants.” The Wayland Dairy farm would supply milk to Charlottesville and Albemarle County throughout the second quarter of the twentieth century.⁴⁵

A Park for the City of Charlottesville (1966 – Present)

Rosser L. Wayland and other Wayland heirs sold two tracts totaling 133.69 acres, encompassing the core of historic Pen Park, to the Piedmont Development Corporation in 1966. In August of 1971, the

⁴² ACDB 167:26; 167:28.

⁴³ ACDB 174:401.

⁴⁴ ACDB 189:532, 533.

⁴⁵ ACDB 175:247; 206:191.

Piedmont Development Corporation sold the same parcels to Trustees for a group called the Pen Park Land Trust. In September of 1971 the Pen Park Land Trust sold the 133-acre core of historic Pen Park to the City of Charlottesville.⁴⁶ The City of Charlottesville would continue to acquire additional small tracts in 1973 and 1979 from the Wayland family increasing the holdings of its new park overlooking the Rivanna River.⁴⁷

The Pen Park Cemetery

No sources were identified during archival research documenting the dates of establishment and physical expansion of the Pen Park cemetery. The earliest reference to a cemetery on the land occurs in 1812 when a 1-acre parcel, to be laid off in the future, is reserved from the sale of the Pen Park estate. This early reference to a burial ground at Pen Park likely derives from the deaths and burials of George Gilmer (1795), Mildred Gilmer (1795), and Lucy Gilmer (1800), as well as the deaths of enslaved African Americans owned by the Gilmer family between 1786 and 1812.

The Pen Park cemetery possesses three distinct partitions, a northern enclosure constructed of brick and containing Gilmer family members and related descendants; a central enclosure constructed of stone and containing Craven family members and related descendants; and a southern enclosure constructed of an iron fence and containing Hotopp family members and related descendants. Online sources identify at least 37 individuals, members of the Gilmer, Craven and Hotopp families buried within the Pen Park cemetery.⁴⁸



Figure #9: DAR and Gilmer family members at the Pen Park cemetery for the dedication of a marker to Dr. George Gilmer, 1927.

⁴⁶ ACDB 415:322; 493:156; 493:626.

⁴⁷ ACDB 529:55; 687:325.

⁴⁸ Pen Park Gilmer Estate Cemetery. Find A Grave.com. Accessed September 21, 2020. Online resource: <https://www.findagrave.com/cemetery/search?cemetery-name=Pen+Park-Gilmer+Estate+Cemetery&cemetery-loc=&only-with-cemeteries=cemOnly&locationId=>

In 1927, the Daughters of the American Revolution erected a grave marker honoring Dr. George Gilmer in the Gilmer section of the Pen Park cemetery (Figure #9).⁴⁹

The earliest photograph of the Pen Park cemetery suggests that it has not changed much in the last century. An aerial photograph from 1937, when the property was under pasture and cultivation by the Wayland family, shows that the Pen Park cemetery was an area possessing and surrounded by trees. Perhaps just as importantly the area kept in trees, left uncultivated, and presumed to be defined as cemetery space included a large area east and south of but adjacent to the cemetery enclosure (Figure #10).



Figure #10: Detail, 1937 aerial photograph, showing the Pen Park domestic complex with the main residence (blue circle), and tree shrouded cemetery (red outline).

The then dilapidated brick enclosure surrounding the Gilmer family section of the Pen Park cemetery was restored in 1975 as part of a regional U. S. Bicentennial project. The enclosure was rebuilt by the U. S. Army Foreign Science and Technology Center.⁵⁰

⁴⁹ Address of George Gilmer, June 10, 1927. Ms-446-c. Mrs. George (Ruth) Gilmer Papers. Albemarle Charlottesville Historical Society, Charlottesville, Virginia.

⁵⁰ Daily Progress, October 5, 1975.

RESEARCH DESIGN

As originally proposed, the Pen Park cemetery research design was composed of two phases of fieldwork, an initial Ground Penetrating Radar survey, and a phase of limited archaeological excavation or ground-truthing. The GPR survey was conducted immediately surrounding all sides of the ca. 130-foot by 30-foot cemetery enclosure with a particular focus on the eastern side where surface indications suggested the presence of unmarked burials, possibly of enslaved African Americans, outside of the historic burial ground. The total area to be examined by GPR, excepting areas of dense plantings, was approximately 12,800 square feet or 0.28 acres. NAEVA, a Charlottesville-based geophysical contractor, undertook the GPR survey on Wednesday, July 15, 2020.

Following the completion of NAEVA's GPR survey and data analysis, RAS was scheduled to undertake controlled, shallow excavations that would investigate two or more areas where surface indications and/or GPR 'anomalies' suggested the presence of potential unmarked grave shafts. The shallow excavations were intended to remove the overlying topsoil to a point where the underlying red clay subsoil was visible, generally a depth of less than one foot. At this point, disturbances dug into the red clay subsoil would be visible, and cultural features such as grave shafts would stand out based on their color and textural differences. The purpose of the archaeological test excavations was to provide more conclusive evidence concerning the presence or absence of unmarked graves outside of the cemetery enclosure and was predicated on the discovery of only a few 'anomalies.'

However, following a review of the preliminary examination of the ground surface surrounding the Pen Park cemetery, as well as the quantity and patterning of the potential grave shafts identified by the GPR survey, it was determined that there was more than enough evidence to conclusively state that there were a significant number of unmarked human interments present outside of the Pen Park cemetery. The limited archaeological excavations were abandoned, and the remaining labor focused on conducting archival research that would contextualize the findings and producing a technical report.

PRELIMINARY EXAMINATION OF THE GROUND SURFACE

On September 3, 2019, Rivanna Archaeological Services, LLC staff visited the Pen Park cemetery to conduct a preliminary examination of the ground surface surrounding the brick and stone enclosure. The examination was conducted in an approximately 25-foot perimeter surrounding the Pen Park cemetery enclosure. Along the east side of the Craven and Hotopp sections of the Pen Park cemetery, several east-west oriented oblong depressions were noted (Figure #11). The depressions appeared to be located east of and adjacent to the stone and iron fence enclosures, and also appeared to be generally clustered near one another. No grave markers were noted anywhere surrounding the Pen Park cemetery, or in association with the identified surface depressions.



Figure #11: East side of Pen Park cemetery looking north and showing flagged oblong east-west oriented depressions in the ground surface indicating potential burials. Soils visible in photograph are disturbances by animals.

GROUND PENETRATING RADAR (GPR) SURVEY

The GPR survey, data processing, and analysis was conducted by NAEVA Geophysics (Charlottesville, Virginia) according to the methods, equipment, and standards detailed in their technical report 'Geophysical Investigation Report: External Area Around Pen Park Cemetery, Charlottesville, Virginia' attached to this document as Appendix One.

Methods

The GPR survey focused on an approximately 0.28-acre project area encompassing a 25-foot zone surrounding the north, west, and south sides, and approximately 50 feet on the east side of the Pen Park cemetery enclosure (Figure #12). With the exception of areas of dense plantings, the 0.28-acre survey area was covered as completely as possible by close-interval (0.5 meter) GPR north-south oriented transects, parallel to the long axis of the cemetery (Figures #13 and 14). The north-south orientation of the transects was chosen to enhance the identification of potential east-west oriented human interments.



Figure #12: GPR Survey area (blue shading) surrounding the Pen Park cemetery.



Figure #13: GPR Survey along the east side of the Pen Park cemetery.



Figure #14: GPR Survey north of the Pen Park cemetery.

GPR utilizes high frequency electromagnetic energy to image objects below ground. An electromagnetic pulse is emitted which travels through the ground and is reflected upon encountering materials with differing electrical properties. GPR 'anomalies' are identified in soils based on differing electrical properties when compared to the surrounding natural soils. Grave shafts and other disturbed cultural contexts generally contain moister soils than the surrounding undisturbed soils. Moist soils possess a higher electrical conductivity than drier soils. Potential grave shafts, as well as other natural and cultural features, have the ability to be identified in the GPR data based on their ability to retain greater moisture. However as graves and other cultural features deteriorate over time the soils they contain possess less moisture and begin to resemble the surrounding natural soils.

The relative size and shape of GPR 'anomalies' can also be mapped. In GPR transects that are set on a north-south axis, perpendicular to the traditional east-west oriented burial, grave shafts can be seen as oblong, rectangular-shaped features in one or more transects placed at close intervals

GPR data returns recorded digitally during the Pen Park cemetery survey were examined by NAEVA in both profile and plan view visualizations to enable the detection of GPR 'anomalies,' areas of disturbed soils containing more moisture than the surrounding undisturbed soils, features that are potentially consistent with expectations for the geophysical signatures of unmarked grave shafts. A brief report describing the objectives, site location, equipment used, methods of survey and analysis, and results was issued by NAEVA Geophysics (See Appendix One).

Findings

The GPR Survey identified a total of 43 potential grave shafts outside of and surrounding the Pen Park cemetery enclosure. The potential grave shafts were concentrated predominantly along the east side of the Gilmer, Craven and Hotopp enclosures (n = 40), with three potential grave shafts located north of the Gilmer enclosure (n = 1), and south of the Hotopp enclosure (n = 2). The potential grave shafts located along the eastern side of the Pen Park cemetery appeared to be arranged in three distinct rows (Figure #15). Seven of the GPR identified potential grave shafts overlapped with surface depressions identified during the preliminary field examination. Four additional surface depressions did not register a GPR 'hit.'

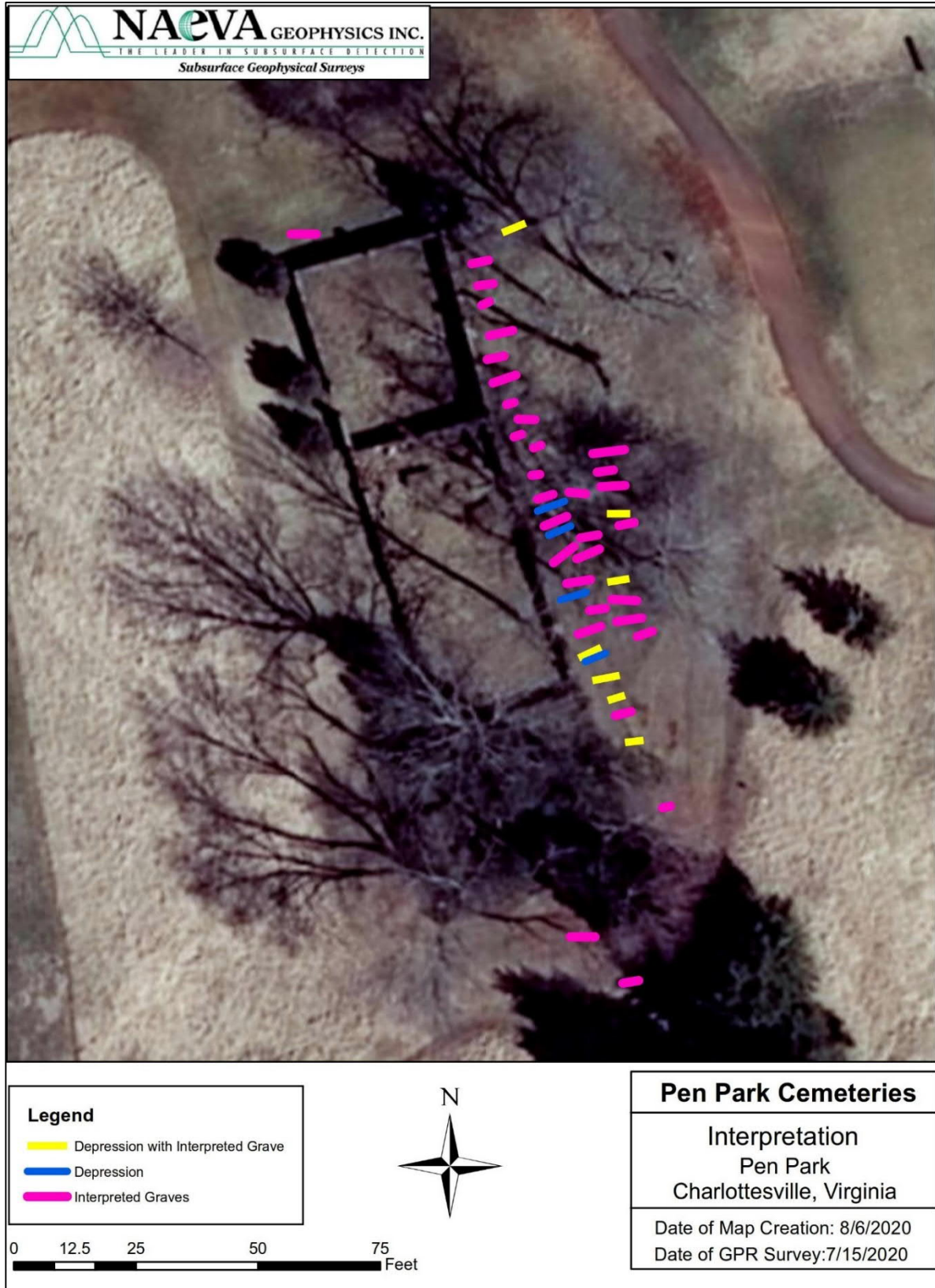


Figure #15: Map showing Pen Park cemetery and GPR identified potential grave shafts.

