

## INFRASTRUCTURE FUNDING AGREEMENT

**THIS AGREEMENT** is made this \_\_\_ day of \_\_\_\_\_, 2021, by and among the **City of Charlottesville, Virginia (the “City”)**, a municipal corporation and political subdivision of the Commonwealth of Virginia, and, **Belmont Station, LLC, a Virginia limited liability company (the “Developer”)**.

### Recitals

**R-1.** The Developer’s purpose and intent is to invest a significant amount of money into real estate and improvements, described as: All that certain tract or parcel of land situated in the City of Charlottesville, Virginia (the “City”) on the south side of Stribling Avenue, containing 11.053 acres, more or less, according to the City land records, and currently shown as City Tax Map Parcel 18A025000, and as further **(the “Investment”)** described and depicted on **Exhibit A** hereto **(the “Property”)**, where Developer intends to design and develop a Planned Unit Development containing approximately 170 newly-constructed residential dwellings (the “PUD Project”), which will promote the safety, health, welfare, convenience or prosperity of the inhabitants of the City by promoting appropriate housing density and affordability within an area of the City, enhance the tax base in the City, create more housing opportunities, and promote other economic development in the City. The Developer’s Investment and the amounts and other requirements included in such Investment are set forth in part as **Exhibit B**.

**R-2.** The City has a documented need for pedestrian sidewalk improvements and related stormwater and utility infrastructure along Stribling Avenue in the City of Charlottesville, as noted in the City’s “Complete Sidewalks Projects List”, page 209 of the *Charlottesville Bicycle & Pedestrian Master Plan Update 2015*, as well as in the “Proposed Fiscal Year (YR) 2022 Capital Improvement Program (CIP) Revenue and Expenditure Description Summary”, page 8, and, the “Capital Improvement Program Final Request Form, 5-Year Program Span: Fiscal Year 20-24, Project Title: Stribling Sidewalk + Drainage Improvements” (“Sidewalk Improvements”). The Sidewalk Improvements will be made to one or more sides of the street in order to provide pedestrian connectivity, as determined in the final design, from the intersection with JPA and ending in proximity to the City limits.

**R-3.** The Sidewalk Improvements are separate from the Developer’s Property; however, Developer acknowledges and agrees that, although a need for the Sidewalk Improvements already exists, the PUD Development will increase use of Stribling Avenue by both vehicular and pedestrian traffic, and the Developer desires to make a financial contribution that will facilitate the City’s commencement of the Sidewalk Improvements on an expedited basis.

**R-4.** The Developer has offered to enter into a funding agreement with the City, to provide certain monies to the City through cash escrow or letter of credit, which may be utilized by the City under the terms and conditions set forth within this Agreement to construct the Sidewalk Improvements.

**WHEREAS**, the Developer and the City desire to set forth their understanding and agreement as to these matters in this Agreement.

**NOW, THEREFORE**, for and in consideration of the premises, 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 hereto hereby covenant and agree as follows:

1. The recitals are incorporated as part of this Agreement.
2. The Developer:
  - a. Shall make and maintain the Investment described on Exhibits A and B;
  - b. Shall have \$2,000,000 in Cash Escrow, or Letter of Credit (“Funding”) in place and available to the City: (i) prior to the date on which the City issues a land disturbing permit for the PUD Project, or (ii) by December 31, 2026, whichever first occurs. The Funding shall be made available for the City to draw upon to pay for the Sidewalk Improvements;
  - c. At the request of the City, the Developer shall request that its contractor for the PUD provide a bid to the City for the construction of the Sidewalk Improvements, to assist the City’s efforts to achieve any efficiencies that may be possible if the Sidewalk Improvement can be worked on contemporaneously with the contractor’s construction of sidewalks within the PUD Project. The Developer shall give the City at least 60 days advance written notice of the date on which the Developer’s contractor will commence construction streets and sidewalks within the PUD Project;
  - d. Shall provide the City with the engineering and surveying work that the Developer has caused to be completed to date, and the City agrees to reimburse the Developer for the cost of that work;
  - e. Shall make its commercially reasonable efforts to obtain approvals of the Final Site Plan for the PUD from the City, and commence land disturbing activities, no later than **December 31, 2026 (“Commencement Date”)**, which may be extended due to force majeure or other administrative reasons approved by the City;
  - f. Shall make its commercially reasonable efforts to complete construction and equipping of the PUD Project, in accordance with the Site Plan for the PUD approved by the City, no later than **December 31, 2036 (“Completion Date”)**, which may be extended due to force majeure or other administrative reasons approved by the City.
  - g. Shall 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 and completion of the PUD Project and the occupancy thereof.

