

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the “**Agreement**”) is made and entered this ____ day of ____, 2024 (the “**Effective Date**”), by and among Piedmont Housing Alliance, a non-profit 501(c)(3) organization under the Internal Revenue Code of 1986, as amended (“**PHA**”) on behalf of FC PHASE 2, LLC, a Virginia limited liability company (including its permitted successors and assigns, the “**Recipient**”), of which PHA serves as a member and manager of FC Phase 2 Managing Member LLC, the managing member of the Recipient, and the Economic Development Authority of the City of Charlottesville, Virginia, a political subdivision of the Commonwealth of Virginia (the “**Authority**”) and acknowledged by the City of Charlottesville, Virginia, a political subdivision of the Commonwealth of Virginia (the “**City**”).

WHEREAS, the Recipient, an organization formed for the use of a subsidiary of PHA and its joint venture partner, the Managing Member, as defined below, and the low-income housing tax credit investor as the investor members of the Recipient to enable it to better accomplish its purposes, plans to invest a significant amount of money to develop the Project, as defined below, on the Site, as defined below; and

WHEREAS, the City and the Authority have determined that the Project will result in significant investment and economic development on the Site, will promote safe and affordable housing in the City, will result in substantial benefits to the welfare of the City and its inhabitants, is in the public interest, and serves governmental interests; and

WHEREAS, the City plans to provide monies to the Authority to enable the Authority to enter into a performance agreement providing grant funding (the “**Funding**”) by the Authority to the Recipient for the purpose of inducing the Recipient to construct and operate the Project in the City and to assist the Recipient in obtaining the capital necessary for construction of the Project; and

WHEREAS, payment of the Funding will be conditioned upon Recipient’s completion of construction and continued maintenance of the Project, as defined herein, and the funds comprising payments of the Funding will be solely limited to an amount equal to a portion of the Incremental Real Estate Tax Revenues (as hereinafter defined) for the Site generated by the Project and the increase in assessed value of the Site by the City above the Base Year Tax Revenue, as defined herein (i.e., including both the fee interest (and leasehold interest, if applicable) in the land and all improvements), all as set forth herein; and

WHEREAS, the City is authorized by Section 15.2-953 of the Code of Virginia of 1950, as amended, (the “**Code of Virginia**”) and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Chapter 49, Title 15.2 of the Code of Virginia, (the “**Act**”) and other laws to perform the activities contemplated in this Agreement. The Authority is authorized by the Act to make grants and provide funding to non-profit organizations and other organizations, such as the Recipient or any person, partnership, association, corporation, business, or governmental entity, as provided herein, to enable them to accomplish such purposes for the benefit of inhabitants of the Commonwealth of Virginia and for the promotion of their health, welfare, convenience or prosperity specifically under Sections 15.2-4905(12) and (13) of the Act to accept monies from the City and to make grants and provide funding to any entity in furtherance of the purposes for which the Authority was created; and

WHEREAS, this Agreement sets forth the understanding of the parties concerning the Recipient's obligations, the Authority's obligations, and any appropriations made by the City Council of the City (**the "City Council"**), subject to the initial approval of the Authority's Board and the City Council and subject to annual appropriations by the City Council and any conditions to funding herein;

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Preliminary Provisions

1.1 Incorporation of Recitals. The foregoing recitals are incorporated herein by reference.

1.2 Definitions. For the purposes of this Agreement, the following terms shall have the following definitions:

"AMI" means area median gross income for the Charlottesville Metropolitan Statistical Area for each applicable year of the Funding Period.

"Approved Lender" means any institutional lender reasonably approved by the Authority in writing upon the request by the Recipient after providing reasonable documents and information requested by the Authority.

"Base Real Estate Tax Revenue" means \$34,070 per year, being the amount equal to the real estate taxes levied on the Site for the current tax year as of the Effective Date.

"Funding" means a grant funding to be paid to the Recipient, or its successors or assigns, by the Authority pursuant to this Agreement.

"Funding Payment" means, for each real estate tax year during the Funding Period, an amount equal to 70% of the Incremental Real Estate Tax Revenue for such corresponding tax year. The Parties acknowledge that the annual real estate tax levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein "Funding Payment" shall include payments of 70% of the Incremental Real Estate Tax Revenue for each installment payment corresponding to the applicable Real Estate Tax Levy as prorated for the applicable installment period.