DISCUSSION AND ANALYSIS

The number, location and patterning of both visually identified surface depressions, and GPR identified potential grave shafts, convincingly documents the use of the area outside and predominantly east of the Pen Park cemetery enclosure for human burials by a large population over a significant period of time.

Size and Shape of Pen Park Cemetery

The earliest photograph of the Pen Park cemetery shows that it was a tree-covered polygon in 1937. The area of trees may or may not have been fenced, however it is clear from the aerial photo that this area was not cultivated like the surrounding soils. The fact that it was intentionally left uncultivated suggests that the entire polygon was identified as cemetery space (Figure #16).



Figure #16: Pen Park cemetery showing the area kept in trees in 1937 (red outline, at left) and the same area in 2018 (red outline, at right).

The shape of the area in trees in 1937 was a trapezoid, generally following the north, west and south sides of the existing cemetery enclosure, but extending far beyond the east side of the enclosure. The fact that the east side was the only side of the cemetery defined space that did not follow the line of the enclosure suggests that this too was acknowledged as sacred space (Figure #17).



Figure #17: Pen Park cemetery in 2018 showing long rectangular enclosure and area kept in trees (red outline) in 1937. Note the area east of the enclosure kept in trees in 1937 *includes* the area where a large number of potential graves were identified.

Number of Human Interments

The number of potential grave shafts identified through the GPR survey and the preliminary visual examination of the ground surface surrounding the Pen Park cemetery should be interpreted as the best possible results for the methods used. As previously noted, the identification of GPR 'anomalies' depends upon the differing electrical properties of grave shafts as compared to the surrounding natural soils, as well as their interpreted profile (size, shape, location and depth, etc.). It is important to acknowledge however that there may in fact be additional unidentified grave shafts that do not show

surface indications and which did not possess enough difference in electrical properties to be seen in the GPR data. Likewise, there may be GPR 'anomalies' identified as potential grave shafts that are, in fact, other cultural or natural features.

As previously noted, the GPR survey identified a total of 43 potential grave shafts located predominantly along the east side of the Pen Park cemetery. This number includes those potential grave shafts identified only by surface depressions (n = 4), those GPR anomalies identified as potential grave shafts (n = 32), and potential grave shafts identified by both surface depressions and GPR data (n = 7).

The number of potential grave shafts identified outside of the Pen Park cemetery is considerably larger than anticipated when compared to the relatively few surface depressions identified during the preliminary field examination. The size of this population, and the presence of two to three rows of individuals, suggests that the interments may have occurred over a long period of time.

Identification of the Population

One of the more significant questions to be answered is to determine who is buried outside of the Pen Park cemetery. In the absence of any inscribed grave markers and / or any burial records, the names of the individuals buried adjacent to and outside of the Gilmer, Craven and Hotopp cemetery enclosures remains elusive. An examination of the historical context for the establishment and development of the Pen Park estate however provides some evidence as to whom the population may represent.

It is clear that the persons documented as having been buried within the Gilmer, Craven and Hotopp sections of the Pen Park cemetery are all white individuals. Headstones mark their precise location and provide name, birth, death and relationship information. Future research into state death records for Albemarle County may also document many of these interments. In contrast, none of the potential grave shafts identified outside of and adjacent to Pen Park cemetery possess markers, either fieldstones or other more formal inscribed headstones.

The chances that 43 individuals associated with the prominent white families who owned Pen Park are buried outside of the existing cemetery enclosure without markers and lacking burial records seems unlikely given the well-marked and well-recorded interments within the Gilmer, Craven and Hotopp enclosures. Therefore if the 43 potential grave shafts are not likely members of the white Gilmer, Craven and Hotopp families, then they likely represent the burials of enslaved African Americans, and/or African Americans who lived and worked on the Pen Park estate between 1866 and 1904.

U. S. Census and Albemarle County Personal Property Tax Records document that the Gilmer and Craven families possessed significant numbers of enslaved African Americans during the periods in which they owned and resided at Pen Park. Dr. George Gilmer, and the George Gilmer estate, possessed 26 to 41 enslaved individuals between 1786 and 1801, while John H. Craven possessed 37 to 53 enslaved individuals between 1819 and 1845. The significant enslaved population living and working at Pen Park from the late eighteenth through the mid-nineteenth century means that there would also have been a significant number of enslaved African American deaths due to age, disease and enslavement.

Likewise, following Emancipation, the establishment of the Hotopp vineyard and wine making facility at Pen Park, as well as the operation of a farm throughout the last three decades of the nineteenth century, necessitated a number of laborers to perform the required tasks. An 1886 report of the Bureau of Statistics noted that William Hotopp employed seven African-American men in 1886 on his vineyard and farm. In addition, the 1870 and 1880 census record that the Hotopps had six African American individuals living in their household and listed as domestic servants. The presence of African American laborers and domestic help and their families associated with Pen Park between 1870 and 1900 suggests that burials outside of the Pen Park cemetery could have occurred in the post-Emancipation period as well.⁵¹

Black and White Cemeteries in Pre-Emancipation Virginia

Enslaved African Americans had little control over how and where they buried their loved ones. Enslaved burials in Virginia typically followed a limited number of options. They are found: 1) buried in the same cemetery as their white owner, 2) buried outside of and adjacent to the white cemetery; and 3) buried in a separate, distinct cemetery. Many different examples of burial patterns have been documented in Albemarle County. At the University of Virginia, enslaved African Americans were buried adjacent to and outside of the formal stone wall enclosed white cemetery. At Dunlora, the plantation and residence of Samuel Carr⁵² 1.5 miles north of Pen Park on the Rivanna River, enslaved African Americans were buried in a separate cemetery located approximately 0.3 miles southwest of the white cemetery. At Pen Park, it appears that enslaved African Americans were buried outside of but adjacent to the white cemetery. This typical burial pattern may have continued well into the post-Emancipation period.

Pen Park Cemetery Burial Patterns

Analysis of the spatial patterning of the 43 potential grave shafts located outside of the Gilmer, Craven and Hotopp enclosures enhance the interpretation of the Pen Park cemetery. The most obvious spatial pattern is that the predominant number of potential grave shafts are located adjacent to and along the east side of the Pen Park cemetery. A significant majority (40 of 43 or 93%) of the burials follow this pattern.⁵³ This spatial pattern may be a direct result of the historic designation of a 'front' and 'rear' to the Pen Park cemetery. For both the Gilmer and Craven sections, the two pre-Emancipation sections in the Pen Park cemetery, the primary entrances to the brick (Gilmer) and stone (Craven) enclosure are located on the west side. The west side of the Pen Park cemetery is also the more level of the two long sides, as the east side falls off subtly to the south and east. This would mean that west side was the formal front of the cemetery, and that the east side was the back of the cemetery. The GPR survey did not identify any potential grave shafts located along the west or front of the Gilmer, Craven or Hotopp enclosures. The location of approximately 93% of the potential grave shafts to the east, or rear, of the Pen Park cemetery is significant and likely represents an intentional decision to place enslaved African Americans in this location.

⁵¹ John D. Imboden, Virginia, p: 177. In United States Treasury Department, Report on the Internal Commerce of the United States, by William F. Switzler, Chief of the Bureau of Statistics, Treasury Department. (Washington D.C.: Government Printing Office, 1886).

⁵² Samuel Carr (b. 1771 – d. 1855) was a contemporary of both Dr. George Gilmer and John H. Craven.

⁵³ Two of the potential grave shafts are located south of the Hotopp enclosure, one is located north of the Gilmer enclosure.

The several potential grave shafts located east of and adjacent to the Hotopp enclosure, the southern most of the three enclosures, is interesting. These five potential grave shafts appear to reflect the presence of the Hotopp enclosure, a cemetery which was not established until 1866 at the earliest, and most likely in June of 1867 with the death of Johanna H. A. Hotopp. If these potential grave shafts are indeed reflecting the presence of the Hotopp cemetery and enclosure, then this would mean that these interments date to the post-1866 period and may reflect the deaths of African Americans living and working at the Pen Park vineyard and farm.

An examination of the map of potential grave shafts documented that most of the GPR identified burials (designated pink and blue in Figure #15) appeared to be clustered nearly exclusively east of the Gilmer and Craven sections, while most of the burials possessing surface indications such as oblong depressions (designated yellow and blue in Figure #15), appear to be clustered east of the Craven and Hotopp sections of the Pen Park cemetery. Much like the Gilmer, Craven and Hotopp sections that proceed in age from north to south, the potential grave shafts adjacent to and east of the Pen Park cemetery may follow a similar progression in time. Very few of the burials identified by GPR also possess surface indications (n = 4) suggesting that over time, their surface signature (e.g. oblong depressions) may have been filled in. Likewise, burials that do possess a surface indication, may be more recent in time.

The absence of any headstone or footstone markers associated with the 43 potential grave shafts is potentially significant. It was common for most eighteenth and nineteenth-century white and black burials to possess some kind of grave marker, even if only a fieldstone. The complete absence of grave markers suggests that many have been removed over time, either in an effort to erase this portion of the cemetery, or for the care and maintenance of the sod.

RECOMMENDATIONS

The recommendations below are tailored to address possible 'next steps' that the City of Charlottesville might take regarding the 43 potential grave shafts located adjacent to and outside of the Pen Park cemetery.

Memorialization

It is recommended that the City of Charlottesville memorialize, in some way, the presence of the 43 individuals buried outside of the Pen Park cemetery enclosure. It is believed that these interments are those of enslaved African Americans owned by the Gilmer, Craven and other families, as well as possibly African Americans associated with the Hotopp vineyard and farm during the 1866 – 1904 period. Memorialization may include erecting signage with compelling text and graphics. Memorialization may also involve the construction of some form of enclosure that visually separates the 43 potential burials from the surrounding golf course. The area composing the newly identified burials, as well as any future memorialized area, should be surveyed and mapped and entered as part of the legal record for Pen Park.

Guidelines for the Future Use and Treatment of the Pen Park Cemetery

Prior to the GPR Survey, it was believed that all of the human interments at Pen Park were contained within the existing cemetery enclosure. Now that it is known that a significant number of additional previously unidentified burials are present predominantly along the east side of the cemetery, it is recommended that the City of Charlottesville consider the development of new policy and guidelines on how this area is to be maintained by park staff and used by the public in the future.

