

CITY OF CHARLOTTESVILLE, VIRGINIA

CITY COUNCIL AGENDA



Agenda Date:	November 4, 2013
Action Required:	Approval of Resolution
Presenter:	Kathy McHugh, Housing Development Specialist
Staff Contacts:	James E. Tolbert, AICP, Director of NDS Kathy McHugh, Housing Development Specialist
Title:	Sale & Purchase Agreement Amendment for Elliott Avenue with Southern Development Group Inc. & Greater Charlottesville Habitat for Humanity, Inc.

Background: On May 7, 2012, City Council approved conveyance of City owned property at Elliott Avenue (Parcels 266 and 272.1) to Southern Development Group, Inc. and Greater Charlottesville Habitat for Humanity, Inc. (the Purchaser). This approval was subject to a public process requiring a public hearing and submittal of proposals from interested parties.

Pursuant to this approval, a sale/purchase agreement was executed (see attached copy) on August 1, 2012. Section 4 of this agreement states that: *"Closing on the Property will be held within thirty (30) days after all necessary final site plan, PUD, and subdivision approvals have been obtained from the City, and in no event later than January 1, 2014."*

On October 15, 2013, Southern Development (on behalf of the Purchaser) contacted Neighborhood Development Services staff to request an extension of the required closing deadline. Specifically, while the Purchaser has submitted the final site plan to the City for approval, this process will take some time and they are unsure as to whether they can meet the current deadline.

Attached hereto is a copy of the letter received from Southern Development which outlines the request and the various issues associated with need for extra time. Specifically, the following factors are denoted:

Though the planning and approvals moved forward diligently, they did not proceed as fast as is theoretically possible for several reasons. This site is a complicated site and demands design and engineering prudence over haste. Some specific instances of delay are:

- Between the rezoning application submittal and the Planning Commission public hearing the project met with delays due to efforts to work collaboratively with staff to find ways to build the

innovative “woonerf” travelway designs in this project. Current design standards did not and do not allow this innovative approach. Some creative solutions evolved from these conversations but the solutions took approximately 3 months to resolve and refine, delaying the rezoning.

- The site survey conducted during the rezoning process determined that the site is a different shape than was assumed based on City GIS mapping. Though it did not alter the general design, it did require some reworking of the finer details of the concept.
- During final site planning stages we worked with the Tree Commission to find ways to incorporate street trees in a very urban plan setting, with additional complications due to existing overhead power lines where street trees would normally be planted. Some excellent solutions resulted from this process, but it delayed the submittal of the Final Site Plan.

Staff acknowledges that each of these factors are legitimate and that there have been many issues outside the control of the Purchaser, as they have attempted to identify a design that is consistent with the initial proposal submitted to the City. Further, it is clear that they have made significant progress through the efforts to date.

Discussion:

Based on information provided from the Purchaser, staff believes that an extension of time would be appropriate in this case; however, we are recommending only six (6) months and not the full year as requested. Accordingly, the new date for Section 4 would be July 1, 2014.

If additional time is necessary, staff has advised the Purchaser that such a request will be evaluated at that time.

Community Engagement:

The public process for selection of the Purchaser and subsequent efforts has been quite extensive. Specific events include: 1) a request for proposal submittal and review in October 2011, 2) public hearings on March 19, 2012 and April 16, 2012, 3) Council approval on May 7, 2012, 4) rezoning preliminary discussion with the Planning Commission on January 8, 2013, 5) rezoning Planning Commission public hearing on March 12, 2013, 6) City Council approval of the rezoning on April 15, 2013, and 7) discussions with the Tree Commission at their August 28, 2013 meeting.

Alignment with City Council's Vision and Priority Areas:

Approval of this agenda items aligns directly with City Council's vision for Charlottesville to provide quality housing opportunities for all.

Budgetary Impact:

There is no impact that can be quantified. Delayed development will obviously have some unintended economic consequences; however, this is unavoidable as construction cannot commence until closing has occurred and all approvals are in place.

Recommendation:

Approve the resolution providing a six (6) month extension of time.