"Funding Period" means that certain period commencing upon Recipient's completion of Project construction, as shall be evidenced by receipt of a temporary Certificate of Occupancy ("Funding Commencement Date") and ending twenty-seven (27) years following the Funding Commencement Date ("Funding Expiration Date"). The parties acknowledge that the "Real Estate Tax Levy" for the last year of the Funding Period may not be received by the City until after the Funding Expiration Date, and that a Funding Payment shall be paid to Recipient corresponding to such Real Estate Tax Levy.

“Incremental Real Estate Tax Revenue” means, for each applicable real estate tax year during the Funding Period, the amount by which the Real Estate Tax Levy exceeds the Base Real Estate Tax Revenue, provided Recipient pays the Real Estate Tax Levy to the City in full and on time (except as provided in Section 3.3 below). In no event shall the Incremental Real Estate Tax Revenue (or the Funding Payment) include penalties, interest, or any other charges resulting from any delinquent payment. The Parties acknowledge that the Real Estate Tax Levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein.

“Incremental Real Estate Tax Revenue” shall be determined based on the applicable payment (or installment) of the Real Estate Tax Levy for each applicable real estate tax year.

“Investment” means the Recipient’s plans to fund the construction and related costs of the Project with significant equity and loan funds of approximately \$55 million.

“Investor Member” means that certain low-income housing tax credit investor designated by the Recipient. The Recipient shall provide the name and notice address of such designated investor member to the Authority.

“Maintain” means the Recipient’s continued maintenance in accordance with the applicable Virginia Statewide and City building codes and operation of the Project following completion of Project construction as affordable housing, as set forth by Section 2.2.2 of this Agreement.

“Managing Member” means the National Housing Trust, the managing member of the Recipient.

“Project” means a development on the Site containing not less than 100 residential units, subject to income and rent restrictions as set forth in Section 2.4 and as shown on Exhibit B, and monitored by the State Housing Finance Agency.

“Real Estate Tax Levy” means the amount of real estate taxes levied by the City on the Site (including both the fee interest (and leasehold interest, if applicable)) and Project (i.e., including land and all improvements) for a given real estate tax year, pursuant to Chapter 30 of the Code for the City (“City Code”).

“Recipient” means FC PHASE 2, LLC, and its successors and assigns, to the extent permitted by this Agreement.

“Site” means that certain 3.41-acre parcel currently owned by NHTE Piedmont Garrett Square Limited Partnership, located at 400 Garrett Street and currently referred to in the records of the City Assessor as Parcel No. 280112000 and as further described in Exhibit A.

“State Housing Finance Agency” means Virginia Housing (formerly known as Virginia Housing Development Authority), a political subdivision of the Commonwealth of Virginia, or its successor

Section 2. Recipient's Obligations

2.1 Completion of Project Construction: Timeline.

2.1.1 Plan of Development. Recipient shall submit a Plan of Development or similar submission for the Project to the City's Director of Neighborhood Development Services no later than approximately nine (9) months after the Effective Date, which Plan of Development or similar submission shall comply with the relevant provisions of the City Code and shall contain all elements of the Project as defined herein.

2.1.2 Commencement of the Project Construction. Recipient shall commence construction of the Project within approximately eighteen (18) months of the Effective Date, (the "**Construction Commencement Date**"), which shall be subject to force majeure extensions upon notice from Recipient to the City that shall not exceed nine (9) months, and shall be evidenced by the issuance of all permits necessary for commencement of construction of the Project.

2.1.3 Completion of Project Construction. Recipient shall complete the Project within three (3) years of the Construction Commencement Date, which shall be subject to force majeure extensions upon notice from Recipient to the City or extensions required by an Approved Lender, either of which shall not exceed nine (9) months, and shall be evidenced by the issuance of a temporary certificate of occupancy for the Project.