Among the considerations relevant to the use and maintenance of the surrounding public golf course are the following:

- Treatment of the vegetation at the Pen Park cemetery: The area surrounding the Pen Park cemetery enclosure is currently planted in sod but also contains large shrubs and trees. The City should consider creating management practices that address this vegetation. For example, should new plantings in the area of the newly identified burials be allowed? When a tree dies or needs to be removed, the City should make sure that disturbances are minimal and that stump grinding does not occur.
- Use of golf carts: The City may want to consider how golf carts are used in the vicinity of the Pen Park cemetery. Because of the adjacent 14th tee, golf carts frequently stop east of and adjacent to the Pen Park cemetery. Should the area containing the newly discovered burials be a restricted area where temporary parking of golf carts is prohibited? Should a more formal parking area for golf carts be created next to the 14th tee?
- Maintenance of the asphalt cart path: An asphalt surfaced golf cart path passes approximately 50 feet to the east of the Pen Park cemetery. The City should consider developing a policy for future repair and new construction of the golf cart path in the vicinity of the Pen Park cemetery.
- Maintenance of adjacent utilities: A sprinkler control box is located approximately 40 feet east of the brick enclosed Gilmer section of the Pen Park cemetery. Other buried utility lines may

be located nearby. The City should consider developing a policy for future repair and new construction associated with water and electrical lines in the vicinity of the Pen Park cemetery.

Among the considerations relevant to the use of the Pen Park cemetery by the public are the following:

- Developing an Event Policy: The discovery of additional previously unidentified burials, most likely interments of enslaved African Americans held by the Gilmer, Craven and other families, as well as the potential future memorialization of the site, may mean that future visitors wish to hold commemorative events at the Pen Park cemetery. The City should consider the development of an event policy for the Pen Park cemetery that will take into account reasonable access to the park as well as potential conflicts with the use of the golf course.
- Public Access to the Pen Park cemetery: The discovery of additional previously unidentified burials, as well as the potential future development of an educational and interpretive program in this location, may mean that more people will come to visit the Pen Park cemetery. The City should ensure that there is adequate public access to the Pen Park cemetery in the future. Currently the only access is via a concrete-surfaced pedestrian path. The City should consider the construction of a limited handicap access parking area, located in an appropriate place, that will allow all visitors adequate access to the site and which will facilitate the hosting of future commemorative events.

Additional Archaeological Research

Should the City of Charlottesville want to determine the precise location and number of all of the graves outside of the Pen Park cemetery, additional archaeological investigations would be recommended. While the GPR survey has identified a total of 43 potential grave shafts adjacent to the Pen Park cemetery, additional archaeological investigations have the ability to 1) confirm that each potential grave shaft is in fact a human interment and to locate additional human interments not previously identified by the GPR survey; 2) to pin point the precise location of each human interment; and 3) to further define the full spatial extent of the newly identified burials. Confirming the identify of potential grave shafts and knowing the full extent of the burials adjacent to and outside of the Pen Park enclosure will be helpful in planning for any future memorialization of the site, as well as for developing guidelines for the future use and maintenance of the vicinity.

The recommended additional archaeological investigations will not excavate individual grave shafts or knowingly disturb or relocate any human remains. However because any excavation within or adjacent to the Pen Park cemetery has the potential to recover human remains, it is recommended that any future archaeological work east of the Pen Park cemetery occur with oversight from the Virginia Department of Historic Resources. Solely as a precaution against the unlikely event that human remains are encountered, it is recommended that the City secure a Permit for Archaeological Excavation of Human Remains from the Virginia Department of Historic Resources. Securing this permit in advance of any future archaeological fieldwork ensures that the cemetery delineation work plan receives an additional layer of review and oversight while also enabling the archaeological consultant to manage inadvertently encountered human remains in the unlikely event of their discovery.

The goal of additional archaeological excavation adjacent to the Pen Park cemetery should be the positive location and identification of each human interment, and the full definition of the extent of burials. The most accurate means of identifying all human interments and defining the extent of burials

within a cemetery is to remove the topsoil from the project area. At the interface of the topsoil and the underlying naturally occurring subsoil, the tops of the grave shafts will be recognizable by their shape as well as the coloring and disturbed nature of the fill soils they contain, differentiating them from the surrounding naturally occurring red clay subsoil. Archaeological investigations should consist of shallow, controlled excavation that will extend only to a depth sufficient to visually identify each burial, generally less than 1-foot below grade. This work can be conducted with the assistance of a backhoe with a smooth-edged bucket enabling the shallow excavation and removal of topsoil over a large area. Extant trees within the project area will be avoided leaving small 'islands' of turf where tree roots will be protected. Archaeological excavation and removal of topsoil should extend to a point approximately 25 feet beyond the last identified burial, or to a point where excavation is no longer possible, thereby defining a reasonable boundary for the previously unidentified burials. Once all human interments are positively located and identified, a surveyor should be brought in to accurately locate each burial and any relevant cultural features within the project area. Once the individual grave shafts have been accurately mapped by a surveyor, a permeable landscape fabric should be placed on top of the burials and the project area soils replaced. The area composing the newly identified burials, as well as any future memorialized area, should be entered as part of the legal record for Pen Park.

REFERENCES CITED

Albemarle County, Virginia.

- Var. Deed Books [ACDB]. Clerk's Office, Albemarle County Courthouse, Charlottesville, Virginia.
- Var. Will Books. [ACWB]. Clerk's Office, Albemarle County Courthouse, Charlottesville, Virginia.
- Var. Personal Property Tax Records. [ACPPTR]. Richmond, Library of Virginia.
- Var. Chancery Court records. Richmond, Library of Virginia.

Charlottesville Chronicle.

- 1869 Grape Culture in Charlottesville. October 14, 1869.

Charlottesville Daily Chronicle.

- 1867 July 9, 1867.

Charlottesville Daily Progress.

- 1975 October 5, 1975.

Commonwealth of Virginia.

- 1773 Virginia Land Patent Book 15:47, June 20, 1773. Richmond, Library of Virginia.

Find A Grave.

- 2020 Pen Park Gilmer Estate Cemetery. Find A Grave.com. Accessed September 21, 2020. Online resource: <https://www.findagrave.com/cemetery/search?cemetery-name=Pen+Park-Gilmer+Estate+Cemetery&cemetery-loc=&only-with-cemeteries=cemOnly&locationId=>

Gilmer, George.

- 1927 Address of George Gilmer, June 10, 1927. Ms-446-c. Mrs. George (Ruth) Gilmer Papers. Albemarle Charlottesville Historical Society, Charlottesville, Virginia.

Gilmer, Ruth D.

- n.d. Pen Park. Gilmer Family file. Albemarle Charlottesville Historical Society, Charlottesville, Virginia.

Imboden, John D.

- 1886 Virginia. In United States Treasury Department, Report on the Internal Commerce of the United States. William F. Switzler, Chief of the Bureau of Statistics, Treasury Department. Washington D.C., Government Printing Office.

Lay, K. Edward.

- 2000 The Architecture of Jefferson Country, Charlottesville and Albemarle County, Virginia. Charlottesville: University Press of Virginia.

Mutual Assurance Society Insurance Records.

- 1812 Policy issued to John H. Craven and James Dinsmore. No. R5V46N566.

Nalle, John M.

- 1972 John M. Nalle, President, Albemarle County Historical Society to Mrs. Charlotte Tucker, Assistant Editor, The Jefferson Journal, December 11, 1972. Albemarle Charlottesville Historical Society, Charlottesville, Virginia.

Nelson, Wilbur A.

- 1962 Geology and Mineral Resources of Albemarle County. Bulletin No. 77, Virginia Division of Mineral Resources. Charlottesville, Virginia Division of Mineral Resources.

Pellish, Shelly.

- 1999 Pen Park. Notes on Brown Bag Lunch presented to the Albemarle County Historical Society, May 3, 1999. Albemarle Charlottesville Historical Society, Charlottesville, Virginia.

Pollard, Thomas.

- 1879 Third Annual Report of the Commissioner of Agriculture. Richmond, R. E. Frayser.

Richmond Enquirer.

- 1845 Vol. 43, No. 5, May 23, 1845.

Richmond Times Dispatch.

- 1903 Public Sale of Noted Farm and Vineyard, July 2, 1903, p6.

Siler, Jeanne.

- 2001 History of Pen Park and Its Cemeteries, n.d. [2001]. Ms. in possession of the City of Charlottesville.

Strangstad, Lynette.

- 2003 Preliminary Site Evaluation, Charlottesville City Cemeteries, Charlottesville, Virginia. Prepared for the City of Charlottesville, Virginia. Prepared by Stone Faces and Sacred Spaces, Mineral Point, Wisconsin.

Tucker, Charlotte.

- 1972 History – A Vital Element in Planning. The Daily Progress, January 13, 1972;

U. S. Bureau of Census.

- 1820 Fourth U.S. Census, 1820. Population Statistics, Albemarle County, Virginia.

- 1840 Sixth U.S. Census, 1840. Population Statistics, Albemarle County, Virginia.
- 1870 Ninth U. S. Census, 1870. Population Statistics, Albemarle County, Virginia.
- 1880 Tenth U.S. Census, 1880. Non-Population Statistics, Productions of Agriculture, Albemarle County, Virginia.

U.S.D.A. Natural Resources Conservation Services.

Web Soil Survey. Electronic resource, Accessed September 21, 2020.
<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>.

Wood, James R.

- 1980 A Cultural Resource Reconnaissance of the Charlottesville, Virginia, Pen Park Land Acquisition. Prepared for the Virginia Research Center for Archeology and the Virginia Commission of Outdoor Recreation. Prepared by James Madison University, Archeological Research Center.

GPR
MAGNETICS
ELECTROMAGNETICS
SEISMICS
RESISTIVITY
UTILITY LOCATION
UXO DETECTION
BOREHOLE CAMERA
STAFF SUPPORT

Geophysical Investigation Report

External Area Around Pen Park Cemeteries Charlottesville, Virginia

Date of Investigation:
July 15, 2020

OCTOBER 9, 2020

Prepared for
The City of
Charlottesville, Virginia



VIRGINIA
P.O. Box 7325
Charlottesville
Virginia 22906
(434) 978-3187
(434) 973-9791 Fax

Table of Contents

GEOPHYSICAL INVESTIGATION REPORT	1
1 INTRODUCTION	2
1.1 BACKGROUND AND OBJECTIVES.....	2
1.2 SITE LOCATION AND DESCRIPTION	2
2 EQUIPMENT	3
2.1 SENSORS AND SOFTWARE GPR	3
2.2 TRIMBLE RTK GPS.....	4
3 RESULTS	5
3.1 SUMMARY OF DATA PROCESSING	5
3.2 GPR ANALYSIS.....	5
6 CONCLUSIONS.....	8
7 REFERENCES	8

List of Figures

FIGURE 1: AREA OF INVESTIGATION	3
FIGURE 2 MODELED GPR DATA OVER INTACT GRAVE SITE (GOODMAN, PIRO 2013).....	6
FIGURE 3: AN EXAMPLE OF KNOWN GRAVE FOUND IN THE GILMER PORTION OF THE CEMETERY	7
FIGURE 4: A POTENTIAL GRAVE OUTSIDE THE CEMETERY	7
FIGURE 5: THREE POTENTIAL GRAVES OUTSIDE THE CEMETERY WITH GRAVE SHAFTS	7

Appendices

APPENDIX A. DEPTH SLICES, INTERPRETATION AND COMPOSITE IMAGES

1 INTRODUCTION

1.1 Background and Objectives

NAEVA Geophysics Inc. (NAEVA) was contracted by the City of Charlottesville to conduct a geophysical investigation for the area surrounding three adjacent historic family cemeteries in Pen Park which contain graves of the Gilmer, Craven and Hotopp families. The purpose of the geophysical investigation was to attempt to ascertain if depressions found outside the walls of these cemeteries are in fact unmarked graves. NAEVA proposed utilizing ground penetrating radar (GPR) to attempt to image the subsurface at the site to answer the question.