Alternatives:

Deny the request and require the Purchaser to fulfill the contractual obligations by the January 1, 2014 deadline. Upon expiration of this date, the City could void the agreement; however, given the effort, expense and due diligence exhibited to date this would be inconsistent with the goal of developing the Elliott property for mixed-income/mixed use purposes.

Attachments:

Ordinance approving conveyance of property dated May 7, 2012

Copy of executed Sale/Purchase Agreement – Elliott Avenue Lots dated August 1, 2012

Letter from Southern Development dated October 15, 2013

Resolution

**AN ORDINANCE
AUTHORIZING THE CONVEYANCE OF
CITY-OWNED PROPERTY ON ELLIOTT AVENUE TO
GREATER CHARLOTTESVILLE HABITAT FOR HUMANITY, INC. AND
SOUTHERN DEVELOPMENT GROUP, INC.**

WHEREAS, the City of Charlottesville is the owner of property on Elliott Avenue currently designated as Parcels 266 and 272.1 on City Real Property Tax Map 29 (hereinafter the "Property"); and,

WHEREAS, in October 2011 the City solicited proposals from parties interested in acquiring and developing the Property, and subsequently received development proposals from two groups; and,

WHEREAS, after review and consideration of both proposals City staff has recommended that the Property be sold to and developed by a partnership of Greater Charlottesville Habitat for Humanity, Inc. ("Habitat") and Southern Development Group, Inc. ("Southern"); and

WHEREAS, in accordance with Virginia Code Section 15.2-1800(B), a public hearing was held on April 16, 2012 to give the public an opportunity to comment on the proposed conveyance of the City property as requested by Habitat and Southern; and,

WHEREAS, the City Council is in agreement with the staff recommendation that the Property should be sold to and developed by the development team of Habitat and Southern, under the terms and conditions set forth within the attached Land Purchase and Development Agreement;

NOW, THEREFORE, BE IT ORDAINED by the Council for the City of Charlottesville, Virginia that the City Manager is hereby authorized to execute an agreement for the sale of Parcels 266 and 272.1 on City Real Property Tax Map 29 to Greater Charlottesville Habitat for Humanity, Inc. and Southern Development Group, Inc., or their joint assignee, hereinafter "Purchasers", in form approved by the City Attorney. The Land Purchase and Development Agreement shall be substantially the same as the attached agreement, which includes the following general terms and conditions:

- (1) The sales price for the Property will be \$10.00. The Purchasers will agree to bear all costs associated with any required environmental remediation of the site, and any other costs necessary to make the property suitable for the proposed residential development.
- (2) The development on the Property will include approximately 47 residential units, and a potential mixed use component of up to 3,000 square feet. Approximately twenty (20) of the residential units will be affordable housing, targeted to families earning between twenty-five percent (25%) and sixty percent (60%) of Area Median Income (AMI).
- (3) The Purchasers will partner with the Charlottesville Redevelopment and Housing

Authority (CRHA) to designate at least twenty-five percent (25%) of the affordable housing units for CRHA public housing residents or participants in the CRHA Housing Choice voucher program.

(4) The Purchasers will partner with the Region Ten Community Services Board (Region Ten) to provide an independent and / or supported residential opportunity for clients of Region Ten. If the Purchasers' current assumptions regarding the cost of environmental remediation at the site are correct, the Purchasers will offer Region Ten a large developed parcel at no cost, to be used by clients of Region Ten.

(5) The Purchasers will provide for improvements to the adjacent Oakwood Cemetery owned by the City, including a \$5,000.00 donation to the City to be used as a tree replacement fund for the Cemetery, and improvements to the existing road adjacent to the shared property line between the Property and the Cemetery, including resurfacing and the installation of a decorative shoulder and street trees.

(6) The Purchasers will engage in extensive outreach to adjoining property owners to determine if the development can be expanded, and to address any concerns regarding the proposed development.

BE IT FURTHER ORDAINED that the Mayor of the City of Charlottesville is hereby authorized to execute a deed, in form approved by the City Attorney, conveying the Property to Greater Charlottesville Habitat for Humanity, Inc. and Southern Development Group, Inc., or their joint assignee.