2.1.4 Failure to Comply. If Recipient fails to timely comply with any of the provisions of this Section 2.1 then the Authority's Executive Director, in his or her sole discretion, may either extend the time by which Recipient must comply with the corresponding requirement or provide written notice of the Authority's intent to terminate this Agreement (which shall be delivered to the Recipient and the State Housing Finance Agency or Approved Lender). The Investor Member of the Recipient may provide its notice address, in which event, the Authority will use commercially reasonable efforts to include the Investor Member on any such written notices and permit the Investor Member to effect a cure. If Recipient or its Investor Member fails to cure its failure to comply within 30 days of such written notice then this Agreement (however, if such cure cannot reasonably be effected within such 30-day period, then such reasonable period of time as is necessary not to exceed 120 days provided the Recipient (or its Investor Member on its behalf) has promptly commenced and is diligently pursuing such cure, including all rights and obligations herein, shall, upon the Authority's election, terminate and neither the City nor the Authority shall have any further obligation to the Recipient and Recipient shall no longer be eligible for any Funding Payments hereunder.

2.2 Continued Maintenance and Operation of Project.

2.2.1 Continued Control of the Project by Recipient. Recipient shall continue to own, lease, or otherwise control the Site until completion of the Project construction pursuant to Section 2.1.3 of this Agreement and thereafter shall continue to own, lease, or otherwise control the Project until expiration of the Funding Period. Notwithstanding the foregoing, Recipient may transfer the ownership in the Project to third parties ("**Permitted Transferee**") but only if the Authority has provided prior written permission, in its sole

discretion, for the transfer to the Permitted Transferee following review by the Authority of the Permitted Transferee's organization and information relating to such Permitted Transferee's financial condition, and following such approval, Recipient may (1) assign this Agreement, including the rights and obligations herein to such party or parties at the time it transfers ownership in the Project (including any leasehold interests), and (2) if the Agreement is assigned, Recipient shall provide the Authority 30 days' prior written notice of its intent to transfer ownership in the Project, which notice shall include the contemplated date of transfer, the name of the party or parties to which it intends to transfer, and a written statement from such party that it is aware that this Agreement, including the rights and obligations herein, will be assigned to such party and such Permitted Transferee shall be bound by all terms of this Agreement. Following the transfer of ownership in the Project to the Permitted Transferee as provided above, the term "Recipient" as used herein shall mean the Permitted Transferee. Any transfers by or related to a foreclosure or deed in lieu thereof by an Approved Lender are deemed approved.

2.2.2 Continued Maintenance and Operation of the Project. Following Recipient's completion of Project construction as set forth in Section 2.1.3 of this Agreement, the Recipient, or its permitted successors or assigns, shall continue to Maintain the Project until the expiration of the Funding Period. For avoidance of doubt, Recipient's obligation to Maintain the Project includes Recipient's ongoing compliance with the provisions set forth in Section 2.4 (Affordable Housing) of this Agreement.

2.3 MBE Participation.

2.3.1 Goal. The Recipient agrees to diligently work towards the following goal: Where capacity, capability and competitive pricing among minority business enterprises and emerging small businesses exists, 30% of all expenditures for construction costs of the Project that will be paid to third party subcontractors unaffiliated with the Recipient will be spent with minority business enterprises and emerging small businesses that perform commercially useful functions with regard to the prosecution and completion of the Project. The Recipient shall include this goal in its contracts with all assignees, contractors and subcontractors who will be providing any portion of the Project. The Recipient further agrees to encourage contractors and sub-contractors during the construction phase of the Project to provide employment opportunities for City residents, and to that end, to work closely with the City of Charlottesville Office of Economic Development and the Central Virginia Partnership for Economic Development and the Virginia Workforce Center if recruitment, screening, and training of residents is required.

2.3.2 Reporting. To enable the City to measure the achievements of the Recipient and its assignees, contractors and subcontractors with regard to the participation goals set forth above, during the period prior to completion of Project construction, the Recipient shall submit a report, upon request, detailing all expenditures with minority business enterprises and emerging small businesses, showing, at a minimum, (i) the name of the business, (ii) an itemization of what the business provided, (iii) the amount paid for each item, (iv) the total amount of spending to date with minority business enterprises and emerging small businesses and (v) the percentage of total expenditures for the quarter spent with minority business enterprises and emerging small businesses. If the City chooses, the Recipient shall submit these reports on forms reasonably prescribed by the City.

2.4 Affordable Housing.

The Recipient shall restrict occupancy and rents of the Project according to the schedule shown on Exhibit B, according to standards promulgated by the State Housing Finance Agency. Ongoing compliance monitoring and approvals by the State Housing Finance Agency, as provided to the City upon the City's request, shall serve as evidence of the Recipient's compliance with this section.

