

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



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

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

Background:

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

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

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

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

Discussion:

South 1st Street – Phase 1

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

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

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

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

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

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

Affordability Commitments tied to the redevelopment:

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

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

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

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

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

- The City funding will be disbursed as a grant to the CRHA. CRHA will provide the funds to the CCDC, whereby the CCDC will lend to the project as an interest free, 30-year loan. The intent of the City funding is to fund the construction of rental units and the related infrastructure improvements associated with the project. The source of funding is from previously approved taxable bond funds (FY19/20 CIP).
- 100% of the units constructed will be provided for rental by low and moderate income persons: no fewer than 13 units will be public housing units; no fewer than 24 units will participate in the project-based, Section 8 program; the remaining 25 units will be reserved for occupancy by persons having a household income at or below 60% AMI
- City funding in the amount of \$1,125,000 will support this redevelopment project; a maximum of \$144,000 of the total amount will be allowed to go towards “soft costs”. This was approximately the amount of predevelopment costs included in the application CRHA submitted to HUD. CRHA will be allowed to make 3 drawdown requests:
 - o Request 1 (not to exceed \$500,000): with submittal of HUD approvals; and executed project related documents of record; and executed construction contract, schedule and budget; and evidence a building permit has been issued
 - o Request 2 (not to exceed \$343,750): with evidence that construction has started; and following the first payment application from the construction contractor has been submitted for the project; and documentation that funds received from Request 1 were used to pay project related costs
 - o Request 3 (not to exceed \$281,250): with documentation that funds received from Request 2 were used to pay project related costs; and evidence that no grant funds previously allocated remain unspent; and a budget-to-actual expenditure report and a construction schedule for the project; and a Sustainability Plan (40 years) for CRHA properties – this Sustainability Plan must be presented to the City Council and the City Council must be satisfied with the Plan prior to this funding being released.
- if construction of the buildings is not commenced on or before June 30, 2021, this Grant shall expire
- CRHA is requesting that City Council approve an annual recurring subsidy equal to the dollar amount of the real estate taxes assessed and billed to the new Project Owner, who is a taxable entity. (Currently, CRHA is required to make annual payments in lieu of taxes (PILOT) to the City in accordance with the Cooperation Agreement entered into between the City and CRHA in 1958). The proposed Ordinance provides for a subsidy available with respect to the Project for a total of fifteen (15) tax years, beginning with the first tax year in which the Project Owner receives a real estate assessment and bill for the Project.

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

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

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

Crescent Halls

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

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

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

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

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

- The City funding will be disbursed as a grant to the CRHA. CRHA will provide the funds to the CCDC, whereby the CCDC will lend to the project as an interest free, 30-year loan. The intent of the City funding is to fund the renovation of the existing rental units, community spaces, staff and maintenance offices/areas and some exterior improvements. The source of funding is from previously approved taxable bond funds (FY19/20 CIP).
- 100% of the units constructed will be provided for rental by low and moderate income persons: no fewer than 53 units will remain public housing units; no fewer than 52 units will participate in the project-based, Section 8 program. All units will be reserved for occupancy by persons having a household income at or below 60% AMI
- City funding in the amount of \$1,875,000 will support this redevelopment project; a maximum of \$85,000 of the total amount will be allowed to go towards “soft costs”. This was approximately the amount of predevelopment costs included in the application CRHA submitted to HUD. CRHA will be allowed to make 3 drawdown requests:
 - o Request 1 (not to exceed \$500,000): with submittal of HUD approvals; and executed project related documents of record; and executed construction contract, schedule and budget; and evidence a building permit has been issued
 - o Request 2 (not to exceed \$906,250): with evidence that construction has started; and following the first payment application from the construction contractor has been submitted for the project; and documentation that funds received from Request 1 were used to pay project related costs
 - o Request 3 (not to exceed \$468,750): with documentation that funds received from Request 2 were used to pay project related costs; and evidence that no grant funds previously allocated remain unspent; and a budget-to-actual expenditure report and a construction schedule for the project; and a Sustainability Plan (40 years) for CRHA properties – this Sustainability Plan must be presented to the City Council and the City Council must be satisfied with the Plan prior to this funding being released.
- if construction of the buildings is not commenced on or before June 30, 2021, this Grant shall expire
- CRHA is requesting that City Council approve an annual recurring subsidy equal to the dollar amount of the real estate taxes assessed and billed to the new Project Owner, who is a taxable entity. (Currently, CRHA is required to make annual payments in lieu of taxes (PILOT) to the City in accordance with the Cooperation Agreement entered into between the City and CRHA in 1958). The proposed Ordinance provides for a subsidy available with respect to the Project for a total of fifteen (15) tax years, beginning with the first tax year in which the Project Owner receives a real estate assessment and bill for the Project.
- Approval of this Ordinance fulfills the requirement of Virginia Code § 36-19.2 that requires cities to instruct Housing Authorities to redevelop properties prior to proceeding with redevelopment.

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

Ordinance:

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

Alignment with Council Vision Areas and Strategic Plan:

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

Budgetary Impact:

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

Alternatives:

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

Attachments:

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

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

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

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

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

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

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

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

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

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

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

Section 1. Public purpose of the City Grant

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

Section 2. Representations and warranties; remedies for breach

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

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

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

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

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

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

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

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

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

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

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

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

(G) Miscellaneous

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

Section 3. Authorized Expenditures; Budget

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

Notwithstanding the foregoing:

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

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

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

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

Section 4. Disbursement of Grant Proceeds

(A) Preconditions, General

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

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

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

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

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

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

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

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

Section 5. General Grant Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1. Public purpose of the City Grant

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

Section 2. Representations and warranties; remedies for breach

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) Miscellaneous

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

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

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

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

Section 3. Authorized Expenditures; Budget

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

Notwithstanding the foregoing:

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

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

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

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

Section 4. Disbursement of Grant Proceeds

(A) Preconditions, General

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

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

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

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

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

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

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

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

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

Section 5. General Grant Conditions

(A) Compliance with Government Requirements. In all of its actions and activities undertaken to provide for the construction, management and operation of the Project, the Recipient shall comply with:

- i. Any Recovery Agreement entered into between Recipient and the Department of Housing and Urban Development on or after July 1, 2020,
- ii. The 1958 Cooperation Ordinance between CRHA and the City, as amended,
- iii. The Consolidated Annual Contributions Contract (“ACC”), number P-5513, dated August 30, 1996, and all amendments thereto,
- iv. The Ground Lease between CRHA and the Project Owner,
- v. The Declaration of Trust/ Restrictive Covenants for the Project,
- vi. The Regulatory and Operating Agreement between CRHA and the Project Owner,
- vii. HUD’s Mixed-Finance Development Certifications and Assurances for the Project, and
- viii. Any other legal obligations and requirements imposed on the Project, or any aspect of the Project, as a result of any federal or state law, regulation or grant Ordinance, or by any City ordinance.

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

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

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

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

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

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

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

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

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