

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



<b>Agenda Date:</b>	April 18, 2022
<b>Action Requested:</b>	Adoption of Ordinance (1 <sup>st</sup> of 2 readings)
<b>Presenter:</b>	Brenda Kelley, Redevelopment Manager, Office of Community Solutions
<b>Staff Contacts:</b>	Lisa Robertson, City Attorney Robinson Hubbard, Assistant City Attorney Alex Ikefuna, Interim Director, Office of Community Solutions Brenda Kelley, Redevelopment Manager, Office of Community Solutions
<b>Title:</b>	<b>Amendment of the Friendship Court (Phase 1) Loan Agreement</b>

**Background:**

In November 2020, the City Council approved an Ordinance (attached) approving the award of funding for the redevelopment of Phase 1 of Friendship Court through a loan agreement to Piedmont Housing Alliance. This loan was provided for the public purposes of providing for construction of streets, utilities, and other site improvements necessary for Phase 1, and to assist the construction of new for-rental housing units, as part of a multi-phased redevelopment of Friendship Court. One hundred percent (100%) of the dwelling units within Friendship Court Phase 1 will be for rental or for ownership by low and moderate income persons, for a period not less than ninety-nine (99) years.

Note: this forgivable loan funding is in addition to the ongoing financial support that will be provided in future years via the Performance Agreement approved by resolution of City Council in 2020. Within the Performance Agreement, City Council agreed to allocate one hundred percent (100%) of new real estate tax revenues realized by the City as a result of the redevelopment of Friendship Court. (Upon completion of Phase 1 of the redevelopment project, the tax increment to be realized was estimated at \$190,000 per year; if the landowner pays the taxes and demonstrates achievement of certain performance criteria, the Charlottesville Economic Development Authority will pay the amount of \$190,000 per year (funded by a transfer from City Council) until a cap of six million dollars (\$6,000,000) is reached.

**Discussion:**

Due to funding limitations at the times of approval of corresponding fiscal budgets, funding for Phase 1 of Friendship Court, as well as subsequent phases, were/are projected for funding over multiple City Fiscal Years. At the time of approval of the (first) Friendship Court Loan Agreement (for Phase 1) only \$5,545,159 was available, as approved in the city budget, to be allocated through the Ordinance. An additional \$394,841 was contemplated to be included in upcoming funding, however, this final amount of funding for Phase 1 was not approved until the FY22 budget approval (March 2021). In FY2020, \$5,545,159 was approved, in FY2021, \$0 was approved (due to budget

limitations), with the remaining requested funding for Phase 1 moved to approval in FY2022.

\$394,841 is available in the current budget for redevelopment of Friendship Court Phase 1, that has not been previously allocated by City Council through the current Loan Agreement. Staff is requesting that City Council approve the attached Amendment of the Friendship Court Loan Agreement, in order to allocate this funding to Piedmont Housing Alliance.

Per the existing Ordinance, the City Manager cannot modify the previously-approved loan agreement without Council's approval, per the following provision within the agreement:

(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 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.

For this request, there are no material changes to items (i) – (iii). Because the requested amendment relates to a change in the loan amount, City Council approval of an ordinance is required.

**Alignment with City Council's Vision and Strategic Plan:**

The overall funding of affordable housing initiatives supports City Council's visions of Quality Housing Opportunities for All; A Green City; Community of Mutual Respect; and Smart, Citizen-Focused Government. Approval of this request is also supported by the following:

Strategic Plan Goals:

- Goal 1.3: Increase affordable housing options
- Goal 1.4: Enhance financial health of residents
- Goal 1.5: Intentionally address issues of race and equity
- Goal 2.3: Improve community health and safety outcomes by connecting residents with effective resources

Comprehensive Plan Guiding Principles (2021):

- Equity & Opportunity – All people will be able to thrive in Charlottesville.

- Community Culture & Unity – Charlottesville’s rich and diverse culture and form will be celebrated, and the entire community will feel welcomed, valued and respected.
- Local & Regional Collaboration – From the neighborhood to the region, open conversations and partnerships will make the city stronger.
- Environmental Stewardship & Sustainability – The Charlottesville community will demonstrate environmental and climate leadership.
- (Numerous Goals in the Comprehensive Plan also support this request).