Section 3. Disbursement of Funding.

3.1 Funding. Subject to the provisions of this Section 3, during the Funding Period, the Authority shall pay to Recipient (subject to annual appropriation by the City Council) the Funding Payments for such real estate tax year (e.g. the amount equal to 70% of the Incremental Real Estate Tax Revenue for such corresponding tax year), beginning 15 months following the annual valuation of the Project by the City Assessor, which can be done as early as the Completion Date, which is defined as any time after a certificate of occupancy has been issued by the City for at least 50% of the residential units in the Project (i.e. (50) units) (the "**Completion Date**") and annually thereafter, within ninety (90) days following receipt by the City of the annual assessed real property taxes paid by the Recipient (or subsequent owners of the Project) related to the Project. The Funding shall be paid by the Authority to the Recipient (or its Permitted Transferees or assigns), annually during the term of this Agreement, which is 27 years from the Completion Date, subject to annual appropriations by City Council.

3.2 Intentionally Deleted.

3.3 Disbursement of Funding Payment. Subject to any necessary City Council action, including any necessary budget amendment or whether the City Council has determined to appropriate funds to the Authority for such purpose, the Authority agrees to pay the Funding Payment to Recipient (or its Permitted Transferees or to such party to which Recipient has assigned Funding Payments pursuant to Section 9.1 of this Agreement), within fifteen (15) business days of receipt of the funds from the City. Disbursement of the Funding Payment to the Recipient is contingent upon the following:

- a) the Recipient certifies that it has made the Investment in the Project no later than the Completion Date and providing the City and the Authority, at either of their request, with reasonable evidence of the amount of such investment, and certifies with continued Maintenance of the Project, including, if requested by the City or Authority, any reasonable evidence of such Maintenance, including inspections during normal business hours upon advanced written notice;
- b) the Recipient and any subsequent owner or owners of all or any portion of the Project agreeing not to contest any increase in assessed value for the Project for any year on which a Funding is based;
- c) to the extent that the assessed value of the Project is decreased for any reason during the term of this Agreement, the amount of Funding shall be reduced by the tax decrease based on the decrease in Incremental Increased Value; and

- d) no Funding shall be paid so long as any taxes of any kind due and owing to the City by the Recipient or subsequent owner or owners of all or any portion of the Project remain unpaid or if the assessed value for the Project is being contested. Recipient agrees to pay all taxes due to the City in a timely manner.

3.4 Recipient's Relief. Should Recipient believe the Authority failed to comply with Section 3.3 of this Agreement, Recipient may seek relief in accordance with Section 9.2 of this Agreement. Provided, however, Recipient's sole remedy shall be to receive payment for a Funding Payment to which it was entitled (subject to the restrictions set forth in this Agreement, including, but not limited to, Sections 3.3 and 9.5) and for which it did not receive payment.

Section 4. General Administration of Funding

4.1 The City has agreed to transfer to the Authority, subject to appropriation by the City Council, the funds necessary for the Authority to meet its obligations under this Agreement relating to the Funding. No administrative fees or expenses shall be paid by the City.

4.2 The Authority's obligation to undertake the activities herein is specially conditioned upon the City providing funding on a timely basis; provided, however, the City's obligation is subject to annual appropriation by the City Council.

4.3 The Authority agrees to provide the City Manager, or the designee thereof, with copies of all documents related to this Agreement and will keep the City Manager fully and timely informed of all matters related to this Agreement.

4.4 The Authority agrees that all funds transferred by the City to the Authority for the Funding shall be deposited by the Authority within a Project Fund, to be used only to satisfy the obligations contained in this Agreement related to the Funding.

4.5 It is the intent of the parties not to impose upon the Authority any responsibility, duty, or obligation other than what may be required to implement the Funding. Accordingly, Authority does not assume any responsibility or liability whatsoever except as specifically stated herein. If litigation involving the Funding is initiated or expected to be filed against the Authority, the Authority shall immediately notify the City Attorney and the City Manager.

4.6 The Authority shall keep records of its financial transactions, if any, related to the Agreement in accordance with generally accepted accounting principles. The City Auditor or his designee may at any time audit the financial transactions undertaken under this Agreement. The Authority shall cooperate to ensure that the City Auditor is granted reasonable access on a timely basis to all books and records of the Authority necessary to complete such audits.