Approved by Council
May 7, 2012

A handwritten signature in cursive script, reading "Paige Bayfield", is written over a horizontal line.

Clerk of Council

THIS LAND PURCHASE AND DEVELOPMENT AGREEMENT is made this 1 day of August, 2012, by and between the **CITY OF CHARLOTTESVILLE, VIRGINIA** ("City" or "Seller"), and **GREATER CHARLOTTESVILLE HABITAT FOR HUMANITY, INC. (GCHFH)** and **SOUTHERN DEVELOPMENT GROUP, INC. (SDG)** ("Purchaser").

RECITALS:

A. City is the owner of certain real property situated in the City of Charlottesville, Virginia, designated as Parcel 266 (containing approximately 2.408 acres) and Parcel 272.1 (containing approximately 1.129 acres) on City Real Estate Tax Map 29 (the "Property"), a copy of said tax map being attached hereto as Exhibit A.

B. In its continuing effort to maintain and improve the residential and business tax base of the City of Charlottesville, the City has solicited proposals for the purchase and development of the Property. The City has determined that:

- (1) The public interest will be best served by selling and conveying the Property to Purchaser for development purposes consistent with the terms and conditions of this Agreement;
- (2) Purchaser's proposed development of the Property will generate substantial benefits for the City;
- (3) Purchaser's proposed development of the Property is in harmony with and will further the fulfillment of the duly adopted comprehensive plan of the City;
- (4) Purchaser's proposed development of the Property is likely to produce increases in revenue from property and other taxes to the City and will produce expanded housing opportunities for the citizens of the City and surrounding jurisdictions; and
- (5) Purchaser's proposed development and use of the Property will be unlikely to produce pollution or adverse environmental consequences and is unlikely to necessitate significant expenditures of additional public funds for the provision of essential or customary public services.

AGREEMENT

Section 1. Development Plan.

1.1. Purchaser represents that the Property will be developed as residential and commercial space which will foster quality, affordable home ownership. If Purchaser's submittals as described in section 1.2, *infra*, are approved by the City of Charlottesville, Purchaser agrees to develop the Property as a Planned Unit Development (PUD) substantially in accord with its proposal to the City, dated December 14, 2011, or as approved during the PUD rezoning process. Said proposal includes, but is not limited to, the following terms and conditions:

- (a) The development on the Property will include approximately 46 residential units, and one lot that may be developed for either a residential or nonresidential use. Approximately twenty (20) of the residential units will be affordable housing through the Habitat for Humanity homeownership program, and sold to families earning between twenty-five percent (25%) and sixty percent (60%) of Area Median Income (AMI). The Purchaser agrees that outreach to families residing in the City of Charlottesville at the time the affordable housing units are offered for sale will be a priority, and to the extent possible City residents will be given the first opportunity to purchase the affordable dwelling units.
- (b) The Purchaser will partner with the Charlottesville Redevelopment and Housing Authority (CRHA) to designate at least twenty-five percent (25%) of the affordable homeownership housing units for CRHA public housing residents or participants in the CRHA Housing Choice voucher program. Purchaser will work with CRHA and use its best efforts to identify and provide technical assistance to CRHA clients who are willing and able to qualify as purchasers of the Habitat homes provided pursuant to this Agreement. If a sufficient number of CRHA clients are not available to purchase all of the CRHA-designated Habitat homes in the development, the Purchaser shall provide written notice of that outcome to the City. If Purchaser has made a diligent but unsuccessful effort to identify willing and eligible CRHA clients, the City will approve the sale of one or more of the Habitat homes initially reserved for CRHA clients to other families residing in the City of Charlottesville who are earning between twenty-five percent (25%) and sixty percent (60%) of Area Median Income.
- (c) Within reasonable financial limitations to be agreed to by Purchaser and the City during the study period, Purchaser intends to offer to convey to Region Ten Community Services Board, at no cost, a vacant parcel ready for development with the necessary infrastructure in place to be used by clients of Region Ten. If development costs exceed agreed to financial limitations, Purchaser shall provide written notice and documentation to the City at which point the agreement contained within this paragraph can be voided by mutual consent.