1.2 Site Location and Description

The portion of the cemetery that was examined with GPR was roughly a 25-foot buffer outside the walls of the cemetery with the eastern side extending further out to encompass all visible depressions. The survey covered 0.26 acres (**Figure 1**). For the most part the site is in an open area with trees on the east and south sides. The surface is vegetated with mowed grass. Surrounding the cemetery is the Pen Park golf course. The eastern side has a paved road for golf carts and a utility in the northeast corner of the collection area. A few depressions were observed on the eastern side. Their positions were recorded with high accuracy real time kinematic (RTK) GPS and later plotted with potential graves found with GPR.

A grid was established using metric tape measures, with the southwestern corner designated at 0N, 0E. A series of parallel profiles were collected with GPR at a spacing of 0.5 m to cover the collection area. **Figure 1** shows the portion of the cemetery that was examined.



Figure 1: Area of investigation

2 EQUIPMENT

2.1 Sensors and Software GPR

Ground penetrating radar is a common tool to locate unmarked graves. For this project NAEVA used a Sensors and Software GPR system. GPR utilizes the propagation and reflection of high frequency electromagnetic (EM) energy to image subsurface structures and objects. The GPR transmitter emits a pulse, which then travels through the ground and is partially reflected when it encounters an interface of two materials with differing electrical properties. The remaining energy continues downward, perhaps encountering other reflectors, or eventually dissipating due to spreading losses or attenuation in conductive materials. The GPR receiving antenna is connected to the console electronics, which digitizes the signal. The travel time of the reflected energy is very accurately measured (in nanoseconds), as well as the relative amplitude of the signal. The amplitude of the returning signal is a function of the contrast in electrical properties of the materials, and the depth. Conductive materials, including clay, very rapidly attenuate GPR energy, limiting depth penetration.

A Sensors and Software Noggin Plus system with a 250 MHz antenna was initially tested on this site by running over depressions of the east side that were believed to be graves and over known graves within the Gilmer family portion of the cemetery. During testing it was determined the GPR system would be successful at imaging burials at the site.

Data were collected in a North – South direction using a 0.5-meter line spacing to cover the area of investigation. Survey line direction was oriented N-S to maximize the possibility of multiple traverses over E-W oriented burials. Stacked GPR pulses into the ground were triggered using a wheel odometer connected to the GPR electronics spaced at 16 stations for every 10 cm traveled. Straight line profiling across the survey area was accomplished using guide ropes laid perpendicular to the direction of travel, painted with bands of alternating color as a visual cue.

2.2 Trimble RTK GPS

A Trimble R8 RTK GPS base station and rover were used to obtain real-time positions of features of interest and to properly position data in the processing stage. The GPS base station was used in conjunction with one rover mounted on a range pole to record the locations of depressions within the survey area and to record the coordinates of the collection area so data could be georeferenced in the processing stage. The GPS rover received real-time corrections broadcast to the roving GPS unit via a radio link using a Trimble TDL450 radio modem transmitting at 2 watts. This system provides positional corrections at a rate of 1 hertz (Hz), with an expected accuracy of 2 cm horizontal and 3 cm vertical when the required minimum of 5 satellites are available. Data quality derived from a satellite can depend on overhead canopy, local topography, the elevation of the satellite in the sky, weather, and other factors.

A control point was measured by NAEVA for use as a base station by collecting static readings and uploading the data to the National Geodetic Survey's OPUS system. Data was later shifted to match the corrected base station location.

3 RESULTS

3.1 Summary of Data Processing

GPR data were processed using Sensor and Software's EKKO Project program. Hyperbolic velocity calibration was used to determine the speed of the electromagnetic waves passing through the subsurface. For this site, a value of 0.28 ft/ns was used. The profile time axis was able to be converted to depth using this speed constant for the site. Profiles were processed using DC removal and background subtraction filters, which removed noise in the data. A SEC2 gain was employed to compensate for signal attenuation. Within EKKOProject, profile data was dewowed, and a migration and envelope applied. The above processes turn the profiles into amplitude response profiles that can be gridded and have slices cut through the investigation area at varying depths. Color contour maps of the gridded GPR data at 0.5ft intervals are presented in **Appendix A**.

3.2 GPR Analysis

The GPR data were collected in a series of parallel traverses, oriented grid N-S. Subsurface features with straight edges are best defined with GPR if the survey line is oriented perpendicular to the axis of the target. Since graves were expected to be oriented in an East – West orientation, GPR lines were only collected in a North – South direction.

GPR anomalies seen in the data correspond to differences in conductivity with the surrounding soil. Suspected grave shafts can be seen in the data in some places since the disturbed soil retains slightly higher moisture content than undisturbed soil. The suspected graves also retain more moisture than surrounding soil as they decay which is the response seen in the data. As less and less of a grave remains intact, the closer the response resembles the surrounding soil, which deduces the response seen by the GPR.

After corrections were done to the data, each GPR profile was examined for grave like features and potential associated grave shafts. The criteria used to pick potential graves included hyperbola depths of at least 2.5 ft, hyperbola widths of at least 2.25 ft. When encountered, these features were marked on the profiles. Adjacent profiles were examined anytime a potential grave was seen in the data in order to confirm a potential

grave both continued onto adjacent profiles and maintained the same depth. Features not oriented roughly E-W were rejected as potential grave locations. With the age and likelihood these graves did not contain caskets, but burial shrouds, any feature that continues through at least 3 profiles, was at the right depth, and was roughly orientated E-W was considered a potential grave location. Some potential graves also show a grave shaft. Only features that met the criterial within the profile data were used to discern potential grave locations. Depth slices were only used as a visual aide.

In **figure 2**, a GPR response simulator created the expected signature of an intact modern grave. Boxlike reflectors in the subsurface with tails coming off either side is representative of the kind of features marked in the profiles. Pristine grave responses like **Figure 2** were not present in the survey area presumably because these individuals were not buried in caskets and natural decay over time has left very little in terms of remains.

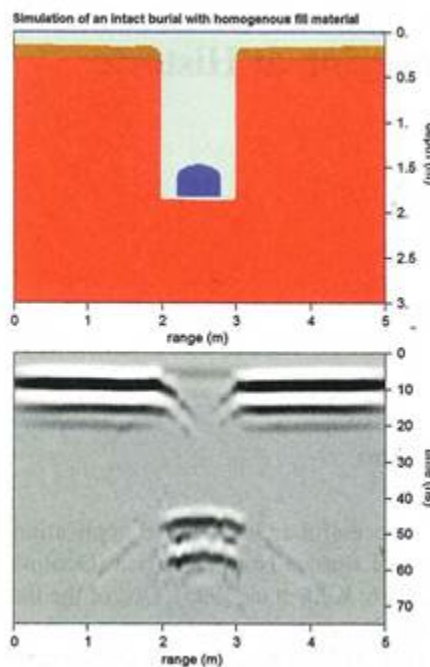


Figure 2 Modeled GPR data over intact grave site (Goodman, Piro 2013)

NAEVA also looked to data collected in the walled in Gilmer portion of the cemetery that still contained grave stones in order to find a better representation of the response of graves that fit the same time period and geologic conditions experienced by graves outside the walls. **Figure 3** shows a profile from the Gilmer portion of the cemetery that passes over a known grave with the peak of the hyperbola marked with a blue dot.

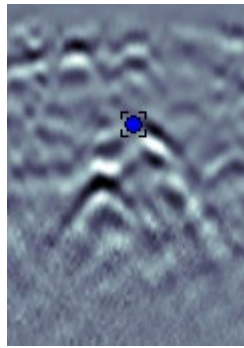


Figure 3: An example of known grave found in the Gilmer portion of the cemetery

Identified burials outside the walls of the cemetery varied in response due to varying ages and how they were buried. **Figures 4 and 5** show examples of the kind of hyperboles that were picked as potential graves. Figure 4 shows a strong response at the right depth and the size of the hyperbola matched well to what was seen in the Gilmer Cemetery. Similar size and depth hyperbolas were seen in adjacent profiles at the same location.

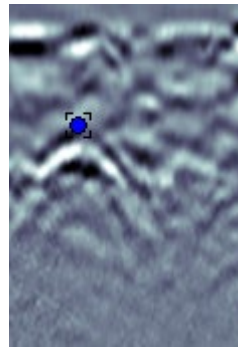


Figure 4: A potential grave outside the cemetery

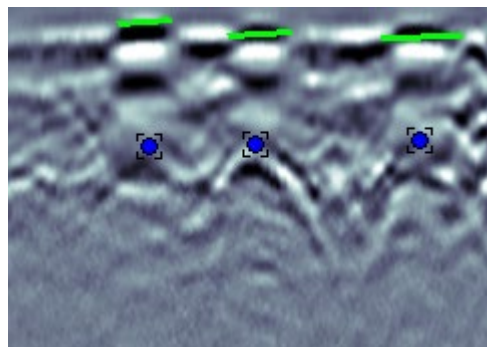


Figure 5: Three potential graves outside the cemetery with grave shafts

Figure 5 is more representative of graves outside the walls of the cemetery. Hyperbolas were still present yet responded with less amplitude. Surprisingly, many of these were accompanied by the remains of grave shafts directly above the hyperbola. The

green lines show the top of grave shafts while the blue dots mark the top of potential graves. These hyperbolas also fit the criteria by having the right depth, size, orientation (E-W), and correlative adjacent profiles.

The GPR data were gridded and contoured, and are displayed in **Appendix A**. Each slice has a thickness of approximately 0.5 feet, based off a GPR velocity of 0.28 ft/ns, ranging from the surface (Slice 1) down to a maximum of 5 feet (Slice 10). The GPR provided useful data to a depth of approximately 5 feet at this site. Depths are shown at the bottom right hand corner of each slice figure. In addition, a 3D transparent image of the data can also be found in **Appendix A**.

Gridded and contoured data was also exported into Geosoft to create a transparent 3D representation. All depth data was combined, and low amplitude data was made transparent. High response areas show up as orange. Suspected graves do not show up well since the remaining response is low. However, the higher response grave shafts mostly clustered next to the Craven portion of the Cemetery show up well in the composite image. The composite amplitude map can be found in **Appendix A**.

In the area investigated, we interpret that approximately 43 graves are present, with the majority being in two rows on the eastern side. An interpretation of grave locations can be found in **Appendix A**.