4.7 The Authority shall not be required to furnish the City a blanket corporate fidelity bond with surety.

Section 5. Representations of the Recipient

5.1 The Recipient is empowered to enter into this Agreement, to be bound hereby, and to

perform according to the terms hereof.

5.2 Any and all actions necessary to enable the Recipient to enter into this Agreement, and to be bound hereby, have been duly taken.

5.3 The person or persons executing or attesting the execution of this Agreement on behalf of the Recipient has or have been duly authorized and empowered to so execute or attest.

5.4 The execution of this Agreement on behalf of the Recipient will bind and obligate the Recipient to the extent provided by the terms hereof.

5.5 There exists no litigation pending against the Recipient or to the Recipient's knowledge threatened, which if determined adversely, would materially and adversely affect the ability of the Recipient to carry out its obligations under this Agreement or the transactions contemplated hereunder.

5.6 The Recipient will comply with all applicable federal, state and local laws and secure all plans, approvals, bonds and permits as may be necessary or appropriate for the construction of the Improvements and the occupancy thereof.

Section 6. Default

6.1 Events of Default. Each of the following events (hereinafter called an "Event of Default") shall be a default hereunder by the Recipient as described:

6.1.1 Failure by the Recipient to maintain its corporate existence or the declaration of bankruptcy by the Recipient;

6.1.2 The failure of Recipient to comply with Section 2 and Section 3.3 of this Agreement; and

6.1.3 The failure of Recipient to pay annual Real Estate Tax Levy.

6.2 Effect of Event of Default. In the case of an occurrence of an Event of Default, the Funding provisions of Section 3 of this Agreement shall, at the Authority's option, terminate ninety (90) days after the Authority's notice to Recipient and the State Housing Finance Agency or, the Approved Lender and, as provided herein, the Investor Member, unless Recipient (or at their option and without any obligation to do so, the Approved Lender or Investor Member) cures the Event of Default to the Authority's satisfaction within such ninety (90) days, and neither the City nor the Authority shall have any further obligation relating thereto and the Recipient shall no longer be eligible for any Funding Payments hereunder. Notwithstanding the foregoing, provided the Authority adheres to the Funding provisions of Section 3 of this Agreement, Recipient's obligations hereunder will remain in force and effect throughout the Funding Period and the Authority shall be entitled to any remedies available at law and equity, including, but not limited to, specific performance.

Section 7. Recipient Reporting.

The Recipient shall provide, at Recipient's expense, detailed updates and verification

reasonably satisfactory to the Authority of Recipient's progress regarding completion of Project construction and, following Project construction, of Recipient's continued compliance with Section of this Agreement.

Section 8. Notices.

Any notices required or permitted 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:

if to the Recipient, to:

Piedmont Housing Alliance
682 Berkmar Circle
Charlottesville, VA 22901

with a copy to:

Erik T. Hoffman
Klein Hornig LLP.
1325 G Street NW. Ste 770
Washington, D.C. 20005

With copies to the State Housing Finance Agency or Approved Lender at the addresses provided by written notice to the Authority.

if to the City, to:

Office of Economic Development
City of Charlottesville, Virginia
610 E. Market Street
Charlottesville, VA 22902

if to the Authority, to:

Economic Development Authority
of Charlottesville VA – Attn: Exec. Dir.
610 E. Market Street
Charlottesville, VA 22901

with a copy to:

Daniel M. Siegel, Esquire
Sands Anderson PC
P.O. Box 1998
919 E. Main Street
Richmond, VA 23218-1998

Section 9. General Terms and Conditions.

9.1 Entire Agreement; Amendments; Assignments. This Agreement constitutes the entire agreement among the parties hereto and may not be amended or modified, except in writing, signed by each of the parties hereto. Except as specifically provided herein, the Authority reserves the right in its sole discretion to approve any assignment of this Agreement by the Recipient to any individual or entity and, the ownership interests of any such entity must be disclosed to the Authority, and for any Investor Member, must disclose the name of the individual, Managing Member, or general partner of the Investor Member, who maintains control of such entity or owns more than a 25% interest in the Investor Member. The Authority will have the notice and consent

rights with respect to any change of the Managing Member of the Recipient stipulated in paragraph (c) below.