- (d) The Purchaser will provide for improvements to the adjacent Oakwood Cemetery owned by the City, including a \$5,000.00 donation to the City to be used as a tree replacement fund for the Cemetery, and improvements to the existing road adjacent to the shared property line between the Property and the Cemetery, including resurfacing and the installation of a decorative shoulder and street trees.
- (e) The Purchaser will engage in extensive outreach to adjoining property owners to determine if the development can be expanded, and to address any concerns regarding the proposed development.

1.2. Within one hundred and twenty (120) days after the execution of this Agreement, Purchaser shall submit to the City a complete application for rezoning the Property to a Planned Unit Development, consistent with the proposal referenced in section 1.1, *supra*. By its execution of this Agreement the City hereby evidences its written consent for Purchaser, as contract purchaser of the Property, to apply for and seek in its sole discretion any and all other land use and zoning approvals for the future use of the Property. The City's consent shall not be construed as a representation that it will grant or approve any particular application submitted by Purchaser, which is otherwise within the City's discretion to approve or deny. The City's approval will not be unreasonably delayed or withheld.

1.3. The Purchaser agrees that the development will include, but shall not be limited to, (a) housing that is suitable for sale to families with children; (b) housing that allows aging in place, through construction of visitable and/or universal design homes; and (c) the use of "green" site development and sustainable building techniques and practices, meeting Earth Craft or comparable standards at a minimum. All construction required or permitted to be performed by or on behalf of Purchaser hereunder shall be performed in a first-class manner using materials and fixtures of good quality.

1.4. Purchaser agrees to commence development of the Property as soon after the Closing referred to in Section 4 as is commercially feasible. Purchaser agrees to comply with the following construction schedule:

- (a) Ten (10) new units shall be substantially complete and ready for sale within twenty four (24) months from the date of closing; and
- (b) The balance of the additional new units shown in the approved PUD plan shall be substantially complete and ready for sale within five (5) years from the date of closing.

1.5 Upon the written request of the Purchaser the Charlottesville City Manager may, upon good cause shown by the Purchaser, agree to up to two (2) six (6) month extensions of the deadlines set forth in section 1.4 (a) and / or (b). In the event Purchaser fails to begin construction activity at the site within eighteen (18) months from the date of closing in a manner that evidences its commitment to fulfill the requirements of this Agreement, the City may, in its discretion and upon thirty days written notice to Purchaser, require Purchaser to reconvey the Property to the City at no cost to the City. If construction activity has started but Purchaser fails to meet either of the deadlines established in sections 1.4 (a) or (b), or such deadlines as extended by the City Manager, the Purchaser agrees to pay to the City the fair market value of

any parcel where Purchaser is not diligently pursuing construction. The fair market value of each such parcel shall be determined by an independent professional appraiser selected and compensated jointly by the City and the Purchaser. Payment to the City will be made no more than thirty (30) days after completion of the appraisal.

1.6 All City rezoning, site plan and subdivision application fees, and all building permit fees for affordable housing units provided pursuant to this Agreement, shall be waived.

Section 2. Land Purchase. City agrees to sell and Purchaser agrees to purchase the Property, together with all improvements, easements, and appurtenances thereunto belonging, upon the terms, conditions, and provisions set forth in this Agreement.

Section 3. Purchase Price. The purchase price ("Purchase Price") for the Property shall be Ten Dollars (\$10.00).

Section 4. Closing and Delivery of Possession. Closing on the Property will be held within thirty (30) days after all necessary final site plan, PUD, and subdivision approvals have been obtained from the City, and in no event later than January 1, 2014. The City shall not unreasonably withhold or delay the necessary approvals. If all necessary final approvals have not been obtained by the last mentioned date, this agreement may be voided by either party. Closing will be held at the Office of the City Attorney, 605 East Main Street, Charlottesville, Virginia. Possession of the Property will be delivered at closing.