3. The City:

a. Shall be responsible for its own final plans to be used for the City's construction of the Sidewalk Improvements, and complete right-of-way acquisition, on or before the Commencement Date;

b. Shall use its best efforts to coordinate construction of the Sidewalk Improvements with the infrastructure construction schedule for the PUD Project, if that is possible with the same contractor(s) and if it will achieve any economies;

c. Shall prepare periodic drawdown requests from the Funding to pay for Sidewalk Improvements pursuant to the City's contract with the contractor(s) for the Sidewalk Improvements. The City, or other designee, and the Developer shall complete all paperwork necessary to complete draw requests.

4. The City, subject to the availability of public funds and the annual appropriation of such funds by the Council, and subject further to the Developer's fulfillment of all of its obligations under this Agreement, shall reimburse the Funding to the Developer, as described herein. Reimbursement of the Funding shall be paid in annual installments, beginning on September 30 of the first Tax Year following the date of the City's issuance of the first building permit for a residential dwelling within the PUD Project ("Initial Reimbursement Installment") and continuing annually thereafter, on or before September 30<sup>th</sup> of each successive Tax Year, but ending on the later of: December 31, 2036, or 10 years after the issuance of the first building permit, in either case regardless of whether the Funding has been full reimbursed to Developer.

a. Each annual reimbursement payment shall be equal to (and shall not exceed) one hundred percent (100%) of the total of the annual real property taxes actually received by the City attributable to the incremental increase in the assessed value of the Property ("**Incremental Increased Value**") over the value of the Property on the City's Land Book for Tax Year 2021 (\$1,041,700) (**the "Base Value"**). An example of the calculation of the annual Funding reimbursement payment required by Paragraph 4, above, is attached as **Exhibit C** to this Agreement.

b. For the purpose of this Agreement, **(i)** the Incremental Increased Value shall be the assessed value of the Property, inclusive of all lots resulting from any subdivision(s) thereof, as set forth within the City's Land Book for each Tax Year subsequent to 2021, without regard to the ownership of the Property, **and (ii)** the Land Book is the official record of real estate assessments for a given Tax Year, as referenced in City Code Section 30-66.

c. Notwithstanding the foregoing, no reimbursement payment shall be due or owing by the City to the Developer within any Tax Year in which the value of the Property on the City's Land Book does not exceed the Base Value.

d. To the extent that the assessed value of the Property 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.

5. The City shall pay interest to the Developer on the Funding utilized by it to pay for construction of the Sidewalk Improvements, at a rate of one and one-half percent (1.5%), beginning on the Commencement Date and continuing until the earlier of: (i) the entire amount of interest and Funding utilized by the City for the Sidewalk Improvements has been reimbursed to the Developer, or (ii) the latest date established in Paragraph 4, being December 31, 2036 or 10 years after the issuance of the first building permit.

6. Developer acknowledges and understands that the City is not empowered under Virginia law to make any binding contractual obligation committing payment of City funds beyond the current fiscal year of the City. However, so long as public funding is available to support the City's performance of this Agreement in subsequent fiscal years, it is the current intention of the Charlottesville City Council to make sufficient annual appropriations to fund the reimbursement obligations of the City hereunder. To that end, the Council has directed the City Manager or other officer charged with the responsibility of preparing the City's budget to include in the City Manager's proposed budget for each fiscal year subsequent to the date of this Agreement a request that the Council appropriate the amounts due under this Agreement during such fiscal year. If at any time the City or the Developer determines that the amount appropriated in any fiscal year budget is insufficient to support the City's performance under this Agreement, then, if sufficient public funding is available, then the City Manager shall submit to the Council at the next scheduled meeting of the Council or as promptly as practicable, a request for a supplemental appropriation sufficient to cover the deficit.

7. This Agreement shall not create any joint venture, any agency, or any employer-employee relationship between the parties hereto.

8. The City reserves the right to approve in advance any assignment of this Agreement by the Developer to any individual or entity while any of the Developer's obligations under this Agreement are outstanding. The ownership interests of such entity must be disclosed to the City. The consent to any such assignment shall not be unreasonably withheld. After the completion of the Developer's obligations under Section 2 of this Agreement, the repayment of the Funding obligations may be sold, assigned, or transferred by the Developer, with the approval of all parties, which consent shall not be unreasonably withheld. All parties to any assignment, sale or transfer under this Section 8. shall be bound by all the terms and conditions of this Agreement.

9. The City may terminate this Agreement at any time if funds have not been drawn from the Developer's Cash Escrow or Letter of Credit. The City may terminate this Agreement

after funds have drawn, by repaying all outstanding Funding amounts plus applicable interest. There is no prepayment penalty if the City chooses to repay Funding in full sooner than otherwise called for under the Agreement. The City will provide written notice to the Developer of its decision to terminate the Agreement pursuant to this section, or if repayment funds sent from the City to the Developer are intended as the prepayment in full of all outstanding amounts, along with the corresponding notice of Agreement termination.