- a) Recipient shall have the right to assign its interest in the Site and Project to any future owner of the provided the Recipient first shall have complied with the requirements set forth in Section 2.2.1 of this Agreement and shall have submitted to the Authority the form of all instruments by which it purports to make such assignment and shall have obtained the Authority's prior written approval thereof, which approval shall not be unreasonably withheld, in which event the assignor shall be released from all obligations and liabilities under this Agreement and any such assignee shall be bound by all the terms and conditions of this Agreement, including but not limited to the Investment amounts and other requirements set forth in this Agreement.
- b) Recipient shall have the right to grant to the State Housing Finance Agency or an Approved Lender a security interest in, and assignment of, Recipient's rights hereunder as collateral for the loan to be provided by a lender providing funds for the development, acquisition, refinancing, or rehabilitation of the Project, and any action taken by such lender to realize on such security interest or assignment and performance thereafter shall be deemed permitted under this Agreement, provided the Recipient first shall have submitted to the Authority the form of all instruments by which it purports to grant such security interest and assignment and shall have obtained the Authority's prior written approval thereof, in its sole discretion (a "**Collateral Assignment**"), but no such consent shall be required to the exercise by an Approved Lender or any assignee of an Approved Lender of its right to perform Recipient's obligations hereunder after a default by Recipient under the applicable loan documents.

The Authority agrees that the State Housing Finance Agency (or an Approved Lender) shall not have any liability for any act or omission of Recipient hereunder and shall only be liable hereunder for obligations arising during such time as it is the owner of Recipient's interests in the Site and the Project pursuant to foreclosure, deed in lieu of foreclosure or otherwise.

- c) The Managing Member will provide advanced written notice, along with any reasonable documentation requested by the Authority regarding the proposed replacement member manager or managers, and consent rights to the Authority for any change in its corporate structure where PHA would no longer be a member manager of the Managing Member. Pursuant to the Amended and Restated Operating Agreement of the Recipient, the Investor Member will have certain default rights and remedies with respect to the Managing Member. The Authority consents to any such rights of the Investor Member; however, the Investor Member will provide notice of such removal and documentation of any affiliate of the Investor Member that has taken over the roles and responsibilities of the Managing Member. The Investor Member will provide advanced written notice of any transfer of such Managing Member interests to an unrelated party ("**Proposed MM Transferee**"), which notice will include the corporate resume of such Proposed MM Transferee, including biographies of the principals of such organization, affordable housing experience, and three (3) references, including one reference from a state allocating agency. The

Authority will have the right to reasonably consent to such Proposed MM Transferee; however, such consent must be provided within thirty (30) days of receipt of the written notice, and any denial of consent shall include specific reasons therefor. The Authority review should be to confirm the Proposed MM Transferee owns at least five (5) affordable housing properties and has no outstanding IRS 8823 violations, no outstanding HUD REAC violations resulting in HUD “red flags”, and is in good standing in the Commonwealth of Virginia and the City on corporate and tax filings. Failure to timely respond as provided above to a request for such consent shall be deemed the consent of the Authority.

9.2 Governing Law; Venue. All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the parties shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. Any and all disputes, claims and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Charlottesville, Virginia. Each party shall be responsible for its own attorneys’ fees in the event of any litigation or other proceeding arising from this Agreement.

9.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

9.4 Severability. If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

9.5 Subject-to-Appropriations. All payments and other performances by the Authority under this Agreement are subject to City Council’s initial approval of acknowledgement and Authority Board’s initial approval of this Agreement (both evidenced by their execution of this Agreement) and subject to the annual appropriations by the City Council. It is understood and agreed among the parties that the Authority shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. The parties to this Agreement acknowledge that under no circumstances shall the City’s or the Authority’s total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Agreement.

9.6 Public Disclosure.

96.1 Applicable Law. The parties to this Agreement acknowledge that records maintained by or in the custody of the Authority are subject to the provisions of the Virginia Public Records Act, Va. Code §§ 42.1-76 through 42.1-90.1, and the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700 through 2.2-3714 and thus are subject to the records retention and public disclosure requirements set forth in those statutes.

96.2 Challenges to Nondisclosure. If a party submitting records to the Authority

requests that those records not be disclosed under applicable law and the Authority consequently denies a request for disclosure of such records based on the submitting party's request, and the Authority's denial of a request for disclosure of records is challenged in court, the submitting party shall indemnify, hold harmless and defend the Authority, its respective officers, directors, agents and employees from any and all costs, damages, fees and penalties (including attorney's fees and other costs related to litigation) relating thereto.