Section 5. Expenses and Proration. Except as otherwise provided, each party shall be responsible for its expenses incurred in connection with this Agreement and the transaction contemplated hereby. Purchaser will pay for all of the engineering and related expenses needed to obtain the required land use and design approvals contemplated by this agreement. Purchaser shall arrange for preparation of a recordable plat showing accurate boundaries of the Property, and the cost thereof shall be shared equally between Purchaser and Seller at closing. City shall pay for preparation of the deed, and its own attorney's fees. Purchaser shall pay its own attorney's fees, its proportionate share of the current year's real estate taxes when due and payable, cost of title insurance, and all recording costs other than the grantor's tax (the City is exempt from grantor's tax).

Section 6. Title. City shall convey the Property to Purchaser by special warranty deed (the "Deed"). City shall furnish Purchaser's attorney with a copy of the proposed Deed for approval by Purchaser's attorney at least ten (10) days prior to closing.

Section 7. Conditions of Sale. The obligation of Purchaser to close under this Agreement is subject to the fulfillment of all the following conditions (unless waived in writing by the Purchaser):

7.1. Title to the Property shall be as provided in Section 6 of this Agreement. Purchaser will notify the City of Charlottesville any title defects at least forty-five (45) days prior to closing, and the City shall have until closing to cure any such defect. In the event the City fails to remedy the defect to the reasonable satisfaction of the Purchaser, either party will have the right to terminate the Agreement, and neither party shall have any further obligation hereunder.

7.2. Neither the Property nor any portion of the Property shall, after the date of this Agreement, have been condemned or taken pursuant to any governmental action or other exercise of the power of eminent domain or shall, after the date of this Agreement, be the subject of any proceeding for condemnation, taking or exercise of the power of eminent domain at any time prior to the closing under this Agreement which materially and adversely affects Purchaser's planned development of the Property, Purchaser at its sole option may:

- (a) Proceed to the closing, but the City shall assign to Purchaser all of the City's right, title, and interest in and to any condemnation award or damages; or
- (b) Terminate this Agreement by giving written notice to the City of its decision to do so, in which event this Agreement shall terminate and neither party shall have any further rights or obligations hereunder.

7.3. The City's obligations described in this Agreement shall have been fully satisfied.

7.4. In the event any of the foregoing conditions are not fulfilled (through no fault of the party to be benefitted by such condition) and are not waived, each party shall be relieved from any further liability under this Agreement.

7.5. Notwithstanding anything set forth elsewhere in this Agreement, for a period of sixty (60) days beginning with the date of this Agreement, Purchaser shall have the right to conduct any and all feasibility studies with respect to the Property, including environmental assessments, soil borings, surveys, engineering studies and site analysis. At any time during that 60 day period, upon written notice of termination to the City, Purchaser may end all of its obligations hereunder if the Purchaser believes that its studies show that purchase and development of the Property is not feasible under the then current circumstances. In the event of such termination by the Purchaser, the City agrees to reimburse Purchaser one-half of the full cost of any environmental studies undertaken, provided that the City receives a copy of such studies and provided further that the City's share in no event shall exceed \$25,000.00. Purchaser may extend such study period, for two (2) additional 30-day periods, upon payment to the City of Charlottesville a non-refundable option payment in the amount of \$2,000.00 for each additional 30-day period. In the event Purchaser or its agents enter the Property for the purpose of feasibility studies, Purchaser agrees to indemnify, defend and hold harmless the City and its officers, officials and employees from all claims of liability for any personal injury or property damage or otherwise to any person or property caused by any action or omission of Purchaser or its agents during any pre-closing entry onto the Property.

7.6 If Purchaser desires to enter onto the Property prior to closing for any purpose other than to perform feasibility studies or investigations or to plan the development, it shall submit a written request to the Charlottesville City Manager describing the reason for the proposed entry, the work to be performed and the duration of the work. The City Manager is hereby authorized to approve the entry and the proposed work if it can be performed in a manner and under such conditions as will protect the City's interests prior to closing on the sale of the Property.