6 CONCLUSIONS

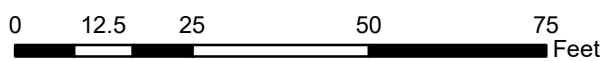
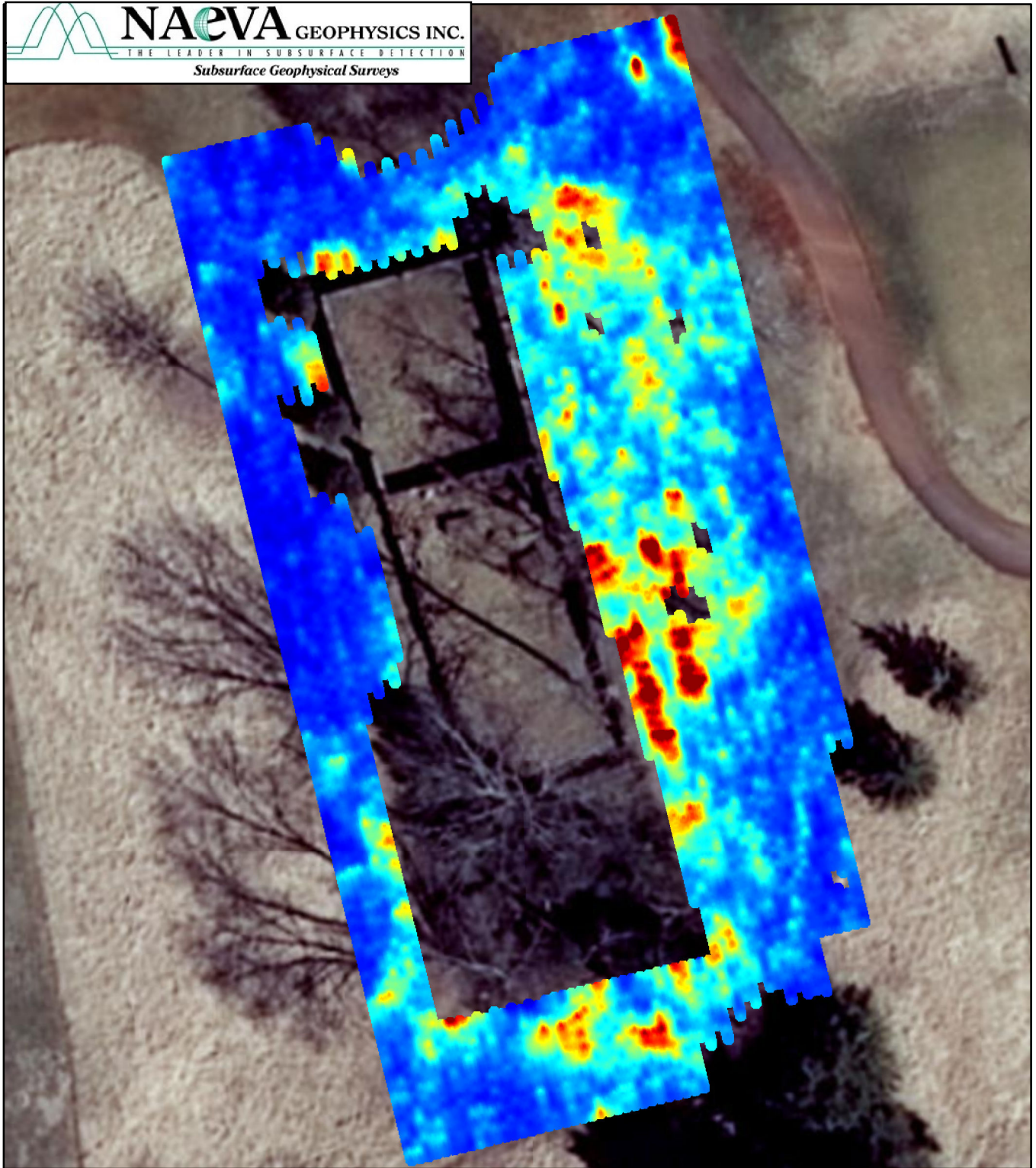
GPR data suggests as many as 43 graves in the study area that are clustered mostly on the eastern side of the survey near the walls of the family cemeteries. These graves presumably are of varying ages and states of decay. Some graves still look well preserved like the one imaged in **Figure 4**, however most are nearing the point where very little remains. Some graves may already be at the point where they are not detectable to geophysical methods.

7 REFERENCES

Goodman, Dean, Piro, Salvatore, GPR Remote Sensing in Archaeology, 2013

Appendix A

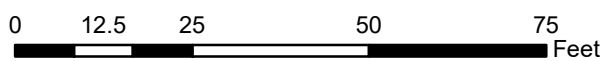
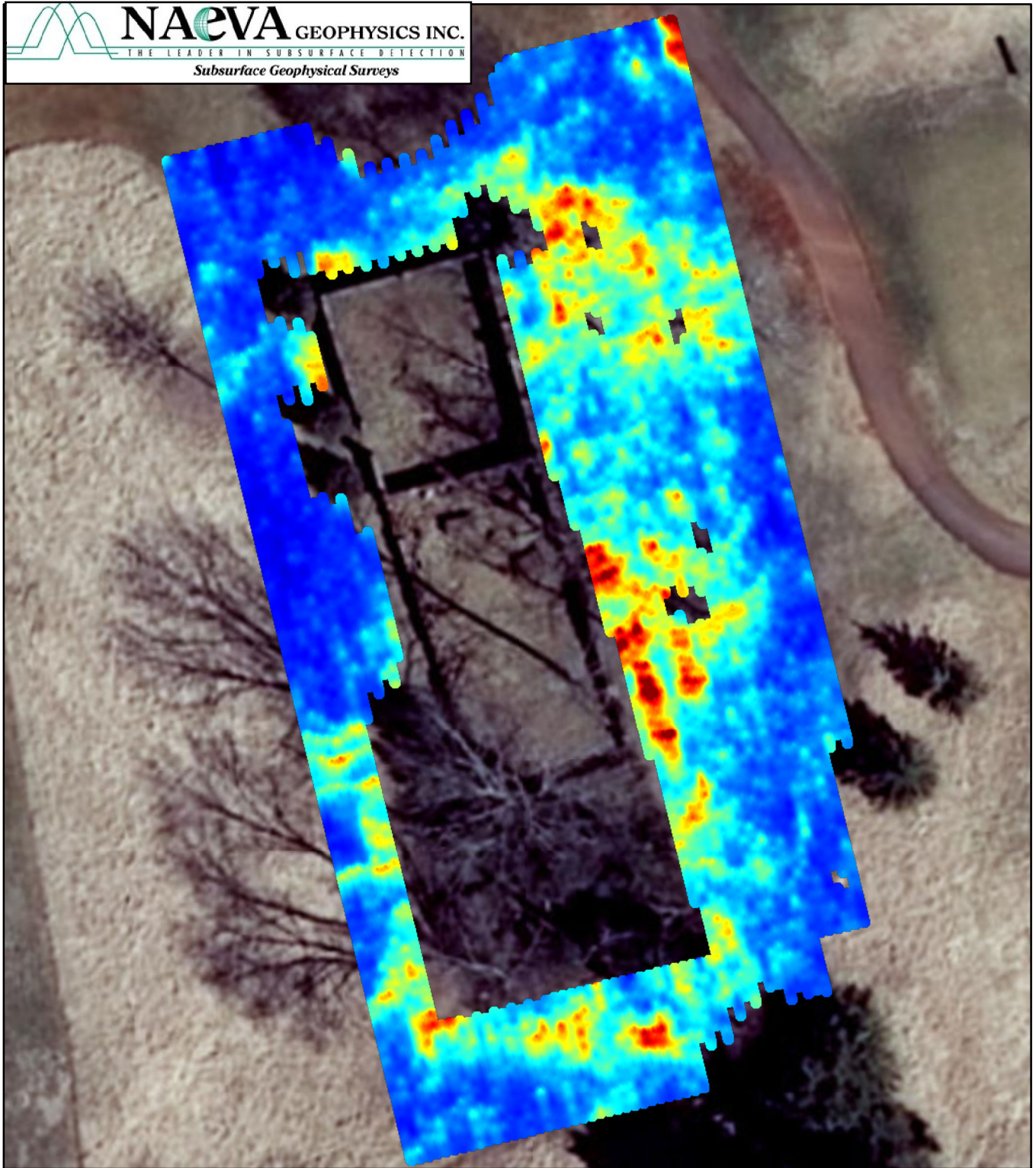
GPR Slices and Interpretation



Pen Park Cemeteries

Slice 1 (0.0 to 0.5 ft)
 Pen Park
 Charlottesville, Virginia

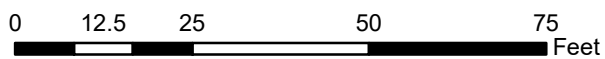
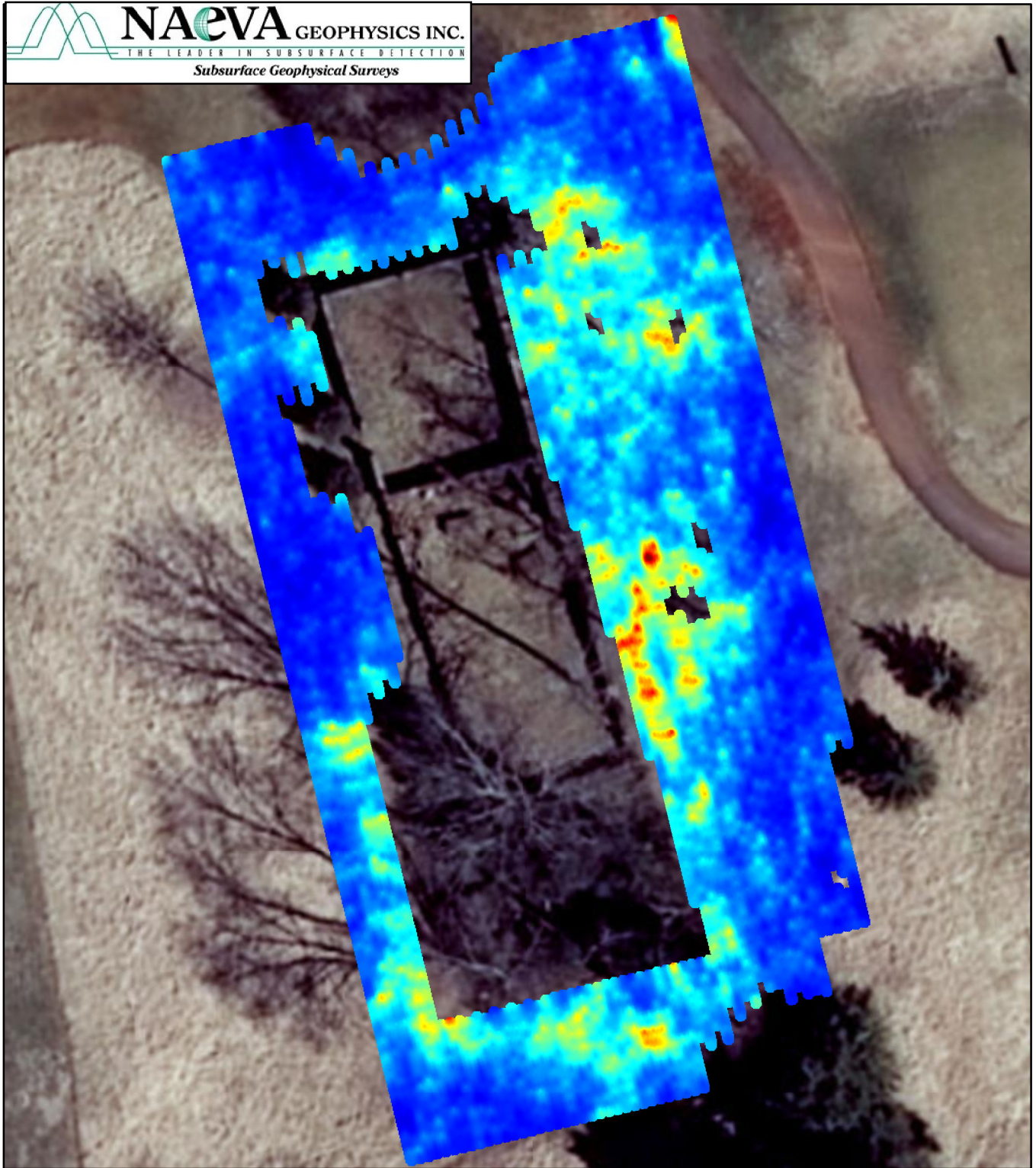
Date of Map Creation: 8/6/2020
 Date of GPR Survey: 7/15/2020