10. This Agreement shall not be interpreted to establish any pledge, security interest, lien, or other encumbrance on property of the City or the Developer.

11. This Agreement shall be governed in all aspects by the laws of the Commonwealth of Virginia, without reference to conflict of laws provisions. In the event of litigation, jurisdiction and exclusive 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. Each of the parties to this Agreement have standing to enforce the terms, conditions and obligations set forth herein.

12. This Agreement sets forth the entire agreement between the parties hereto. There are no promises, agreements, conditions, or understandings between the parties respecting the subject matter hereof, other than those expressly set forth herein, and the provisions of this Agreement supersede all prior and contemporaneous negotiations, conversations, discussions, correspondence, memoranda, and agreements between the parties concerning the subject matter of this Agreement.

13. This Agreement may be modified by mutual agreement of the parties. The City Manager is designated as the City's agent to approve and execute amendments to this Agreement involving procedural or administrative matters. By way of example and not limitation, such procedural or administrative changes can include: date changes relating to any force majeure, changes in the scope of work necessary for the Sidewalk Improvements, or, approvals required by Section 8 of this Agreement.

14. Notices and communications relating to this Agreement shall be given in writing, and shall be deemed to be received by a party hereto (i) five (5) business days after being mailed by U.S. mail, first class, 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) upon being delivered by hand to a party, addressed as follows:

if to the City, to:

The City of Charlottesville, Virginia  
Attention: City Manager  
605 East Main Street, City Hall, Second Floor (P.O. Box 911)

Charlottesville, VA 22092

if to the Developer, to:

Belmont Station, LLC  
142 South Pantops Drive  
Charlottesville, VA 22911  
ATTN: Frank T. Ballif, Manager

with a copy to:

Lois A. Haverstrom, General Counsel  
142 South Pantops Drive  
Charlottesville, VA 22911

15. This Agreement may be executed, via facsimile or email and, in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument. This Agreement shall be binding upon and inure to the benefit of the parties hereto. If any provision of this Agreement is determined to be unenforceable, then the remaining provisions of this Agreement shall be interpreted as in effect as if such unenforceable provisions were not included therein. Each of the parties to this Agreement represents that it is fully authorized to enter into this Agreement, and that it will be bound by this Agreement in accordance with its terms.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement to be effective as of the date first written above.

**CITY OF CHARLOTTESVILLE, VIRGINIA**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

**DEVELOPER**

**BELMONT STATION, LLC on its behalf and as Manager of Belmont Station LLC**

By: \_\_\_\_\_

Frank T. Ballif, as Manager

Date of Execution: \_\_\_\_\_

## EXHIBIT A

(Description of Property)

All that certain tract or parcel of land situated in the City of Charlottesville, Virginia (the “City”) on the south side of Stribling Avenue, containing 11.053 acres, more or less, according to the City land records, and currently shown as City Tax Map Parcel 18A025000, and as further described within the Proposed Planned Unit Development (the “Investment”) described and depicted on Exhibit A below (the “Property”)

Property to be developed into a 170+/- Unit PUD



## EXHIBIT B

### Investment

This Agreement only relates to the \$2,000,000 Cash Escrow or Letter of Credit posted by the Developer in favor of the City, and the reimbursement of amount(s) drawn by the City from of that Cash Escrow or Letter of Credit. Developer plans to construct 170+/- residential dwelling units within the PUD Project, with an estimated completed value after home construction averaging \$275,000, more or less.

## EXHIBIT C

### Funding Calculation of Incremental Increased Value (Examples based on Estimated Assumptions below)

Sample Calculations are for Illustration Purposes Only: The Dates, Assessed Values, and Real Estate Tax Rates are not actual and are for Illustration Purposes Only. Calculations assume that the City has drawn funds that are to be repaid by real estate taxes received by the City and generated directly from the Developer's PUD after the issuance of the first Building Permit.

#### Example 1 - Issuance of First Building Permit

	<b>1 Unit Averaging \$275,000 upon completion and 169 lots at \$65,000 each</b>	<b>Prior to Project (Based 2021 AV)</b>	<b>Estimated Annual Tax Increment Repayment w/ Issuance of First Building Permit</b>
Assessed Value of Real Estate	\$11,260,000	\$1,041,700	
Real Estate Tax Collected	\$106,970	- (\$9,896)*	= \$97,074

#### Example 2 - Complete Project Build Out

	<b>Estimated After Project Completion 170 Units Averaging \$275,000 upon completion</b>	<b>Prior to Project (Base 2021 AV)</b>	<b>Estimated Annual Tax Increment Repayment at the end of the Project</b>
Assessed Value of Real Estate	\$46,750,000	\$1,041,700	
Real Estate Tax Collected	\$444,125.	- (\$9,896)*	= \$434,229

\*Based on real estate tax rate \$0.95 per \$100.