Section 8. Condition of the Property

8.1. Both parties acknowledge that the Property has previously been used as a disposal or storage site for construction and demolition debris and other waste. The City makes no representations or warranties, whether express or implied, concerning the absence of any "hazardous substances" (as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, *et seq.*, as amended) or "hazardous wastes" (as defined by the Resource Conservation Act, 15 U.S.C. Section 2601, *et seq.*, as amended). Purchaser hereby acknowledges that the bearing capacity of some of the soils on the site may be below standard and that portions of these soils, if removed from the site may have to be bioremediated or otherwise disposed of as either a "hazardous substance" or "hazardous waste" as defined herein. Cost of removal, if necessary, and disposal, if necessary, and all other costs associated with the environmental remediation of the site shall be solely the responsibility of Purchaser, unless this Agreement is terminated prior to closing. If such soils are left in place, Purchaser will be solely responsible for any solutions related to bearing capacity.

Purchaser agrees that it will comply with all applicable environmental laws, rules and regulations in remediating and developing the site. Purchaser further agrees that following closing it will indemnify and hold harmless the City from any and all liability, costs, fines, penalties or other expenses of whatever nature arising from the presence of discarded or waste materials on the Property.

8.2. Purchaser warrants and acknowledges to and agrees with the City that Purchaser is purchasing the Property in an "As Is" condition "With All Faults" and specifically and expressly without any warranties, representations or guarantees, whether express or implied, of any kind, nature, or type whatsoever from or on behalf of the City including, without limitation, with respect to the environmental condition of the Property, except that the City warrants that it shall convey marketable fee simple title to the Property. Without in any way limiting the generality of the preceding, Purchaser specifically acknowledges and agrees that it hereby waives, releases and discharges any claim that it has, might have had or may have against the City with respect to the condition of the Property, either patent or latent, its ability or inability to develop the Property, the actual or potential income or profits to be derived from the Property, the compliance with any federal, state or local environmental protection, pollution or land use laws, rules, regulations or requirements, and any other state or local acts or ordinances which exist with respect to the Property. The Property shall be delivered to the Purchaser at closing in its present physical condition, except as otherwise provided in this Agreement. It shall be Purchaser's responsibility to determine that all utility service required by Purchaser is available to the Property.

Section 9. Events of Default.

9.1. The unexcused failure of either party to perform any or all of its obligations as set forth in this Agreement shall be an Event of Default; provided, however, that any failure on the part of the Purchaser to fulfill its obligations with respect to site development or construction shall not be deemed an Event of Default until the City has given Purchaser notice of such failure and a reasonable opportunity to cure any such failure.

9.2. In addition to any other remedies provided in this Agreement or available at law or in equity, upon the occurrence of an Event of Default the non-defaulting party may, by notice to the defaulting party, declare a default and:

- (a) the non-defaulting party may sue for specific performance; or
- (b) if Purchaser is the defaulting party, Purchaser shall, within five (5) days of demand therefor by the City, deliver to the City all site, engineering, architectural, or other plans and all financial projections and construction budgets prepared by or for Purchaser with respect to the Property.

Section 10. Miscellaneous.

10.1. Any notice, election, or consent required or permitted to be given under this Agreement shall be given in writing and shall be deemed to have been duly given when hand-delivered or when delivered by the U.S. Postal Service by certified mail, return receipt requested, postage prepaid, addressed as follows:

To City:

Jim Tolbert
Neighborhood Development Services
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902

To Purchaser:

Frank Ballif
Southern Development Group, Inc.
170 South Pantops Drive
Charlottesville, VA 22911

With a copy to:

S. Craig Brown, City Attorney
City of Charlottesville
P.O. Box 911
Charlottesville, VA 22902

With a copy to:

Tim Kelsey
Boyle Bain Reback & Slayton
420 Park Street
Charlottesville, VA 22911

10.2 Nothing contained herein, and no action of the City in approving or failing to approve any plans or specifications, shall be deemed or construed as making any party a partner or joint venture with any other party, or create a principal-agent relationship or any other relationship except that of seller and purchaser.