9.7 No Waiver. Neither failure on the part of the Authority to enforce any covenant or provision contained in this Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the Authority to enforce the same right in the event of any subsequent default.

9.8 Effective Date of the Agreement. The effective date of this Agreement shall be the date upon which it has been fully executed by the parties following approval by City Council and by the Authority's Board.

9.9 No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstance whatsoever as creating and establishing the relationship of copartners or creating or establishing a joint venture between or among any of the parties or as designating any party to the Agreement as the agent or representative of any other party to the Agreement for any purpose.

9.10 No Third Party Beneficiaries. Except as specified in any Collateral Assignment and as specified herein, the parties agree that (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City, the Authority, an Approved Lender, and the Recipient; (iii) no other individual or entity shall obtain any right to make any claim against the City, the Authority, or the Recipient under the provisions of this Agreement unless pursuant to a Collateral Assignment; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

9.11 Signature Authority. Except as specifically otherwise set forth in this Agreement, the Authority Chair or the designee thereof may provide any authorization, estoppels, approvals, and notices contemplated herein on behalf of the Authority and the City.

SIGNATURE PAGE TO FOLLOW

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

FC PHASE 2, LLC,
a Virginia limited liability company

By: FC Phase 2 Managing Member LLC,
a Virginia limited liability company,
Its Managing Member

By: Piedmont Housing Alliance
a non-profit 501(c)(3)
Its Member and Manager

By: _____
Sunshine Mathon, Executive Manager

**ECONOMIC DEVELOPMENT
AUTHORITY OF THE CITY OF
CHARLOTTESVILLE,
VIRGINIA,**
a political subdivision of the
Commonwealth of Virginia

By: _____
Chairman Date

Approved as to Form:

By: _____
General Counsel to the Authority

**ACKNOWLEDGED BY
THE CITY OF CHARLOTTESVILLE, VIRGINIA**

By: _____
City Manager

Approved as to Form:

By: _____
City Attorney's Office

As delineated and described below Parcel C, D, E and 4th Street Ext. Right-of -Way consisting of 3.41 acres in the City of Charlottesville, Virginia



(Description of Property)

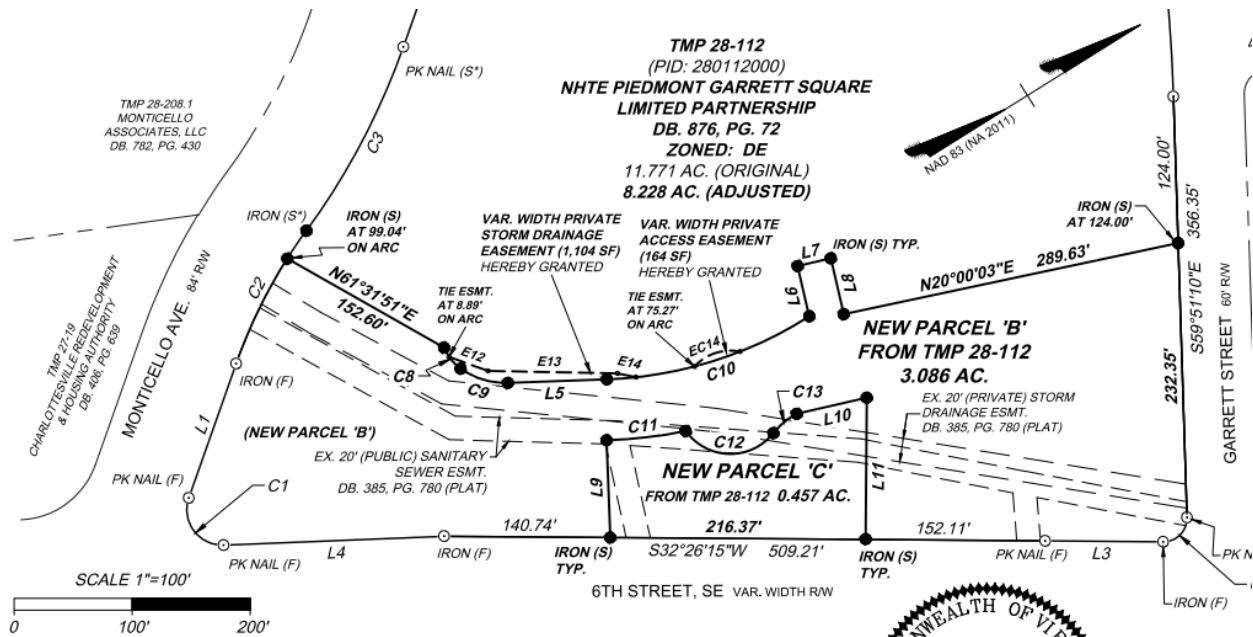


EXHIBIT A
(Description of Property)