Pen Park Cemeteries

Slice 2 (0.5 to 1.0 ft)
 Pen Park
 Charlottesville, Virginia

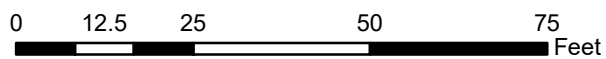
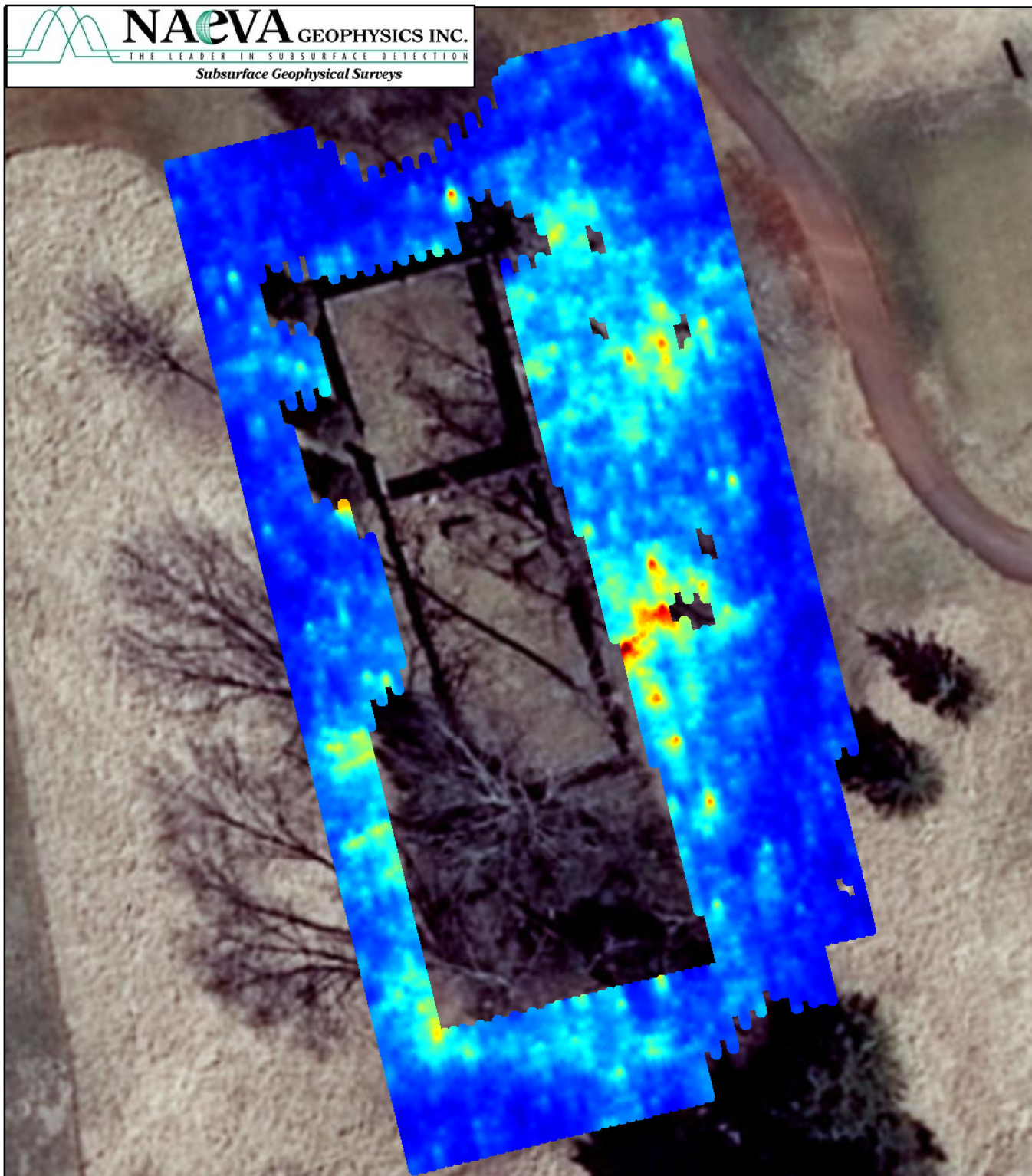
Date of Map Creation: 8/6/2020
 Date of GPR Survey: 7/15/2020



Pen Park Cemeteries

Slice 3 (1.0 to 1.5 ft)
 Pen Park
 Charlottesville, Virginia

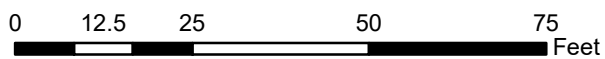
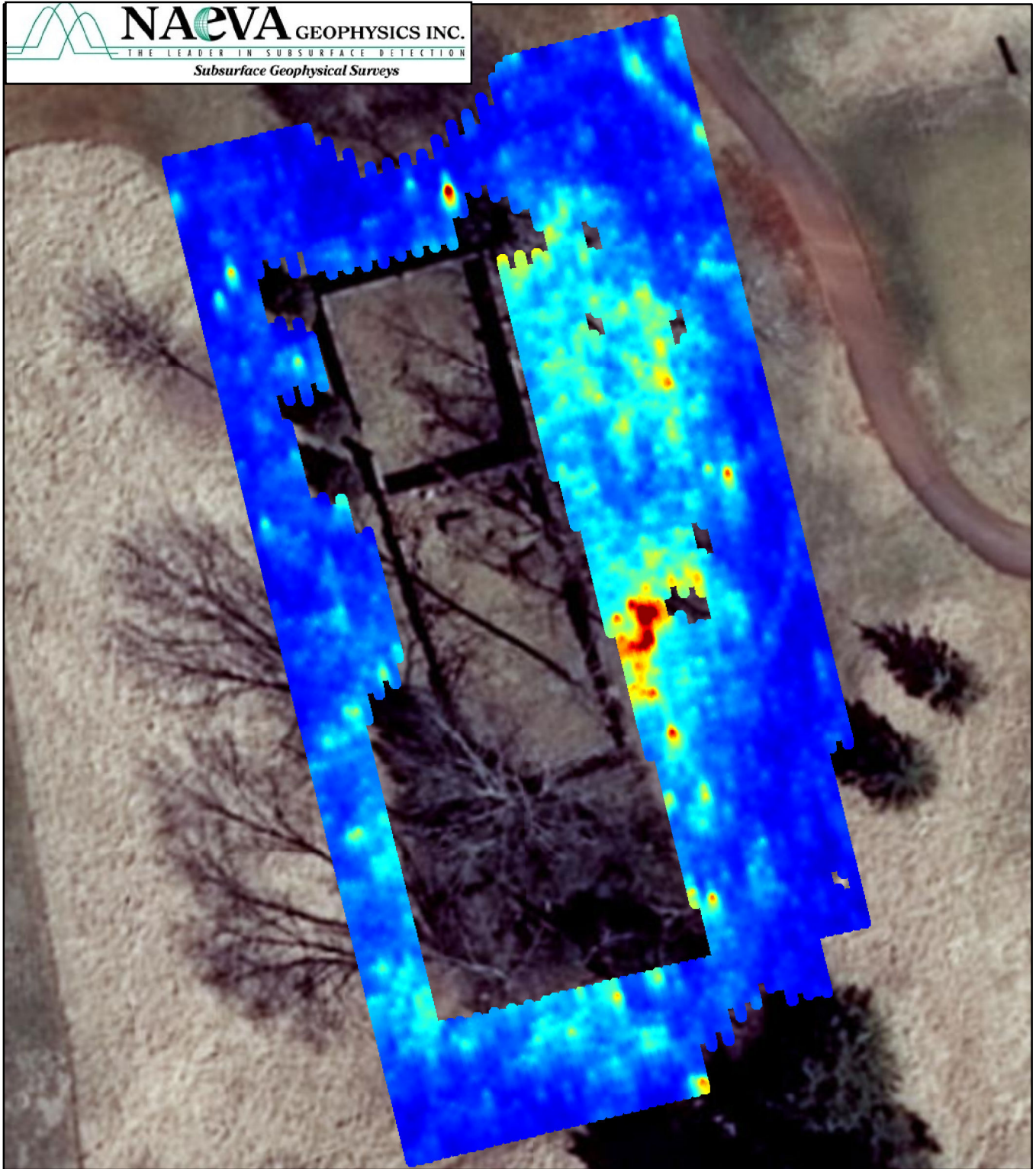
Date of Map Creation: 8/6/2020
 Date of GPR Survey: 7/15/2020



Pen Park Cemeteries

Slice 4 (1.5 to 2.0 ft)
 Pen Park
 Charlottesville, Virginia

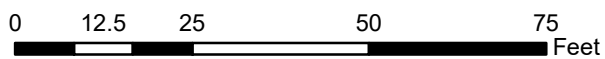
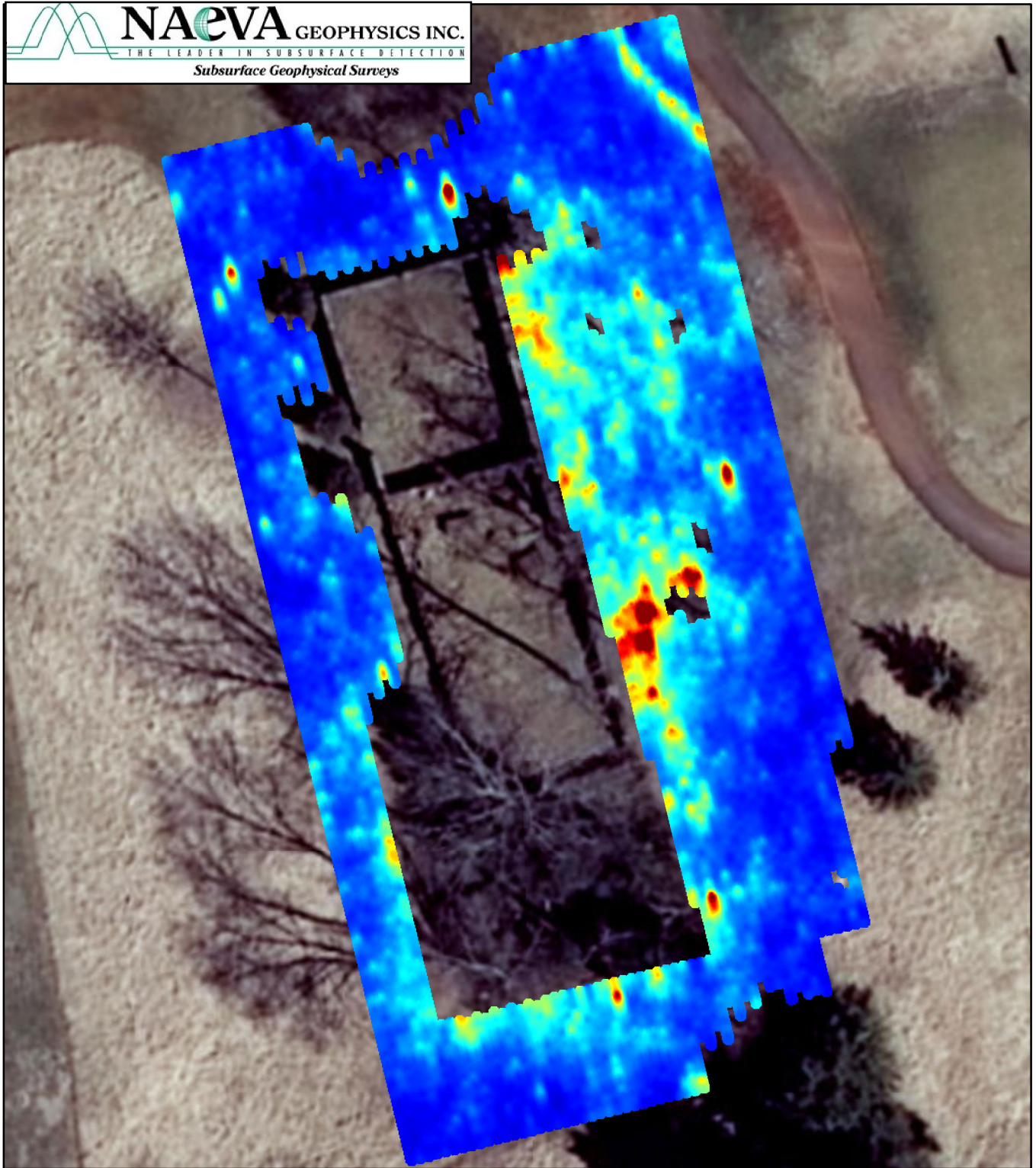
Date of Map Creation: 8/6/2020
 Date of GPR Survey: 7/15/2020