10.3. No part of this Agreement may be assigned by the Purchaser without the prior written approval of the City, except that the Purchaser may assign, without the prior approval of the City, any or all of its rights and interests in this Agreement to another entity so long as Southern Development Group, Inc. and Habitat for Humanity of Greater Charlottesville, jointly or severally, have a controlling interest in the entity to which the rights or interests are assigned.

10.4. The terms, provisions, representations, warranties, covenants, and undertakings set forth in this Agreement shall survive the closing of the transaction contemplated hereby. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, and nominees.

10.5. The Purchaser shall be solely responsible for any real estate commission due in this transaction. City represents that no real estate agents or brokers have been involved in this

transaction and that the Property is not the subject of any current and enforceable listing agreement.

10.6. If any provision of this Agreement, or the application of this Agreement in any circumstance, is deemed to be unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain enforceable.

10.7. This Agreement shall be governed by the laws of the Commonwealth of Virginia.

10.8. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral or written, with respect to such transaction. Unless otherwise provided in this Agreement, no change to this Agreement shall be effective unless in writing signed by the party against whom any waiver, amendment, or discharge may be sought.

Section 11. Other Provisions.

11.1. Purchaser's obligations under this Agreement are contingent upon receiving an acceptable title examination and report for the Property, and satisfactory final site plan, subdivision and rezoning approval from the City of Charlottesville for construction of the residential housing development. Such contingency must include permission to build sufficient on-site parking to meet any applicable city ordinance requirements. Purchaser agrees to use its best efforts to diligently pursue such final site plan and PUD approval.

11.2. Prior to the start of construction, the City Manager or his designee shall have the right to request, review and approve, which approval shall not be unreasonably withheld, documentation of Purchaser's financial sufficiency to complete this project.

11.3 Frank T. Ballif is a Virginia licensed real estate broker and a principal of Southern Development Group, Inc.

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WITNESS the following duly authorized signatures.

Seller:

**CITY OF CHARLOTTESVILLE,
VIRGINIA**

By: Maurice Jones
Maurice Jones, City Manager

Date: 8-13-12

Purchaser:

**GREATER CHARLOTTESVILLE
HABITAT FOR HUMANITY, INC.**

By: [Signature]

Date: 7/19/12

**SOUTHERN DEVELOPMENT GROUP,
INC.**

By: [Signature] President

Date: 8/1/12

Attachments: Exhibit A (Tax Map 29)
Development Proposal



October 15, 2013

Kathy McHugh
Housing Development Specialist
City of Charlottesville
Neighborhood Development Services
610 E. Market Street
P.O. Box 911
Charlottesville, Virginia 22902

Re: Elliott Avenue Land Purchase and Development Agreement Dated August 1, 2012

Dear Mrs. McHugh:

During the contract period of the above-referenced agreement, Southern Development Group and Habitat for Humanity have been diligently pursuing design, entitlement, engineering, planning, and approvals for the Elliott Avenue site. We remain committed to the faithful execution of the agreed upon plan of development and are very excited about the potential for this project to meet and exceed the lofty goals that we and the City established for this property. This will be a model development project for the City.

Section 4 of the Contract states *“Closing on the Property will be held within thirty (30) days after all necessary final site plan, PUD, and subdivision approvals have been obtained from the City, and in no event later than January 1, 2014.”*

Section 11.1 of the Contract states *“Purchaser’s obligations under this Agreement are contingent upon receiving... satisfactory final site plan, subdivision and rezoning approval from the City of Charlottesville for construction of the residential housing development.”*

We have not yet received final site plan or subdivision approval, so we hereby request that the required closing date be extended by up to one year, to December 31, 2014, or within 30 days of final site plan and subdivision approval have been obtained, whichever comes first.

In support of this request, here is some detail of what has been done to date.