Property Description for Phase 2 of Friendship Court Redevelopment
October 10, 2023

Description of portions of tmp 28-112, NHTE Piedmont Garrett Square Limited, 'Friendship Court' Phase 2 Lands:

All that certain piece or parcel of land, situate, lying and being in the city of Charlottesville, Virginia, to be phase 2 lands of the redevelopment of friendship court, and being more particularly described as follows:

Commencing at a found iron rod along the north line of Monticello Avenue, an 84' wide public right of way, approximately 305' west of intersection with 6th street, se, thence with the north line of Monticello Avenue along a curve to the left, having a radius of 606.12', a central angle of 2°48'04", a chord bearing n23°13'05" w, a chord length of 29.63' a distance of 29.63' along the arc of said curve to a point, **said point being the point of beginning (p.o.b.);**

Thence with the north line of Monticello Avenue along a curve to the left, having a radius of 606.12', a central angle of 13°53'42", a chord bearing n31°33'58" w, a chord length of 146.53' a distance of 146.99' along the arc of said curve to a point;

Thence continuing with the north line of Monticello Avenue n38°30'49"w 164.85' to a point;

Thence leaving the north line of Monticello Avenue and through the lands of NHTE piedmont Garrett square limited ('nhte') the following courses:

n51°29'11"e 78.00' to a point;

s71°50'35"e 11.83' to a point;

s38°30'49"e 29.59' to a point;

n51°29'11"e 27.00' to a point;

s38°30'49"e 8.81' to a point;

n51°30'59"e 51.15' to a point;

s38°29'01"e 21.93' to a point;

n50°50'02"e 122.44' to a point;

s71°01'37"e 96.02' to a point;

n19°29'33" e 95.09' to a point;

s70°49'15" e 58.97' to a point;

s22°48'25" e 54.32' to a point;

a curve to the right, having a radius of 165.00', a central angle of 21°59'19", a chord bearing s11°48'45" e, a chord length of 62.93' a distance of 63.32' along the arc of said curve to a point;

s0°46'29" e 9.27' to a point in the west line of city pid 280112001 in the name of fc phase 1, llc ('phase 1');

Thence continuing with the west line of phase 1 the following courses:

a curve to the right, having a radius of 340.74', a central angle of 30°33'40", a chord bearing s14°43'10" w, a chord length of 179.60' a distance of 181.75' along the arc of said curve to a point;

s29°57'42" w 83.93' to a point;

a curve to the right, having a radius of 65.00', a central angle of 37°23'36", a chord bearing s48°39'30" w, a chord length of 41.67' a distance of 42.42' along the arc of said curve to a point;

a curve to the right, having a radius of 40.00', a central angle of 33°05'24", a chord bearing s83°54'00" w, a chord length of 22.78' a distance of 23.10' along the arc of said curve to a point;

s61°31'51" w 66.09' to a point at the northeast corner of the future 'pclt' parcel;

Thence leaving the west line of phase 1 and with the north line of the future pclt parcel n29°45'01" w 59.83' to a point;

Thence s60°14'59" w 80.10' **to the point of beginning**, an area of land, being phase 2 lands, containing 2.839 acres, more or less.

EXHIBIT B

Affordable Housing Schedule

The Project shall restrict occupancy and rents to: (i) 10 units for households with incomes at or below 30% of the Charlottesville Area Median Income (AMI), (ii) 58 units for households with incomes at or below 50% AMI, (iii) 9 units for households with incomes at or below 60% AMI and (iv) 23 units for households with incomes at or below 80% of AMI according to standards promulgated by the State Housing Finance Agency, and subject to the conditions in the form Extended Use Agreement required by the State Housing Finance Agency for tax credit financing.