Pen Park Cemeteries

Slice 5 (2.0 to 2.5 ft)
 Pen Park
 Charlottesville, Virginia

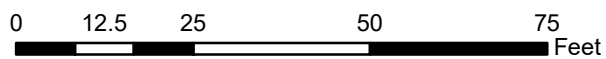
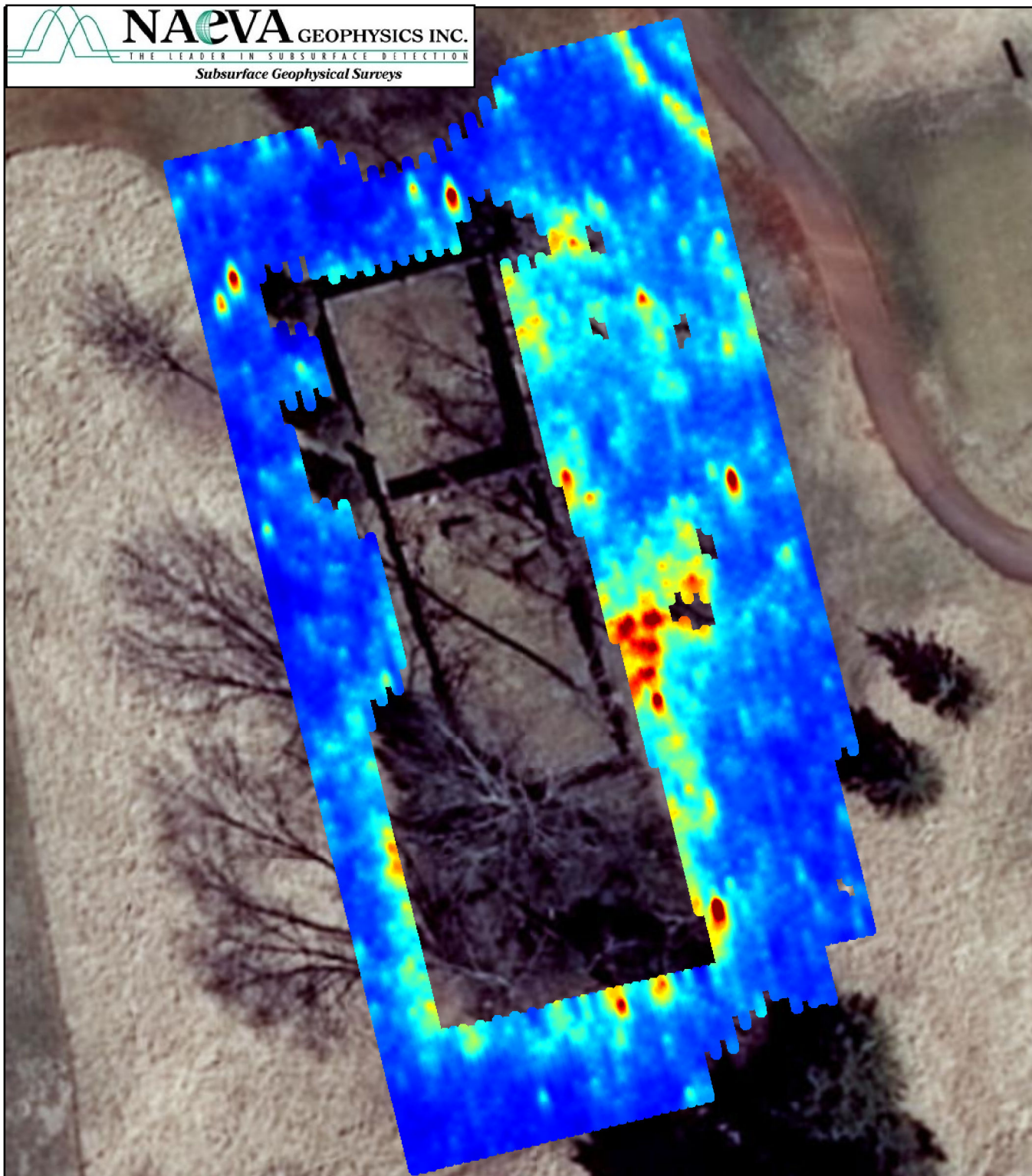
Date of Map Creation: 8/6/2020
 Date of GPR Survey: 7/15/2020



Pen Park Cemeteries

Slice 6 (2.5 to 3.0 ft)
 Pen Park
 Charlottesville, Virginia

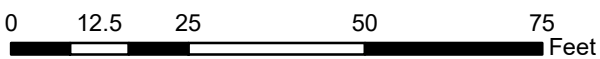
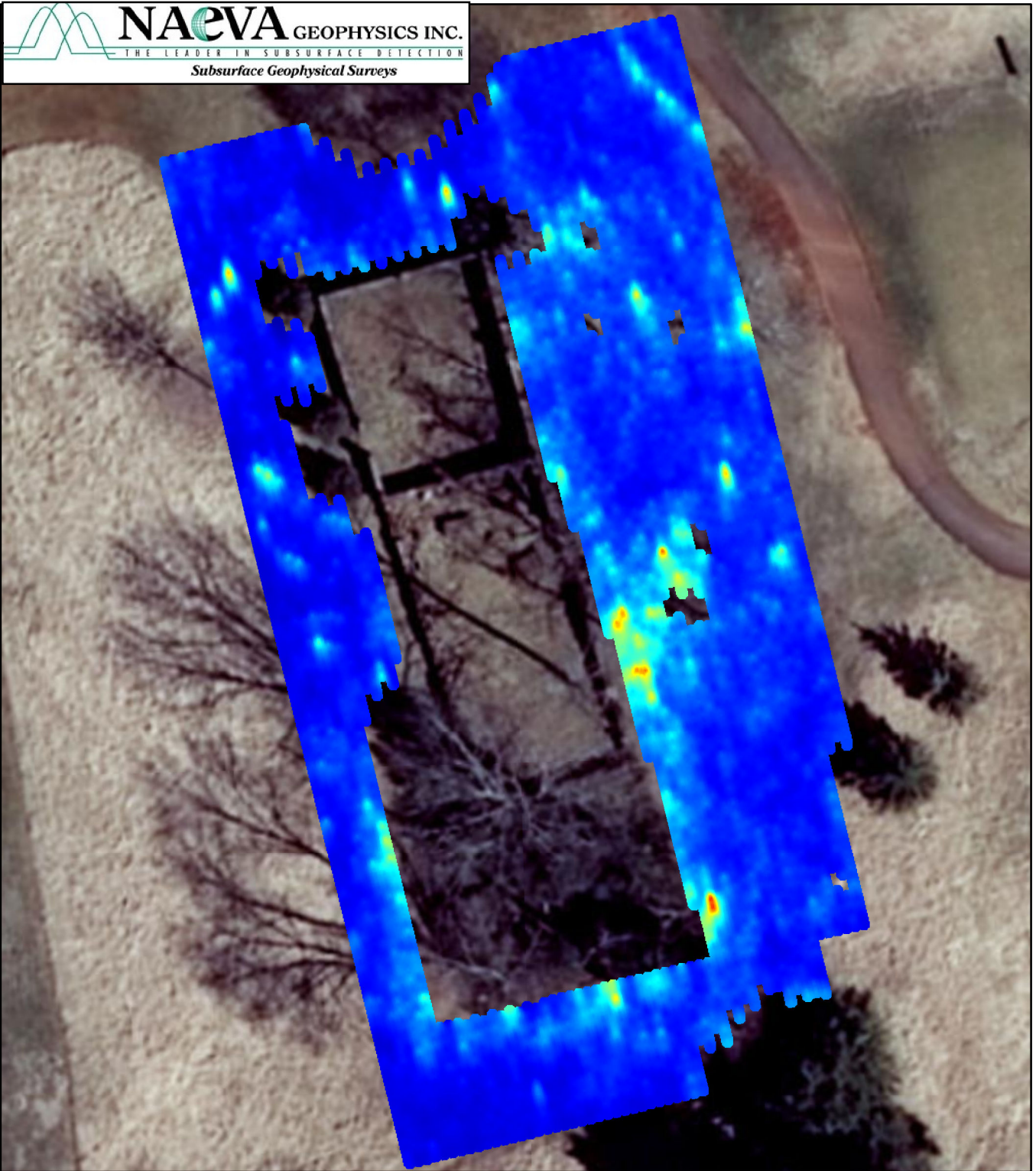
Date of Map Creation: 8/6/2020
 Date of GPR Survey: 7/15/2020



Pen Park Cemeteries

Slice 7 (3.0 to 3.5 ft)
 Pen Park
 Charlottesville, Virginia

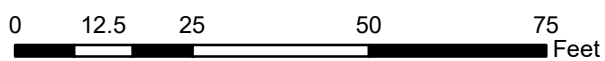
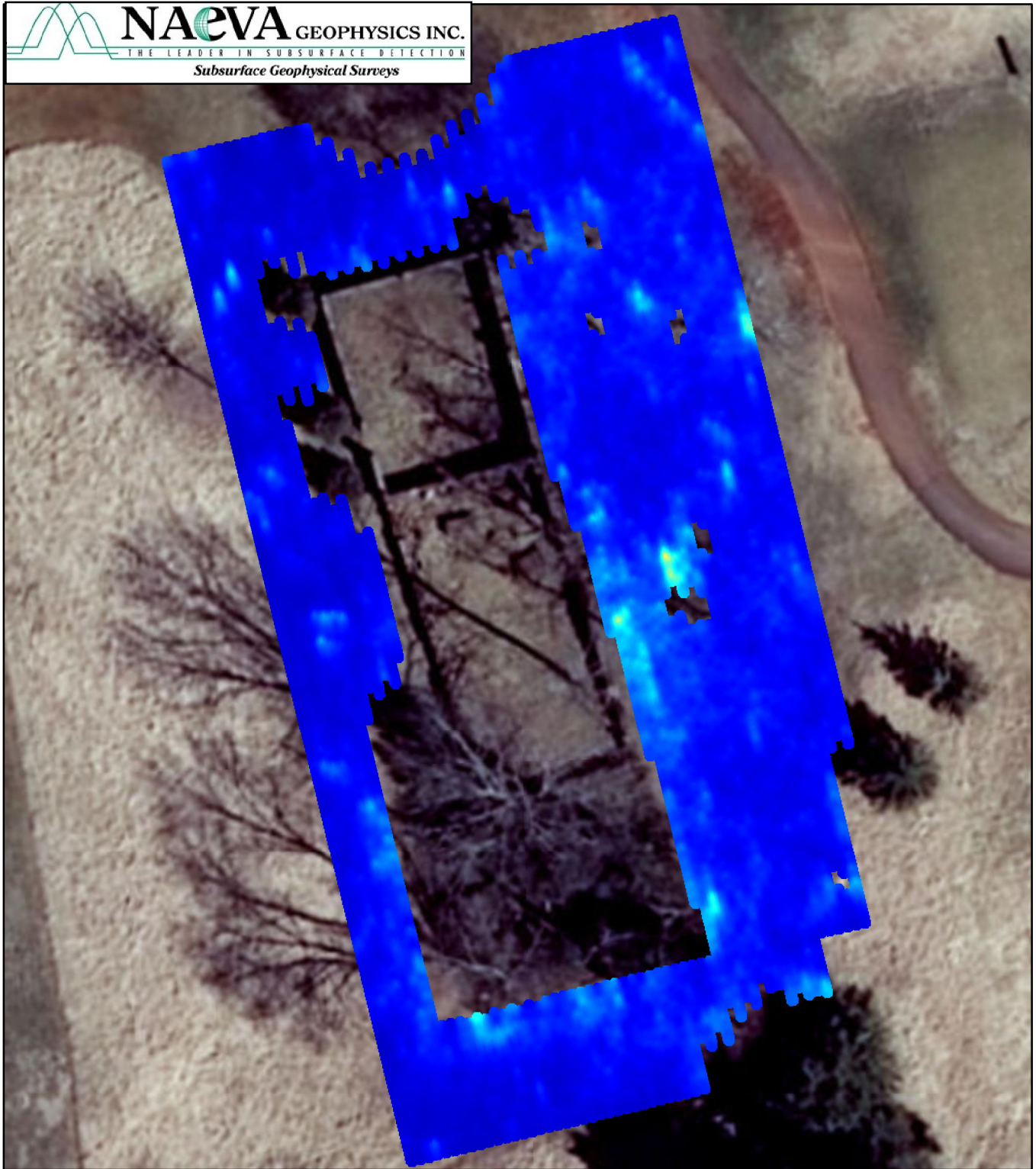
Date of Map Creation: 8/6/2020
 Date of GPR Survey: 7/15/2020