- Erosion & sediment control plan submitted to NDS on September 11, 2012
- Rezoning pre-application meeting held with staff on October 3, 2012
- Rezoning application submitted October 31, 2012
- Rezoning preliminary discussion with PC held January 8, 2013
- Rezoning Planning Commission public hearing held March 12, 2013
- City Council approved the rezoning April 15, 2013
- Site engineering begun in May 2013

170 South Pantops Drive • Charlottesville, Virginia 22911

Phone: 434.245.0894 • Fax: 434.245.0895

www.southern-development.com

- Soil and water environmental sampling conducted in June 2013
- VSMP permit received from Virginia DCR in June 2013
- Storm water infiltration testing conducted in July 2013
- Discussions with the Tree Commission July through August 2013
- Tree Commission meeting held August 28, 2013
- Funding commitment for site remediation received from lenders September 2013
- Final Site Plan submitted to the City for approval on September 30, 2013

Though the planning and approvals moved forward diligently, they did not proceed as fast as is theoretically possible for several reasons. This site is a complicated site and demands design and engineering prudence over haste. Some specific instances of delay are:

- Between the rezoning application submittal and the Planning Commission public hearing the project met with delays due to efforts to work collaboratively with staff to find ways to build the innovative “woonerf” travelway designs in this project. Current design standards did not and do not allow this innovative approach. Some creative solutions evolved from these conversations but the solutions took approximately 3 months to resolve and refine, delaying the rezoning.
- The site survey conducted during the rezoning process determined that the site is a different shape than was assumed based on City GIS mapping. Though it did not alter the general design, it did require some reworking of the finer details of the concept.
- During final site planning stages we worked with the Tree Commission to find ways to incorporate street trees in a very urban plan setting, with additional complications due to existing overhead power lines where street trees would normally be planted. Some excellent solutions resulted from this process, but it delayed the submittal of the Final Site Plan.

Southern Development and Habitat for Humanity have diligently pursued approvals necessary to meet the Contract obligations, and we have invested significant resources during that process. Though there have been some delays along the way we feel that these delays were worthwhile and will result in an excellent project. Our first priority is to make this a model development that will be enjoyed by its residents for decades.

Thank you for considering our request to extend the required closing date on the land. Please don't hesitate to contact me with questions.

Sincerely,



Charlie Armstrong

RESOLUTION

BE IT RESOLVED by the Council for the City of Charlottesville, Virginia, that the City Manager is hereby authorized to sign the following document, in form approved by the City Attorney or his designee.

Amendment No. 1 to the Land Purchase and Development Agreement, dated August 1, 2012, among the City of Charlottesville, Greater Charlottesville Habitat for Humanity, Inc. and Southern Development Group, Inc., extending the deadline to close on the sale of land on Elliott Avenue.

**AMENDMENT NO. 1 TO THE LAND PURCHASE AND DEVELOPMENT
AGREEMENT DATED AUGUST 1, 2012, AMONG THE
CITY OF CHARLOTTESVILLE, GREATER CHARLOTTESVILLE HABITAT FOR
HUMANITY, INC. AND SOUTHERN DEVELOPMENT GROUP, INC.**

This Agreement Amendment is entered into between the CITY OF CHARLOTTESVILLE, VIRGINIA, GREATER CHARLOTTESVILLE HABITAT FOR HUMANITY, INC., AND SOUTHERN DEVELOPMENT GROUP, INC. on this _____ day of _____, 2013. As evidenced by their signatures below, for and in consideration of the mutual premises herein contained, the parties agree as follows:

Section 4 (Closing and Delivery of Possession) of the Land Purchase and Development Agreement dated August 1, 2012 is hereby amended to change the deadline for closing on the sale/purchase of the property from January 1, 2014 to July 1, 2014.

All other provisions of the original agreement not expressly or implicitly changed by this Amendment are hereby reaffirmed and shall continue in full force and effect.

WITNESS the following signatures and seals.

CITY OF CHARLOTTESVILLE, VA

SOUTHERN DEVELOPMENT GROUP, INC.

By: _____
Maurice Jones, City Manager

By: _____
Title: _____

GREATER CHARLOTTESVILLE HABITAT FOR HUMANITY, INC.

By: _____

Title: _____