**Community Engagement:**

Redevelopment of Friendship Court continues to be driven by a steering committee of residents and other stakeholders of the community. In addition, the city budget process includes substantial community engagement and public input.

**Budgetary Impact:**

This request does not encumber any additional funding from the City budget. This funding is currently allocated in the adopted Capital Improvement Program (CIP) FY21/22 budget in the line item Friendship Court Redevelopment – Phase 1 (\$394,841). Approval of the attached Ordinance will establish the terms and conditions under which this additional funding can be expended.

**Alternatives:**

While \$394,841 in additional funding to Friendship Court Phase 1 was approved within the FY21/22 budget (and continues to be available as detailed in the FY23 Budget), City Council could choose to not allocate this funding. However, staff does not know how a failure to add this money to the loan would affect the current activities under construction.

Piedmont Housing Alliance has informed staff: “Failure to approve the \$394,841 additional will negatively impact our debt financing with Virginia Housing. Over the last year, with construction costs increasing over \$2 million, Virginia Housing effectively closed the gap by significantly reducing their debt interest rates. This was an unprecedented show of support, and was predicated on the City following through on its original commitment. Not following through would compromise the good will of Virginia Housing and potentially negatively impact future flexibility in debt structuring for additional phases of Friendship Court.”

**Recommendation:**

Staff recommends City Council approve the attached Ordinance.

*Suggested Motion: “I move the ORDINANCE amending and reenacting the forgivable loan agreement approved by Ordinance No. O-20-145, to add the amount of \$394,841 to the amount of the forgivable loan to Piedmont Housing Alliance for the Friendship Court Redevelopment”*

**Attachments:**

Proposed Ordinance  
Ordinance No. O-20-145

**ORDINANCE**  
**AMENDING AND RE-ENACTING THE FORGIVABLE LOAN AGREEMENT**  
**APPROVED BY ORDINANCE NO. O-20-145, TO ADD THE AMOUNT OF \$394,841 TO**  
**THE FORGIVABLE LOAN TO PIEDMONT HOUSING ALLIANCE FOR THE**  
**FRIENDSHIP COURT REDEVELOPMENT**

WHEREAS on November 2, 2020 this City Council enacted Ordinance No. O-20-145, authorizing a forgivable loan (“Loan Agreement”) to Piedmont Housing Alliance to support the redevelopment of Friendship Court for the purpose of producing new housing for low- and moderate-income persons (“Project”), and

WHEREAS it appears that the dollar amount of the forgivable loan approved within Ordinance No. O-20-145 failed to include all of the funding set aside by City Council within the Capital Fund for the Project, and there remains three hundred ninety-four thousand eight hundred forty one dollars (\$394,841) within the Capital Fund which prior Councils have contemplated to be utilized for the Project and Piedmont Housing Alliance is requesting a modification of the Loan Agreement to increase the dollar amount approved for the forgivable loan;

NOW, THEREFORE be it ordained by the Council of the City of Charlottesville that the Loan Agreement approved by City Council is hereby amended and re-enacted with the following changes:

Section 3 (Authorized expenditures; budget), Paragraph (C), is hereby modified to add a new subparagraph (iv), as follows:

(iv) Up to \$394,841 shall be expended for the purpose of construction of rental affordable dwelling units within Phase 1 of the Project

With the foregoing amendments included, the Loan Agreement is ratified and shall be and remain in effect as approved by City Council within Ordinance No. O-20-145 and this ordinance.

Approved by Council  
May 2, 2022

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Kyna Thomas, MMC  
Clerk of Council

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<sup>m</sup> 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 I Project Owner") in an amount not to exceed the loan from the City to PHA (the "Sponsor Loan"), which the Phase I 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 I. 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 I. 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 I 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 I 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 I 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 I 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 I, 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 5 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 or costs of tenant relocation and construction of affordable housing**

1. 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 1 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 (40<sup>th</sup>) 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 I; or
  - d. upon the sale or transfer of the Phase I 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 I, 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 I;
  - 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 I ;
  - 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 I ;
  - 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- 1 9), 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 91 1 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.

Approved by Council  
November 2, 2020



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Kyna Thomas, CMC  
Clerk of Council