Pen Park Cemeteries

Slice 8 (3.5 to 4.0 ft)
 Pen Park
 Charlottesville, Virginia

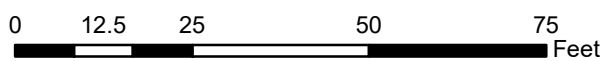
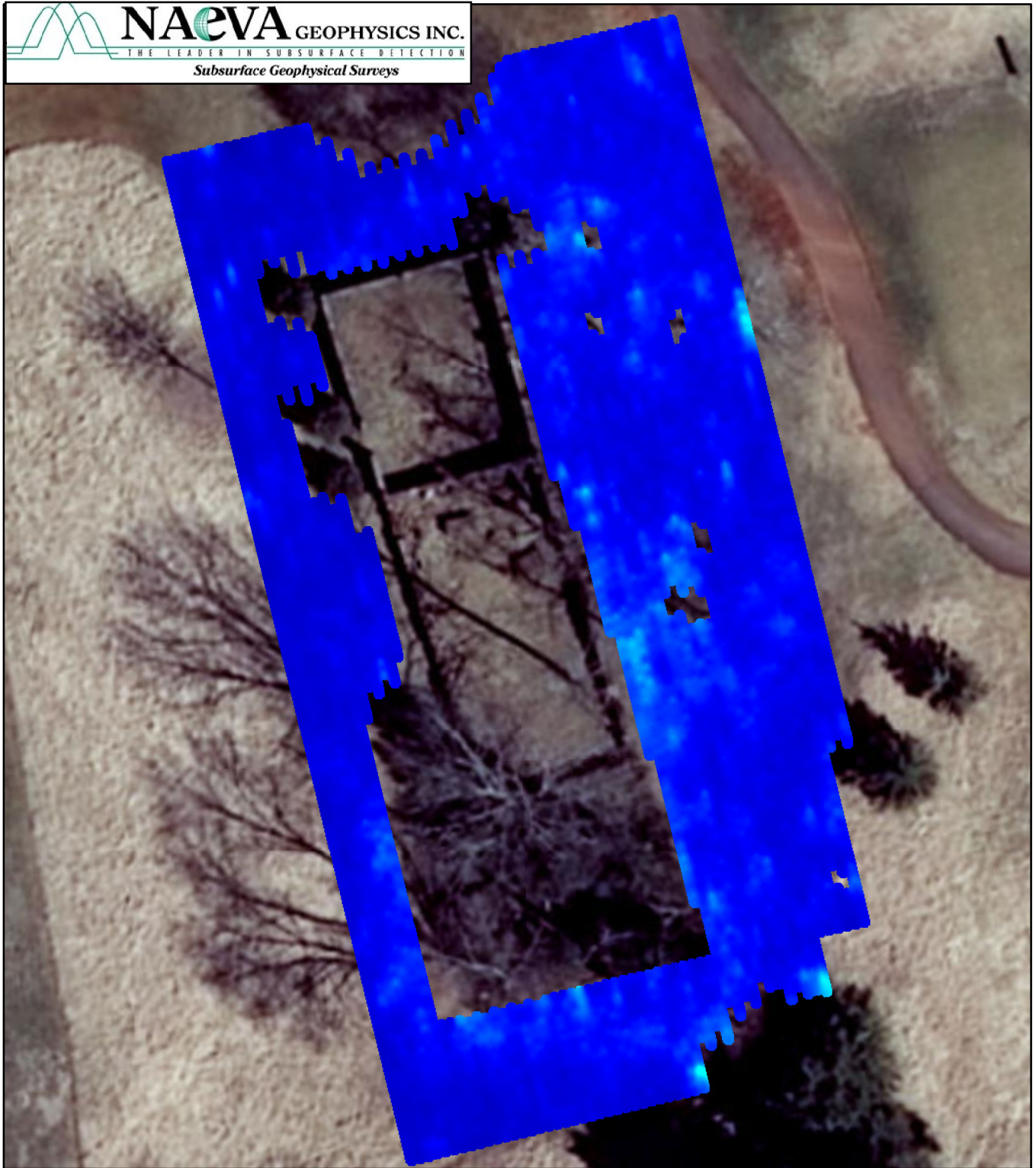
Date of Map Creation: 8/6/2020
 Date of GPR Survey: 7/15/2020



Pen Park Cemeteries

Slice 9 (4.0 to 4.5 ft)
 Pen Park
 Charlottesville, Virginia

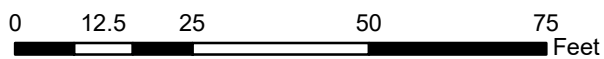
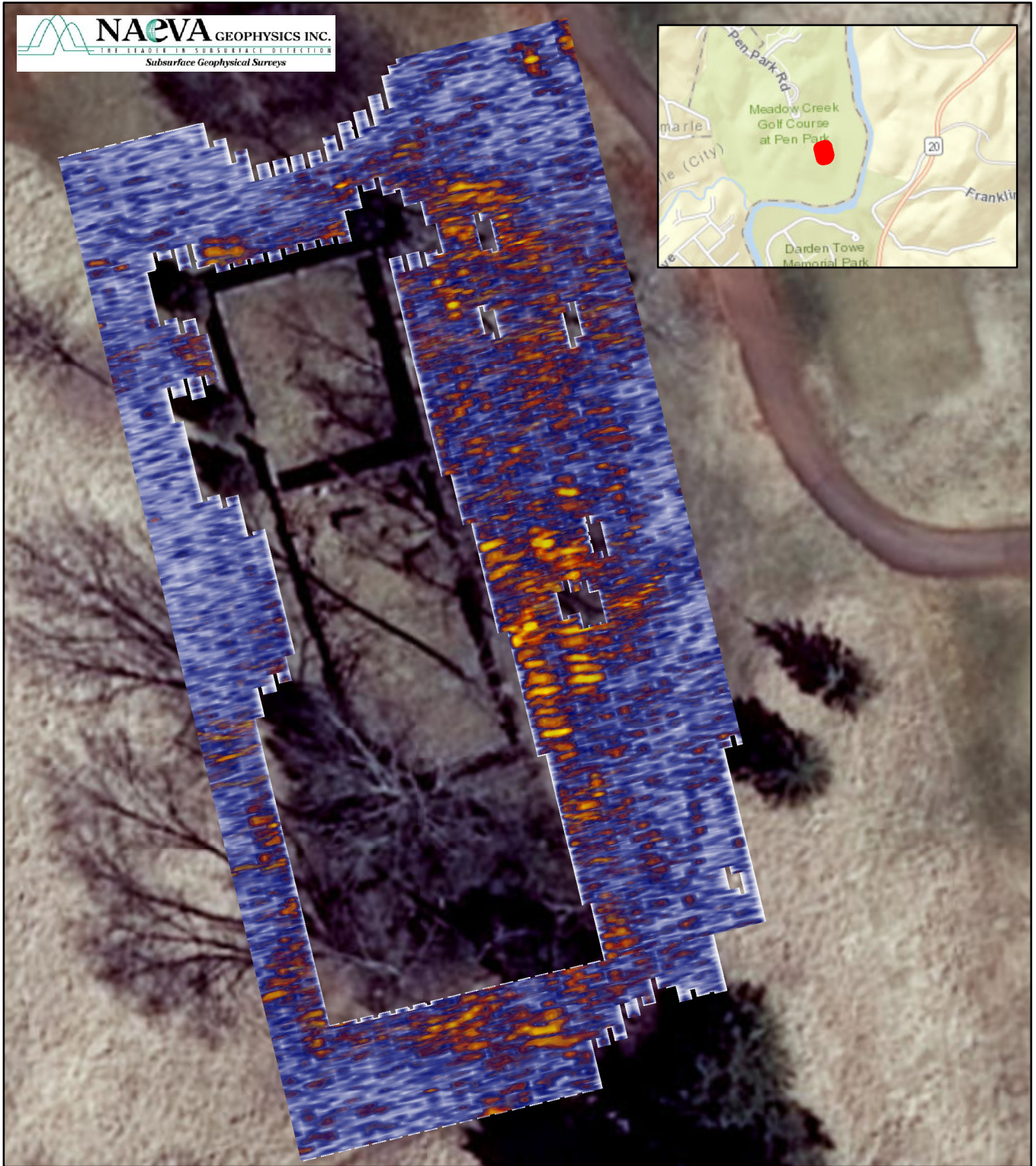
Date of Map Creation: 8/6/2020
 Date of GPR Survey: 7/15/2020



Pen Park Cemeteries

Slice 10 (4.5 to 5.0 ft)
 Pen Park
 Charlottesville, Virginia

Date of Map Creation: 8/6/2020
 Date of GPR Survey: 7/15/2020



Pen Park Cemeteries

Composite GPR Amplitude Map

Pen Park
 Charlottesville, Virginia

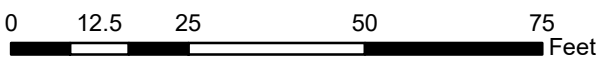
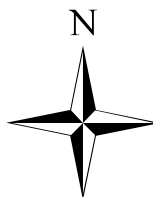
Date of Map Creation: 10/11/2020

Date of GPR Survey: 7/15/2020



Legend

- Depression with Interpreted Grave
- Depression
- Interpreted Graves



Pen Park Cemeteries
Interpretation Pen Park Charlottesville, Virginia
Date of Map Creation: 8/6/2020 Date of GPR Survey: 7/15/2020

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	November 2, 2020
Action Required:	Report
Staff Contacts:	John Blair, Acting City Manager
Presenters:	Jordy Yager
Title:	Mapping Cville Report

Background:

In 2018, Jordy Yager received a grant from the Charlottesville Area Community Foundation to fund a project for the Jefferson School African-American Heritage Center that maps inequities in Charlottesville from the past to the present. This project is known as Mapping Cville.

Discussion:

Mr. Yager will present an update of his work to the City Council at its November 2, 2020 meeting.

Attachments:

None